

TITLE 15
DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

CHAPTER 2
HAWAII CAPITAL LOAN PROGRAM

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Historical Note: This chapter is based substantially upon Rules and Regulations Governing the Hawaii Capital Loan Program, Department of Business Economic Development. [Eff. 12/4/69; R JUL 6 1981; am and comp DEC 21 1989] Substantive changes include incorporating provisions of Act 243, SLH 1987, which increased the maximum loan amount to \$1,000,000 from \$250,000.

§15-2-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii capital loan program authorized by chapter 210, Hawaii Revised Statutes. [Eff. JUL 6 1981; comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS § 210-5)

§15-2-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Department" means the department of business and economic development;

"Director" means the director of business and economic development;

"Financial institution" includes, but is not limited to, banks and other lending institutions whose regular course of business entails the making of commercial and industrial loans;

"Loan" means a direct loan made by the department, a loan in which the State participates with financial institutions, including the SBA, or a loan made to a local development company;

"Local development company" means a corporation chartered under any applicable state corporation law to operate in a specified area within the State;

"SBA" means the Small Business Administration of the United States Government;

"SBIA" means the Small Business Investment Act of 1958 (P.L. 85-699), as amended;

"SBIC" means the Small Business Investment Company which provides venture capital to meet the equity needs of small business concerns;

"Small business concern" means any business entity, including its affiliates or subsidiaries, which is non-dominant in its field and organized for profit, and which conforms with the SBA definition of a small business as defined by title 13, section 121.3-10 of the Code of Federal Regulations;

"State" means the State of Hawaii. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, § 210-5) (Imp: HRS §210-1, §210-5)

§15-2-3 Purpose of loans. (a) The department may make loans to small business concerns for the purpose of financing plant construction, conversion, expansion, acquisition of land for expansion, acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital.

(b) Loans shall not be granted in any of the following instances:

(1) Where the direct or indirect purpose or result of granting the loan would be to:

- (A) Pay off a creditor or creditors of the applicant who are inadequately secured and are in a position to sustain a loss; or
- (B) Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or share- holders of the applicant's business, except as ordinary compensation for services rendered; or
- (C) Refund a debt owed to a small business investment company; or
- (D) Replenish funds heretofore used for any of the above purposes;
- (2) Where the purpose of the applicant in applying for a loan is to effect a change in ownership of a business, unless the change will promote the sound development or preserve the existence of the business;
- (3) Where the loan will provide or free funds for speculation in any kind of property, real or personal, tangible or intangible;
- (4) Where the applicant is an eleemosynary institution or other nonprofit enterprise; provided that this provision shall not bar a loan to a local development company if it carries on a business activity and the purpose of such activity is to obtain pecuniary benefit for its members in the operation of their otherwise eligible small business concerns;
- (5) Where the purpose of the loan is to finance the construction, acquisition, conversion, or operation of recreational or amusement facilities, unless the facilities contribute to the general well-being of the public and are properly licensed by the State or local authority;
- (6) Where the applicant is engaged in the creation, origination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form, or content. Financial assistance to such applicants is barred in order to avoid government interference, or the appearance thereof, with the constitutionally protected freedoms of speech and press; provided that nothing herein shall preclude financial assistance to any otherwise eligible applicant engaged in one or more of the following activities:
 - (A) Printing: firms solely engaged in commercial or job printing, if there is no common ownership with any concern ineligible under this section and the printer has no direct financial interest in the commercial success of the material so produced;
 - (B) Publishing: publishers of shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material;
 - (C) Advertising and technical material production: firms producing advertisements and promotional material for a client's goods or services, or technical or instructional material relating to such goods or services;
 - (D) Reproduction: firms providing motion picture, videotape, sound recording, or theatrical technical production facilities, or the technical reproduction of motion picture, videotape, or sound recordings without editorial or artistic participation therein, without a direct interest in the commercial success of material so produced, and without common ownership between the concern providing such services and the concern's interest in such success;
 - (E) Broadcasting and cable TV: operators of commercial broadcasting (radio and television) stations and cable TV systems under the regulatory jurisdiction of the Federal Communications Commission (FCC) or a cable TV franchise granted in conformity with FCC standards, are eligible to apply for financial assistance;
 - (F) Education: vocational, technical, and other nonacademic schools which do not also teach academic subjects; and nursery and pregrade schools if they are not primarily engaged in teaching academic subjects;
 - (G) Distributors of books: assistance is not prohibited for general merchandise stores also selling books, newspapers, magazines, records, etc., and general book or music (record) stores;

- (7) Where any part of the gross income of the applicant (or any of its principal owners) is derived from gambling activities;
- (8) Where the loan is to provide funds to an applicant, other than a local development company, primarily engaged in the business of lending or investing, the otherwise eligible enterprise becomes ineligible' where the purpose of assistance is to finance investments that are neither related nor essential to the enterprise;
- (9) Where the purpose of the loan is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment; provided that this prohibition shall not apply to a loan for the remodeling or improvement (including expansion) of existing commercial or industrial structures held for rental where the applicant is performing substantial maintenance and operational services in connection with such structures; and provided further that no loan shall be made to build or acquire buildings for investment;
- (10) Where the effect of the granting of the loan will be to encourage monopoly or will be inconsistent with generally accepted practices of the American system of free competitive enterprise. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210- 5) (Imp: HRS §210-5, §210-6)

§15-2-4 Types of loans; policy on direct and participation loans. (a) The department may make two types of loans:

- (1) Direct loans; and
 - (2) Participation loans made in conjunction with loans made by other financial institutions, including the SBA.
- (b) Direct loans may be made by the department when a participation loan is not available to the applicant.
- (c) Participation loans may be made if the applicant is unable to obtain the entire loan from a financial institution, the SBA, or others.
- (d) The department's policy shall be to stimulate and encourage participation by financial institutions including the SBS. A direct loan may be made when an applicant provides evidence satisfactory to the director that a participation loan is not available. [Eff. 7/6/81; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-6)

§15-2-5 Eligibility requirements. Consideration for loans under this chapter shall be extended only to applicants who meet the following requirements:

- (1) The applicant is a small business concern authorized to do business in the State;
- (2) The applicant is not able to obtain the desired loan on reasonable terms from the financial institutions principally dealt with;
- (3) The applicant furnishes information to show that the applicant has the ability to repay the loan out of income from the business;
- (4) The applicant shall have enough equity invested or to invest so that if the loan is approved, it can operate on a sound financial basis;
- (5) Adequate collateral is required to reasonably protect the State's interest. The amount of Collateral needed, considered along with other credit factors, is determined on a case-by-case basis; and
- (6) The purpose of the loan is in conformity with provisions of section 15-2-3. [Eff. 7/6/81; Am and comp DEC 21 1989] (Imp: HRS §210-5, §210-6)

§15-2-6 Application procedure. (a) Before applying to the department, an applicant shall make every effort to obtain the loan from a financial institution, including the SBA. If the applicant is unable to obtain the loan from a financial institution or other source, the applicant shall ascertain whether a financial institution or other source, or both; would be willing to make the loan in participation with the department.

(b) All persons applying for loans shall utilize the department's loan application form or the appropriate SBA forms which may be obtained from any commercial bank or the local SBA office.

(c) Copies of the application form shall be submitted first to the applicant's financial institution principally dealt with. If a loan is not available, or if the financial institution declines to make a participation loan, the application shall then be submitted to at least one other financial institution before it is submitted to the economic development division of the department.

(d) All financial statements submitted by an applicant shall show the applicable date of the information given and shall be signed and certified by the proprietor, partner, or public accountant. The department may require an audited statement. The department may also require that financial statements accompanying applications include balance sheets and profit and loss statements for the past five tax years and a year-to-date interim financial statement dated no later than 90 days of application date. [Eff. JUL 6 1981; am comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5)

§15-2-7 Consideration and review of applications. (a) Applications for loans shall be considered only when there is evidence that the loan is not available on reasonable terms from other sources. The loan applied for shall be deemed to be otherwise available on reasonable terms, unless the applicant provides proof of refusal of all or a part of the required loan from the applicant's financial institution principally dealt with. The department shall require proof of refusal from more than one financial institution if the loan is considered likely to be available in whole or in part from other financial institutions. Proof of refusal shall contain the date of application, amount, and terms requested, and the financial institution's reasons for not granting the desired loan. The financial institution's refusal to advance credit shall not be considered the full test of unavailability of credit, and where there is reason to believe that credit is otherwise available on reasonable terms from sources other than such financial institution, the loan applied for may not be granted notwithstanding the receipt of a written refusal from such financial institution.

(b) The department need not consider an application for a loan if the amount of loan required is obtainable:

- (1) On reasonable terms through the public offering or private placing of securities of the applicant; or
- (2) Through the disposal at fair price of assets not required by the applicant in the conduct of its Existing business or not reasonably necessary to its potential healthy growth; or
- (3) Without undue hardship through utilization of the personal credit or resources of the owner, partners, management or principal shareholders of the applicant; or
- (4) Through other appropriate government financing.

(c) The department shall not approve a loan unless the applicant provides reasonable assurance that the loan can and will be repaid pursuant to its terms. Reasonable assurance of repayment shall be based upon consideration of the applicant's record of past earnings or projections of future earnings which indicate that the applicant will be able to repay the loan from the income of the business.

(d) The department may disapprove the loan for any of the following reasons:

- (1) The purpose of the loan is to accomplish an expansion which is unwarranted in the light of the applicant's past experience and management ability;
- (2) The effect of making the loan is to subsidize inefficient management;
- (4) The applicant cannot meet certain practical credit requirements established by the department;
- (5) The applicant fails to meet other basic criteria deemed necessary in justifying or granting a loan.

(e) Applications meeting the requirements enumerated above and in the foregoing sections of this chapter shall be reviewed by the staff of the economic development division and referred to the loan advisory committee for its advice and recommendation before final approval or disapproval by the director.

(f) An applicant shall not be required to pay any fees in connection with filing an application, but shall be required to pay for such costs as appraisals, title searches, documentation of mortgages, and any other work required in processing the loan which is not performed by the department. When deemed necessary by the department, an applicant shall be responsible for hiring independent appraisers to

determine the value of capital assets or to assess the economic feasibility of a business operation. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5, §210-6)

§15-2-8 Preferences and priorities in granting loans. In granting loans, the department shall be guided by the nature of the small business concern and the potential economic advantage it offers the State or the increased job creation the loan will provide. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5)

§15-2-9 Maximum loan amount; loan terms and restrictions. (a) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans with a private financial institution.

(b) Direct and participating loans to any one applicant shall not exceed \$1,000,000 in state funds.

(c) The director shall determine the extent and kinds of security required for each loan. When loans are secured, such security may be subordinated to direct loans made by financial institutions.

(d) No loan shall be granted for a period exceeding twenty years. The following guidelines shall be used by the department in setting loan terms;

(1) Working capital loans shall in most instances be for a maximum of six years;

(2) Loans to purchase fixed assets, including land, construction, etc., may be for periods up to a maximum of twenty years, but normally shall be ten years.

(e) Each loan shall bear a simple interest at a rate one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate is determined on January 1 and July 1 of each year by the rate charged by the two largest banks in the State of Hawaii identified by the Department of Commerce and Consumer Affairs division of financial institutions. Should there be a difference in rate charged by the Institutions, the lower of the two shall be utilized.

(f) The director shall determine the commencement date for the repayment of the first installment. The director may defer the initial payment on the principal of a loan, but in no event shall the principal payments be deferred in excess of five years from date of issuance of the loan.

(g) The director may defer the interest on the principal of a loan, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan.

[Eff. 7/6/81; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5).

§15-2-10 Inspection of premises and records. The department shall have the right to inspect, at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any business concern either in connection with the processing of a loan application or in the administration of a loan granted to that business concern. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5)

§15-2-11 Annual reports required of borrowers; interim reports. During the life of a loan, each borrower shall submit to the director, annually, financial reports consisting of a balance sheet and profit and loss statement on either a fiscal year or calendar year basis, depending on the tax reporting period of the borrower. These reports shall be submitted no later than four months after the close of the applicable tax period. The department may require the filing of interim financial statements and reports and the submission of progress and final reports relating to any aspects of the business. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS §210-5)

§15-2-12 Default. (a) Loans that are three installments in arrears shall be considered in default. The borrower shall also be considered to be in default for failure to comply with any term or condition of the loan authorization, loan agreement, or mortgage. If the borrower is in default, the whole of the loan, at the option of the director, shall become due and payable. The director may foreclose any mortgage by any

method provided by law. Any expense incurred by the department for recovering of moneys shall be borne by the borrower.

(b) Loans in default shall be referred to the state attorney general for collection and action if the department is not able to obtain payment. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210- 4, §210-5) (Imp: HRS §210-5)

§15-2-13 Local development company loans. (a) The department may make loans to local development companies approved by the SBA as qualifying for loans under section 502, 503 and 504 of the SBIA. In order to qualify for loans, the local development company shall have the sole purpose of enhancing the economic growth of the geographic area in which it is chartered to operate. The loan made by the department may represent a portion of the local development company's private capital which must be raised before any loan will be approved by the SBA.

(b) Any local development company which has become incorporated under the state corporate law and which satisfies the qualifications required by the SBA shall be eligible to apply to the department.

(c) The loan made to a local development company may be made for assistance to any identifiable small business only for the purpose of land acquisition, construction, machinery, and equipment.

However, each such loan to a local development company shall be subject to the following restrictions:

- (1) Loans for any single project shall be of such an amount as determined by the department to be necessary and proper, but in no instance shall be more than twenty per cent of the total cost of the project or any other maximum established by law;
- (2) The terms of the loan may be for a period of twenty-five years plus construction time, which time may be extended, at the discretion of the director, for a period up to, but not in excess of, ten years; or for such a period as that in effect for local development company loans by the SBA at the time of the making of the loan;
- (3) The interest shall be determined by the director, but shall not be less than the annual rate in effect by the SBA for local development company loans at the time of the making of the loan;
- (4) The initial payment of principal may be made concurrent with or placed in a standby position to the SBA loan. Interest shall be paid concurrently with the SBA loan;
- (5) The department shall ensure that all terms and conditions of any loan made to a local development company shall conform as closely as possible to those prescribed the SBA subject to the State restrictions.

(d) The local development company to whom a loan has been granted shall submit to the department annual financial statements during the life of the loan and interim financial statements and reports as may be required by the department. [Eff. JUL 6 1981; am and comp DEC 21 1989] (Auth: HRS §210-4, §210-5) (Imp: HRS § 210-7)