

CHAPTER 689

H.B. No. 259

AN ACT

relating to the creation and administration of a linked deposit program to encourage lending to historically underutilized businesses and small businesses in distressed communities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 481, Government Code, is amended by adding Subchapter N to read as follows:

**SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESS
AND SMALL BUSINESS LINKED DEPOSIT PROGRAM**

Sec. 481.191. **DEFINITIONS.** *In this subchapter:*

- (1) *"Eligible borrower" means a person who proposes to begin operating a small business in a distressed community or a historically underutilized business.*
- (2) *"Eligible lending institution" means a financial institution that makes commercial loans, is a depository of state funds, and agrees to participate in the linked deposit program established by this subchapter and to provide collateral equal to the amount of linked deposits placed with it.*
- (3) *"Historically underutilized business" means:*
 - (A) *a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned by one or more persons who are members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;*
 - (B) *a sole proprietorship formed for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Paragraph (A) of this subdivision;*
 - (C) *a partnership formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A) of this subdivision. Those persons must have proportionate interest and demonstrate active participation in the control, operation, and management of the partnership's affairs; or*
 - (D) *a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision.*
- (4) *"Small business" means a corporation, partnership, sole proprietorship, or other legal entity that:*
 - (A) *is domiciled in this state;*
 - (B) *is formed to make a profit;*
 - (C) *is independently owned and operated; and*

(D) employs fewer than 100 full-time employees.

Sec. 481.192. **LINKED DEPOSIT.** A linked deposit is a time deposit governed by a written deposit agreement between the state and an eligible lending institution that provides:

(1) that the eligible lending institution pay interest on the deposit at a rate that is not less than the greater of:

(A) the current market rate of a United States treasury bill or note of comparable maturity minus two percent; or

(B) 1.5 percent; and

(2) that the eligible lending institution agree to lend the value of the deposit to an eligible borrower at a maximum rate that is the current market rate of a United States treasury bill or note of comparable maturity plus four percent.

Sec. 481.193. **LINKED DEPOSIT PROGRAM.** (a) The department shall establish a linked deposit program to encourage commercial lending for the development of small businesses in distressed communities and historically underutilized businesses.

(b) The policy board shall adopt rules for the loan portion of the linked deposit program.

(c) In order to participate in the linked deposit program, an eligible lending institution may solicit loan applications from eligible borrowers.

(d) After reviewing an application and determining that the applicant is an eligible borrower and is creditworthy, the eligible lending institution shall send the application for a linked deposit loan to the department.

(e) The eligible lending institution shall certify the interest rate applicable to the specific eligible borrower and attach it to the application sent to the department.

(f) After reviewing each linked deposit loan application, the executive director of the department shall recommend to the state treasurer the acceptance or rejection of the application.

(g) After the state treasurer's acceptance of the application and the lending institution originates a loan to an eligible borrower, the state treasurer shall place a linked deposit with the applicable eligible lending institution for the period the treasurer considers appropriate. The state treasurer may not place a deposit for a period extending beyond the state fiscal biennium in which it is placed. Subject to the limitation described by Section 481.197, the treasurer may place time deposits at an interest rate described by Section 481.192, notwithstanding any order of the State Depository Board to the contrary.

(h) Before the placing of a linked deposit, the eligible lending institution and the state, represented by the state treasurer and the department, shall enter into a written deposit agreement containing the conditions on which the linked deposit is made. The deposit agreement must provide that:

(1) the lending institution notify the state treasurer if the borrower to which the deposit is linked defaults on the loan; and

(2) in the event of a default the state treasurer may withdraw the linked deposit.

(i) If a lending institution holding linked deposits ceases to be a state depository, the state treasurer may withdraw the linked deposits.

Sec. 481.194. **COMPLIANCE.** (a) On acceptance of its application to receive linked deposits, an eligible lending institution shall loan money to an eligible borrower in accordance with the deposit agreement and this subchapter. The eligible lending institution shall forward a compliance report to the department.

(b) The department shall monitor compliance with this subchapter and inform the state treasurer of noncompliance on the part of an eligible lending institution.

Sec. 481.195. **DESIGNATION AS DISTRESSED COMMUNITY.** (a) A municipality may apply to the policy board for designation of a subarea of the municipality as a distressed community.

(b) The application must:

73rd LEGISLATURE—REGULAR SESSION

(1) provide evidence that the subarea of the municipality for which the application is being made has been traditionally recognized by custom or by previous governmental designation as a subarea and certify that:

- (A) the per capita income in the subarea is 80 percent or less of the median income of the entire municipality filing the application;
- (B) the unemployment rate in the subarea is 1.5 times higher than the average unemployment rate of the entire municipality; and
- (C) 10 percent or more of all individuals and families in the subarea are in poverty;

or

(2) certify that the subarea is part of an enterprise zone designated under the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

(c) The policy board shall designate the subarea for which an application is filed as a distressed community if it determines that the requirements of Subsection (b) have been satisfied and that the evidence required under Subsection (b)(1), if applicable, is sufficient.

Sec. 481.196. **STATE LIABILITY PROHIBITED.** The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an eligible borrower. Linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 481.197. **LIMITATIONS IN PROGRAM.** (a) At any one time, not more than \$3 million may be placed in linked deposits under this chapter.

(b) The maximum amount of a loan under the linked deposit program is \$100,000.

(c) The borrower shall apply a loan granted under this subchapter to the purchase, construction, or lease of capital assets, including land, buildings, and equipment.

(d) Notwithstanding Subsection (a), at any one time before September 1, 1995, not more than \$1 million may be placed in linked deposits under this chapter. This subsection expires September 2, 1995.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 23, 1993: Yeas 118, Nays 3, 2 present, not voting; the House refused to concur in Senate amendments to H.B. No. 259 on May 18, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 259 on May 24, 1993, by a non-record vote; passed by the Senate, with amendments, on May 13, 1993: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 259 on May 25, 1993: Yeas 31, Nays 0.

Approved June 17, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.