

Appropriations: Halvorson of Clayton, Chair; Harbor and Norland.

MAR 19 1982

Appropriations

HOUSE FILE 2447

BY COMMITTEE ON COMMERCE

(Formerly Study Bill 738)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the establishment of a loan loss reserve
2 program for bank loans to small businesses.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act, unless the context otherwise requires:

3 1. "Administrator" means the executive director of the
4 Iowa housing finance authority appointed under section 220.6.

5 2. "Bank" means a commercial bank that is organized under
6 state or federal law and that is authorized to maintain a
7 place of business in this state, and that has registered as
8 a participant under section 3 of this Act.

9 3. "Qualified borrower" means a person who is a small
10 business or will use proceeds from the loan to become a small
11 business.

12 4. "Qualified loan" includes any agreement for a loan,
13 extension of credit, advancement, or line of credit, or any
14 extension or renewal of the agreement, where the proceeds
15 are to be used in the commencement or operation of a small
16 business.

17 5. "Loan loss reserve fund" means the fund authorized
18 by section 5 of this Act.

19 6. "Registered bank" means a bank that has registered
20 under section 3 of this Act for participation in the loan
21 loss reserve program.

22 7. "Small business" means a business entity organized
23 for profit, including but not limited to an individual,
24 partnership, corporation, joint venture, association or
25 cooperative, to which the following apply:

26 a. It is not an affiliate or subsidiary of a business
27 dominant in its field of operation.

28 b. It has either twenty or fewer full-time equivalent
29 positions or not more than the equivalent of one million
30 dollars in annual gross revenues in the preceding fiscal year.

31 c. It does not involve the operation of a farm and does
32 not involve the practice of a profession.

33 For purposes of this definition "dominant in its field
34 of operation" means having more than twenty full-time
35 equivalent positions and more than one million dollars in

1 annual gross revenues, and "affiliate or subsidiary of a
2 business dominant in its field of operation" means a business
3 which is at least twenty percent owned by a business dominant
4 in its field of operation, or by partners, officers, directors,
5 majority stockholders, or their equivalent, of a business
6 dominant in that field of operation.

7 Sec. 2. NEW SECTION. PROGRAM CREATED. There is a loan
8 loss reserve program. The administrator shall perform the
9 duties required by this Act, and may use employees of the
10 Iowa housing finance authority as necessary in the performance
11 of these duties. The loan loss reserve program shall be
12 administered separately from other duties of the administrator
13 under chapter 220.

14 Sec. 3. NEW SECTION. REGISTRATION OF PARTICIPATING BANKS.
15 A bank that wishes to participate in the loan loss reserve
16 program shall register with the administrator. Registration
17 shall be in the manner prescribed by the administrator by
18 rule under section 9 of this Act.

19 Sec. 4. NEW SECTION. LOSS RESERVE CREATED.

20 1. A registered bank and a qualified borrower obtaining
21 a qualified loan from that bank may agree that a loss reserve
22 be established under this Act in connection with the qualified
23 loan to that borrower.

24 2. If a loss reserve is to be established pursuant to
25 subsection 1, the bank and the borrower shall agree upon an
26 amount to be contributed by each of the parties to the loss
27 reserve. The amount shall be equal to a percentage, not less
28 than two percent nor more than five percent, of the principal
29 amount of the loan. The amount of the contribution shall
30 be the same for each party.

31 3. Upon the execution of a loss reserve agreement under
32 subsections 1 and 2, the registered bank shall give written
33 notice to the administrator. The notice shall be in the form
34 prescribed by the administrator by rule under section 9 of
35 this Act.

1 4. A bank that lends funds under an agreement for which
2 a loss reserve has been created shall be responsible for
3 remitting to the administrator the contributions of the bank
4 and the borrower in the amount agreed to in subsection 2.
5 The administrator shall adopt rules under section 9 of this
6 Act prescribing the manner in which these funds shall be
7 remitted.

8 Sec. 5. NEW SECTION. LOSS RESERVE FUND.

9 1. The administrator shall establish a loss reserve fund
10 for each bank that registers under section 3 of this Act.

11 2. The loss reserve fund of a bank consists of amounts
12 received by the administrator from the bank under section
13 4, subsection 4 of this Act, plus the contribution of the
14 state under section 6, subsection 2 of this Act, plus earnings
15 of the fund as certified by the treasurer of state under
16 section 8 of this Act.

17 3. The loss reserve fund of a bank constitutes a reserve
18 against loss subsequently sustained by the bank as a result
19 of the default of borrowers under qualified loans that have
20 been made by the bank and for which loss reserve agreements
21 were in effect under section 4 of this Act.

22 4. A borrower has no right, title, or interest in moneys
23 contained in or payable to the loss reserve fund of a bank.
24 The total amount that is held to the credit of the loss reserve
25 fund of a bank at any time or so much thereof as is necessary
26 may be withdrawn by the bank at its request to reduce or
27 eliminate a loss referred to in subsection 3.

28 5. Any claim of a bank against a borrower for damages
29 incurred as a result of the default by the borrower under
30 a loan for which a loss reserve has been established under
31 this Act is reduced to the extent of any amount withdrawn
32 by the bank from its loss reserve fund on account of that
33 default.

34 Sec. 6. NEW SECTION. CONTRIBUTION OF STATE.

35 1. The administrator shall cause contributions to be made

1 to loss reserve funds of banks as established under section
2 5, subsection 1 of this Act. These contributions shall be
3 made out of and only to the extent of appropriations made
4 to the administrator specifically for this purpose.

5 2. Subject to any limitations contained in rules adopted
6 under section 9, subsection 5 of this Act, upon receipt of
7 the contributions of the bank and the borrower under section
8 4, subsection 4 of this Act, the administrator shall cause
9 the state's contribution to be made to the loss reserve fund
10 of that bank. The amount of the state's contribution is equal
11 to the percentage agreed to by the borrower and the lender
12 under section 4, subsection 2 of this Act, multiplied by the
13 loan principal.

14 3. Upon determining that all of the funds appropriated
15 to the administrator for the purpose specified in subsection
16 1 have been allocated to loss reserve funds under this Act,
17 the administrator shall give written notice to all registered
18 banks of this fact. A bank that has remitted funds in
19 connection with a loan under section 4, subsection 4 of this
20 Act is entitled to a refund from the administrator on behalf
21 of the bank and the borrower if the state's contribution in
22 connection with that loan is not made for any reason.

23 4. Nothing contained in this Act shall be construed to
24 create any liability on the part of this state or the Iowa
25 housing finance authority or the administrator for any loss
26 incurred by any person in connection with any loan.

27 5. Nothing contained in this Act shall be construed to
28 give a person any right or title to or interest in any moneys
29 of this state except to the extent of funds actually credited
30 to a loss reserve fund pursuant to subsection 2.

31 Sec. 7. NEW SECTION. WITHDRAWALS FROM RESERVE.

32 1. A bank that has sustained a loss, as defined by the
33 administrator by rule under section 9 of this Act, may file
34 a written request with the administrator to withdraw money
35 held to the credit of the loss reserve fund of that bank.

1 If the administrator determines that the loss has occurred,
2 the administrator shall authorize the state comptroller to
3 issue a warrant payable to the bank and drawn against the
4 loss reserve fund of the bank. The administrator shall not
5 approve the withdrawal of any amount that exceeds the amount
6 of loss to the bank, as established by evidence the
7 administrator requires to be submitted, and shall not approve
8 the withdrawal of an amount that exceeds the balance of the
9 loss reserve fund.

10 2. A bank may file a written request with the administrator
11 to terminate its participation in the loss reserve program
12 and to abolish the loss reserve fund. If a reserve fund is
13 abolished under this subsection, one-third of the amount held
14 to the credit of the fund at that time shall be distributed
15 to the bank, one-third to the state general fund, and the
16 remainder shall be distributed to borrowers who contributed
17 to the fund as their interests may appear, but excluding all
18 borrowers who are in default of qualified loans for which
19 loss reserves were established and excluding all borrowers
20 whose previous default resulted in a withdrawal by the bank
21 under subsection 1. However, if the administrator determines
22 that a borrower who otherwise qualifies for a refund under
23 this subsection has ceased to operate the small business for
24 which the qualified loan originally was made, the amount
25 otherwise due that borrower shall be paid into the general
26 fund of the state. As used in this paragraph, "ceased to
27 operate" includes abandonment, bankruptcy, insolvency, or
28 any other discontinuance of the business, or a voluntary or
29 involuntary transfer of the assets of the small business to
30 another person who was not a co-debtor under the loan.

31 3. The administrator may require the execution of such
32 undertakings by a bank as may be necessary to protect borrowers
33 and to protect the state, the Iowa housing finance authority,
34 the administrator and officers and employees of any of them,
35 from liability with respect to wrongful withdrawal of funds

1 under subsection 1 or 2, or the subsequent misuse or
2 misappropriation of funds withdrawn under subsection 1 or
3 2.

4 Sec. 8. NEW SECTION. TREASURER OF STATE AS CUSTODIAN.

5 1. The administrator shall deliver to the treasurer of
6 state all funds credited to a loss reserve fund under this
7 Act.

8 2. The treasurer of state shall establish a trust fund
9 for purposes of accounting for moneys credited to loss reserve
10 funds established under this Act. The treasurer of state
11 may comingle amounts held in this trust fund with other funds
12 held by the treasurer of state for purposes of investment.

13 3. The treasurer of state shall certify to the
14 administrator during each calendar quarter the earnings of
15 the trust fund, and the portion of the earnings of the trust
16 fund that is attributable to each bank's loss reserve fund.
17 The amount attributable to each loss reserve fund is equal
18 to that portion of total earnings that bears the same relation
19 to the total earnings as the balance held to the credit of
20 that fund bears to the balance of the trust account, as nearly
21 as may be determined by the treasurer of state.

22 Sec. 9. NEW SECTION. ADMINISTRATIVE RULES. Following
23 public hearings held under chapter 17A for this purpose, the
24 administrator shall adopt rules under chapter 17A as follows:

25 1. The administrator shall define "qualified loan". The
26 administrator shall include in the definition such requirements
27 as may be necessary to assure that loans covered by a loss
28 reserve fund under this Act are loans as defined in section
29 1, subsection 4 of this Act that are reasonably necessary
30 in the ordinary course of establishing or operating a small
31 business.

32 2. The administrator shall establish minimal registration
33 requirements for use under section 3 of this Act, giving due
34 consideration to information that is otherwise available as
35 public records from the superintendent of banking or another

1 regulatory agency.

2 3. The administrator shall prescribe the form of notice
3 to be used under section 4, subsection 3 of this Act.

4 4. The administrator shall prescribe the procedures for
5 remitting contributions under section 4, subsection 4 of this
6 Act.

7 5. The administrator shall adopt rules that are reasonably
8 necessary to assure that a single registered bank does not
9 receive a disproportionate amount of the state funds
10 appropriated for purposes of this Act, and to assure that
11 the loan loss reserve program created by this Act is available
12 to banks and borrowers throughout the state.

13 6. The administrator shall prescribe the procedures for
14 and the conditions precedent to withdrawals under section
15 7 of this Act. The administrator may prescribe any provisions
16 that are reasonably necessary to assure the safety of the
17 loss reserve funds, to assure that participating banks withdraw
18 loss reserve funds only for the purpose of reducing or
19 eliminating actual and unanticipated losses, to assure that
20 a loss has been sustained before a withdrawal is approved,
21 and to assure that a bank does not utilize this Act to insure
22 against loss from a prior loan in which default by the borrower
23 is pending or reasonably can be expected. Nothing contained
24 in this Act or in rules adopted by the administrator shall
25 be deemed to give a bank or any other person any right of
26 action against the state, the Iowa housing finance authority,
27 the administrator, or any officers or employees of any of
28 them as a result of the administrator's releasing funds to
29 a bank upon its written request and in accordance with this
30 Act and rules adopted under this Act.

31 7. The administrator shall prescribe rules for identifying
32 and giving notice to borrowers to whom a distribution is owed
33 upon the termination of a loss reserve fund under section
34 7, subsection 2 of this Act.

35 Sec. 10. The general assembly declares that this Act

1 serves a general public purpose by stimulating economic
2 development and employment in this state and by reducing
3 potential unemployment and business failures in this state,
4 and that therefore this Act is necessary for the well-being
5 of all of the residents of this state.

6 Sec. 11.

7 1. This Act takes effect July 1 following its enactment,
8 except that sections 3 through 7 of this Act take effect
9 January 1 of the year following the enactment of this Act.

10 2. The administrator shall adopt rules under section 9
11 of this Act as may be necessary to administer this Act upon
12 the effective date of sections 3 through 7 of this Act.

13 3. In January of the year following the date of enactment
14 of this Act, the administrator shall submit to the house and
15 senate standing committees on commerce all rules that have
16 been adopted by the administrator under this Act, together
17 with any recommendations for changes in this Act.

18

EXPLANATION

19 This bill creates a loan loss reserve program to encourage
20 banks to lend risk capital to small businesses as defined
21 in subsection 1. The program would be administered by the
22 executive director of the Iowa housing finance authority.

23 A bank and its borrowers under qualified loans could agree
24 to pay equal amounts into a loss reserve fund to protect that
25 bank against losses on those loans. The state would contribute
26 an equal share. In the event the bank sustains a loss under
27 a covered loan, the bank could withdraw from the fund to
28 offset the loss.

29 Any state or national bank in Iowa could elect to
30 participate. Each participating bank would have a seperate
31 loss reserve fund.

32 The administrator is given authority to issue rules after
33 public hearings have been held to define the procedures to
34 be followed.

35 The substantive parts of the bill would take effect January

1 1 of the year following its enactment, but the administrator
2 could hold hearings and adopt rules before that time to take
3 effect on that date.

4 The administrator would be required to submit all rules
5 and proposed statutory changes to the house and senate commerce
6 committees in January following the year of enactment, and
7 the general assembly could amend the bill as necessary to
8 cause substantive changes in the program.

9 The state contribution could not be made unless a separate
10 appropriation is made, and the state does not incur liability
11 in excess of the actual appropriation.

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