

TITLE 15
DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

CHAPTER 5
HAWAII INNOVATION DEVELOPMENT PROGRAM

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§15-5-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the Hawaii innovation development program authorized by chapter 211E, Hawaii Revised Statutes. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS § 211E-2)

§15-5-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Advisory committee" means the committee appointed by the director, pursuant to section 211E-4, HRS, to advise the director on applications for loans;

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

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

"Financial institution" means banks and other lending institutions whose regular course of business includes the making of commercial and industrial loans.

"Innovation" means any new product or invention;

"Invention" means any new process or technique for which a patent has been granted; or which, in the opinion of the advisory committee, has a favorable chance of obtaining a patent;

"Inventor" means any resident taxpayer subject to the jurisdiction of the laws of the State of Hawaii who develops an innovation;

"Loan" means a direct loan made by the department, or a loan in which the State participates with financial institutions;

"Product" means any product, device, technique, or process, which is or may be exploitable commercially. This term shall not refer to pure research but shall be construed to apply to such products, devices, techniques, or processes which have advanced beyond the theoretical stage and are readily capable of being, or have been reduced to practice;

"State" means the State of Hawaii. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-3 Purpose of program. The purpose of the Hawaii innovation development program is to promote the development of new or substantially modified products or inventions that have direct economic benefits for Hawaii by providing loans to applicants for the development of their product or invention. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-4 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 private and/or public financial loan programs.
- (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 any private and/or public financial loan programs
- (d) The department's policy shall be to encourage participation by other financial institutions including private and/or public financial loan programs. [Eff. APR 3 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-5 Purpose of loans. (a) The department may make loans to applicants to develop new or substantially modified products or inventions. The loans shall be for the purpose of financing acquisition of equipment, machinery, materials, or supplies, or for product development.

- (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 shareholders of the applicant's business; or
 - (C) Refund a debt owed to a small business investment company; or
 - (D) Replenish funds heretofore used for any of the purposes stated in this paragraph; or
 - (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 is for a purpose approved by the director; or
 - (3) Where the loan will provide or free funds for speculation in any kind of property, real or personal, tangible or intangible; or
 - (4) Where any part of the gross income of the applicant (or any of its principal owners) is derived from gambling or other illegal activities. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-6 Eligibility requirements. To be eligible for consideration for a loan, an applicant shall be required to meet the following criteria:

- (1) The applicant is not able to obtain the desired loan on reasonable terms from two financial institutions of which one shall be the institution currently dealt with.
- (2) The applicant furnishes information to show that the applicant has the ability to repay the loan out of income from the venture;
- (3) The purpose of the loan is in conformity with the provisions of section 15-5-5;
- (4) The applicant furnishes information to show that the invention or product does not or will not infringe on another person's patent rights or copyrights; and
- (5) The applicant has clear title to the invention or product. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth. HRS §211E-2) (Imp: HRS §211E-2)

§15-5-7 Application procedure. (a) Before applying to the department, an applicant shall make every effort to obtain the loan from a financial institution. If the applicant is unable to obtain the loan from a financial institution, the applicant shall ascertain whether a financial institution, 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 an appropriate loan application form from a financial institution or the U.S. Small Business Administration and shall furnish such financial statements as may be required by the department.

(c) The application form shall be submitted first to the applicant's financial institution currently dealt with. If the applicant cannot obtain a direct loan 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 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 an applicant or an authorized representative of the applicant. 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 two tax years, if applicable. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-8 Consideration and review of applications. (a) Applications for loans shall be considered only when the requirements of section 15-5-6 have been met and 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 financial institutions of which one should be the institution currently dealt with. Proof of refusal shall contain the date of application, amount requested, and the financial institution's reasons for not granting the desired loan and shall be signed by an authorized official of the financial institution. The financial institution's refusal to advance credit shall not be considered the full test of unavailability of credit. Where there is reason to believe that credit is otherwise available from sources other than the financial institution, the loan applied for may not be granted notwithstanding the receipt of a written refusal from the 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 by 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 applicant; or
- (4) Through other applicable 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 shall not approve a loan unless the applicant provides evidence of clear title to the invention or product and that there will be no infringement of patent rights or copyrights of others.

(e) Applications meeting the requirements enumerated above and in the foregoing sections of this chapter shall be reviewed by the staff of the financial assistance branch of the business services division of the department for its 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, patent searches, and any other work required in processing the loan which is not performed by the department. When determined to be 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 commercial exploitation of the applicant's product or invention. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-9 Preferences and priorities in granting loans. (a) In granting loans, the department shall be guided by the nature of the product or invention and the potential economic advantage it offers the State or the increased job creation the loan will provide.

(b) Priority consideration shall be given to a participation loan over a direct loan. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-10 Maximum loan amount; loan terms and restrictions. (a) Each participating loan to any one applicant shall be no more than ninety per cent of the total loan amount, and shall not exceed \$100,000 in state funds.

(b) Each direct loan to any one inventor shall not exceed \$100,000 in state funds.

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

(d) The director may prescribe a form of financial participation with the applicant including, but not limited to, warrants, options, or royalties on sales or earnings, in addition to direct loan repayment.

(e) No loan shall be granted for a period exceeding ten years.

(f) Each loan shall bear a simple interest rate of seven and one-half per cent a year or any other rate established by law.

(g) The director shall determine the commencement date for the repayment of the first installment. The director may defer the initial payment on the principal and interest payments be deferred in excess of two years from date of issuance of the loan. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-11 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 applicant either in connection with the processing of a loan application or in the administration of a loan granted to that applicant. When appropriate, the department will prescribe management counseling and will monitor the business activities. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-12 Reports required of borrowers. During the life of the loan, the applicant shall submit to the department written reports showing progress of development, funds expended, and expected developmental milestones at the next reporting period, at such reporting frequencies as may be established by the director. [Eff. APR 03 1982; am and comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-13 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 entire loan, plus accrued interest, 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 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. APR 03 1982; am an comp DEC 21 1989] (Auth: HRS §211E-2) (Imp: HRS §211E-2)

§15-5-14 Advisory committee. The director may appoint an advisory committee of at least three and not more than seven members to advise the director on the technical aspects of the new or substantially modified products or inventions. The director shall designate the chairperson and vice-chairperson of the advisory committee and the terms that each member shall serve on the committee. [Eff. APR 03 1982; am and comp Dec 21 1989] (Auth: HRS §211E-2) (Imp: HRS § 211E-4)