

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 11

COMMUNITY-BASED DEVELOPMENT PROGRAM

CHAPTER 126

COMMUNITY-BASED DEVELOPMENT GRANTS PROGRAM

§15-126-1	Purpose
§15-126-2	Definitions
§15-126-3	Community-Based Development Advisory Council
§15-126-4	Purpose of Grants
§15-126-5	Eligibility
§15-126-6	Grant Application Requirements and Procedures
§15-126-7	Consideration and Review of Applications
§15-126-8	Preference and Priorities in Awarding Grants
§15-126-9	Conditions for Grant
§15-126-10	Commingling of Funds Prohibited
§15-126-11	Severability

§15-126-1 Purpose. The purpose of this chapter is to provide rules and procedures governing the administration and implementation of the grant funds of the Community--based Development Program authorized by Act 111, SLH 1990. The effective date of the program is July 1, 1990. [Eff DEC 16 1991] (Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-126-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Community-based development" means a business that can be carried on a small scale in a neighborhood and which increases a community's capacity to utilize and sustain its local resources in ways which are responsive to community needs and values. It is further characterized by local control and decision-making as well as the circulation of revenues generated within the community. Examples include, but are not limited to, a cottage industry; export-oriented arts, crafts, and fashion operations; and backyard fish farming.

"Community-based organization" means an established nonprofit organization that generates community-based development activities or provides support, consultation, advocacy and training to other community groups, individuals, and businesses or enterprises engaged in community-based development activities.

"Council" means the community-based development advisory council.

"Department" means the department of business, economic development and tourism.

"Director" means the director of business, economic development and tourism.

"Grant" means an award of funds from the community-based development program, based on merit and need, to stimulate and support activities of the recipient for a specified public purpose and specified period.

"Grantee" means any recipient of a grant from the community-based development program.

"Perquisite" means a privilege, gain, or profit incidental to regular salary or wages.

"Personal information" means any information provided by the applicant, financial or otherwise, which is deemed confidential as defined by Act 262, SLH 1988.

"Traditional industry" means a viable industry or enterprise traditionally carried on by communities in Hawaii, such as, but not limited to, farming and arts and crafts.

"State" means the State of Hawaii.
[Eff DEC 16 1991] Auth: Act 111, SLH 1990)

(Imp: Act 111 SLH 1990)

§15-126-3. Community-Based Development Advisory Council.

(a) The Council shall consist of nine (9) citizens appointed by the Governor from the general public and representatives of the geographic, ethnic, and socioeconomic composition of the State of Hawaii. Each county shall be represented by at least one member who is a resident of that county, and at least one member of the council shall be a representative of the financial community. The director of the State Department of Business, Economic Development, and Tourism and the chairperson of the Board of Agriculture, or their respective designees, shall be ex-officio voting members of the council. The Council shall be placed for administrative purposes in the Department of Business, Economic Development, and Tourism.

(b) The Council shall review proposals and make written recommendations on the awarding of grants and loans, subject to the final approval of the department. The Council shall also advise the department on matters related to program implementation.

(c) All meetings of the Council shall be subject to the provisions of Chapter 92 of the Hawaii Revised Statutes, as amended. [Eff DEC 16 1991]
(Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-126-4 Purpose of grants. (a) The purpose of the grants is to assist the establishment and development of economically viable traditional or community-based businesses in the State.

(b) Grant funds may be used to cover costs, such as, but not limited to, administration and personnel; training and education; technical assistance; organizational development and planning; and advertising and marketing. [Eff]
(Auth: Act 111, SLH 1990) (Imp: Act 111, SM 1990)

§15-126-5 Eligibility. To be eligible, the applicant shall: (a) Be either:

- (1) An individual or association who, at the date of the application, has owned and operated a traditional or small community-based business or enterprise for at least two years; or
- (2) A profit organization incorporated under the laws of the State; or
- (3) A nonprofit organization determined to be exempt from federal income taxation by the Internal Revenue Service; or
- (4) A cooperative association.

(b) In the case of a nonprofit organization, such organization shall have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and shall not employ or contract with two or more members of a family or kin of the first or second degree unless specifically permitted by the department. [Eff DEC 16 1991]
(Auth: Act 111, SLH 1990) (Imp: Act 111, SLH 1990)

§15-126-6 Grant application requirements and procedures.

(a) In applying for a grant under the State of Hawaii Community-Based Development Program, the applicant must use the application format prescribed by the Department. One (1) original of this application shall be submitted for the department's review to determine compliance with minimum requirements. One (1) copy only of applicable documentation such as bylaws, policies, IRS letter, articles of incorporation, audits, or other documents specified by the Department, shall also be submitted to the department

unless current versions of such documentation have been previously filed with the community-based development program. Upon notification of preliminary approval by the department, one (1) original and fourteen (14) copies of the approved application shall be submitted to the department.

(b) Each organization also shall submit any additional information and documentation required by the Department for review of the application.

(c) If the organization intentionally withholds, omits, misrepresents, or refuses to provide the required information, the application shall be returned without action.

(d) Solicitation and acceptance of program proposals from eligible individuals, organizations, or businesses shall occur on an ongoing basis. However, there will be an annual primary round for the review and funding of grant proposals. All applications received after the specified cutoff date for the primary round of funding will be considered in subsequent rounds of grant allocations which will be contingent on funding availability.

(e) The public solicitation notice for applications shall include the total amount of funds available for distribution and the application cutoff date for the primary funding round. The notification shall be published at least once a week for two weeks in a newspaper of general circulation and in a local newspaper on all of the neighbor islands. A final published solicitation notice shall appear at least thirty (30) days prior to the cutoff date for the primary funding round. Public solicitation notices will also be published at least thirty (30) days prior to the cutoff dates for any subsequent funding rounds.

(f) The Administrative Rules for the Program shall be available at the Business Services Division, Department of Business, Economic Development and Tourism, for review and information.

(Eff DEC 16 1991] (Auth: Act 111, SLH 1990)
(Imp: Act 111, SLH 1990)

§15-126-7 Consideration and review of application. (a) Each application for a grant shall be reviewed by the Department for completeness and compliance with application procedures and guidelines.

(b) The Department shall also review each application to determine if the applicant will have sufficient funds available to achieve the goals and objectives proposed.

(c) The applications shall be reviewed by the Community-Based Advisory Council which shall make funding and non-funding recommendations.

(d) After receiving the Council's recommendations, the director shall make the final determination on grant awards.

(e) Grant funds shall not be awarded unless the application for grant funds has been received and reviewed in accordance with this chapter. (Eff DEC 16 1991] (Auth: Act 111, SLH 1990)
(Imp: Ac 111, SLH 1990)

§15-126-8 Preference and priorities in awarding grants. In awarding grants, the Department shall:

(a) Make every effort to ensure that traditional and small community-based businesses, supported by the State of Hawaii Community-Based Development Program, are distributed throughout the State.

(b) Give preference and priority to grant proposals which establish or support businesses that:

(1) Have a majority ownership by community residents.

(2) Have a majority of employees who are residents of the community.

(3) Possess a demonstrated plan to utilize and sustain the available resources within the community.

(4) Can adequately demonstrate their conformance with the community's definition of cultural and environmental acceptability.

(5) Can demonstrate the potential for economic viability while generating socioeconomic benefits for the community.

(c) Give preference and priority to grant proposals which establish or support community-based organizations that provide broad-based support to self-sustaining socioeconomic activities.

(Eff DEC 16 1991] (Auth: Act 111, SLH 1990)

(Imp: Act 111, SLH 1990)

§15-126-9 Conditions for grant. Before receiving a grant, each applicant shall provide written assurance to the department that it shall:

(a) Use the grant exclusively to support traditional or small community-based businesses;

(b) Have applied for or received all applicable licenses and permits;

(c) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;

(d) Not use grant funds for entertainment purposes or as perquisites;

(e) Comply with other requirements as the department may prescribe;

(f) Comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;

(g) Indemnify and save harmless the State and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department;

- (h) Not use or intend to use facilities for sectarian instruction or as a place of worship;
- (i) Allow the representatives of the department full access to records, reports, files, and other related fiscal practices of the grantee so that grantee may be monitored and evaluated to assure the proper and effective expenditure of public funds;
- (j) Allow the representatives of the department to inspect, at reasonable hours, the physical facilities and operations of the grantee relating to the operation of the traditional or community-based enterprise, either in connection with the processing of a grant application or in the administration of the grant;
- (k) Maintain sound fiscal management controls and accounting procedures to assure effective operation of the program; and
- (l) Return to the department all unobligated grant funds at the end of the specified period.

[Eff DEC 16 1991] (Auth: Act 111, SLH 1990)

(Imp: Act 111, SLH 1990)

§15-126-10 Commingling of funds prohibited. The grantee shall maintain all grant funds and revenues separately from revenues of the grantee. [Eff DEC 16 1991] (Auth: Act 111, SLH 1990)

(Imp: Act 111, SLH 1990)

15-126-10

§15-126-11 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. (Eff DEC 16 1991] (Auth: Act 111, SLR 1990)

(Imp: Act 111, SLH 1990)

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
& TOURISM

Chapter 126, of Title 15, State of Hawaii, Department of Business, Economic Development Tourism, Administrative Rules was adopted on November 15, 1991, following public hearings held on October 28, 29, 30, November 4, 5, 7, and 8, 1991, after public notice was given in the Advertiser, Star-Bulletin, Maui News, The Garden Island, Hawaii Tribune-Herald, and the Molokai Dispatch on September 27, 1991.

These rules shall take effect ten days after filing with the office of the Lieutenant Governor.

A Bill for an Act Relating to Community-Based Enterprise Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by \$1,000,000, or 0.039 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
COMMUNITY-BASED DEVELOPMENT**

§ -1 Findings and purpose. The legislature finds that:

- (1) It is in the best interest of the State to bring about a diversification of opportunities in all aspects of life for the residents and communities of the State;
- (2) Traditional and small community-based enterprises play an important part in providing the diversification of opportunities for Hawaii's residents and communities;
- (3) Traditional and small community-based enterprises exist in Hawaii and are characterized by their interests not only in profits but in community empowerment, that is, building the community to enable it to be self-sufficient, which encourages diversification of opportunities for Hawaii's residents and communities;
- (4) Traditional and small community-based enterprises have the potential to increase self-sufficiency, provide employment opportunities, strengthen community identity, retain and create community cultural anchors, and reinforce community social, cultural, economic, and spiritual values, and are thus of crucial importance in securing the diversification of opportunities;
- (5) Programs to develop traditional and community-based enterprises have the potential to increase self-sufficiency and provide employment opportunities to Hawaii's people;
- (6) Conventional financial institutions traditionally do not provide loans to initiate the establishment of community-based enterprises or to initiate establishment or expansion of traditional enterprises;
- (7) No present state agency or program has the authority to financially assist traditional and small community-based enterprises; and
- (8) The State should initiate a program to assist community-based enterprises through loans and grants.

The purpose of this chapter is to establish a program of loans and grants to financially assist the establishment and development of traditional and small community-based enterprises in the State.

ACT III

§ -2 **Definitions.** As used in this chapter:

"Community-based development" means a business or enterprise that can be carried on a small scale in a neighborhood, such as, but not limited to, a cottage industry; export-oriented arts, crafts and fashion operations; and backyard fish farming.

"Council" means the community-based development advisory council.

- "Department" means the department of business and economic development.

"Traditional industry" means an industry or enterprise traditionally carried on by native Hawaiians, such as taro farming.

§ -3 **Hawaii community-based development loan and grant program.** There is established the Hawaii community-based development loan and grant program, placed within the department.

§ -4 **Hawaii community-based development revolving fund; established.** There is established a revolving fund to be known as the Hawaii communitybased development revolving fund from which moneys shall be loaned or granted by the department under this chapter. All moneys appropriated to the fund by the legislature, received in repayment of loan principal, or payment of interest, and fees shall be deposited into the revolving fund and used for the purposes of this chapter.

§ -5 **Community-based development advisory council; established.** There is established the community-based development advisory council, which shall consist of eleven members. The director of business and economic development and the chairperson of the board of agriculture, or their respective designees, shall be ex officio voting members of the council. The remaining nine members shall be appointed by the governor in accordance with section 26-34. Each county shall be represented by at least one member who is a resident of that county, and at least one member of the council shall be a representative of the financial community. The council shall be placed for administrative purposes in the department of business and economic development.

§ -6 **Compensation and expenses of members.** All members shall serve without compensation, but may be reimbursed from the fund for any actual and necessary expenses, including travel expenses, incurred in carrying out their official duties.

§ -7 **Authority of council.** The council shall review all business plans, except financial statements or personal information, to assess whether the proposed business or enterprise is likely to achieve the purposes of this chapter. The council shall make recommendations to the department regarding the appropriateness of the proposed business or enterprise, and the department shall then have final authority to approve or disapprove the loan or grant application.

§ -8 **Powers and duties.** The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) With advice from the council, prescribe the qualifications for eligibility of applicants for loans;
- (2) With advice from the council, establish preferences and priorities in determining eligibility for loans and loan repayment requirements;
- (3) Establish the conditions, consistent with the purpose of this chapter, for the granting or for the continuance of a loan;

ACT III

- (4) Provide for inspection at reasonable hours of the plant facilities, books, and records of a community-based business or enterprise which has applied for or has been granted a loan and require the submission of progress and final reports;
- (5) Make loans and grants for traditional or small community-based enterprises, including loans or grants for start-up financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials or for the supplying of working capital, consistent with this chapter;
- (6) Determine the necessity for and the extent of security required in a loan;
- (7) Prescribe appropriate management counseling and monitoring of business activities;
- (8) Administer the Hawaii community-based development revolving fund;
- (9) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
- (10) Participate in loans made to qualified persons by private lenders;
- (11) Establish interest rates chargeable by the State for direct loans and by private lenders for participation loans; and
- (12) Adopt rules pursuant to chapter 91 to implement this chapter.

§ -9 **Loans; limitation and terms.** (a) Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A" and "B" in paragraphs (1) and (2) and shall be made only to applicants who meet the eligibility requirements specified therein.

- (1) Class A community-based enterprise ownership and improvement loans may be made only to provide for:
 - (A) The start-up costs, purchase or improvement of a traditional or community-based enterprise; and
 - (B) The purchase, construction, or improvement of facilities.

The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed twenty years.

- (2) Class B operating loans may be made only to carry on and improve an existing enterprise, including:
 - (A) The purchase of equipment; and
 - (B) The payment of production and marketing expenses including materials, labor, and services.

The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed twenty years.

§ -10 **Terms of loans.** Loans shall be made to qualified applicants with the following terms and conditions:

- (1) No loan shall be granted unless financial assistance is not otherwise available to the applicant;
- (2) The amount of the outstanding balance on all loans issued under this chapter to any one applicant at any one time shall not exceed \$500,000;
- (3) The maximum term of a loan shall not exceed twenty years;
- (4) Each loan shall bear simple interest at a rate of not less than three and not more than ten per cent a year, depending on the nature of the loan; and

ACT III

- (5) The commencement date for the repayment of the first installment on principal and interest of each loan may be deferred by the director of business and economic development for a period not to exceed two years.

§ -11 Grants; conditions and qualifications. (a) Grants shall only be made with funds specifically appropriated for providing grants, and shall be made for amounts not to exceed \$500,000 for each applicant. Applications for grants shall be made to the department and contain such information as the department shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant must show that:

- (1) The grant shall be used exclusively for a traditional or small community-based business or enterprise for a continuous period of at least five years;
- (2) The traditional or small community-based business or enterprise shall have applied for or received all applicable licenses and permits;
- (3) The applicant will comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (4) The grant shall not be used for purposes of entertainment or perquisites;
- (5) The applicant shall comply with other requirements as the department of business and economic development may prescribe;
- (6) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;
- (7) The applicant will indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department; and
- (8) The facilities will not be used and are not intended to be used for sectarian instruction or as a place of worship.

(b) To receive a grant hereunder for development of a traditional or small community-based enterprise, an applicant shall:

- (1) Be either:
 - (A) An individual or association who, at the date of the application, has owned and operated a traditional or small community-based business or enterprise for at least two years; or
 - (B) A profit organization incorporated under the laws of the State; or
 - (C) A nonprofit organization determined to be exempt from federal income taxation by the Internal Revenue Service; or
 - (D) A cooperative association.
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree unless specifically permitted by the department;

ACT III

- (3) Agree to make available to the department all records the applicant may have relating to the operation of the traditional or communitybased enterprise, to allow state agencies to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the business or enterprise for the purpose for which the grant is awarded.

(c) Prior to the adoption of rules pursuant to section - 8, the department may provide grants to applicants who meet the minimum criteria for eligibility set forth in this chapter.

§ -12 **Priorities and preferences.** In selecting applicants for funding, the department shall make every effort to ensure that traditional and small community-based enterprises are distributed throughout the State.

§ -13 **Exemption from chapter 42.** The provisions of chapter 42 shall not apply to the grants made pursuant to this chapter, but all grants made under this chapter shall be made only in accordance with the standards and conditions specified in section -11.

§ -14 **Annual report.** The department shall submit a report of the actions taken under this chapter which shall be included in the annual report pursuant to section 201-10."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$900,000, or so much thereof as may be necessary for fiscal year 1990-1991 to be paid into the Hawaii community-based development revolving fund for the purposes of this Act; provided that out of that sum, \$500,000 shall be appropriated for the purpose of providing grants. The sum appropriated shall be expended by the department of business and economic development.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1990-1991, to hire necessary staff without regard to chapters 76 and 77, Hawaii Revised Statutes, and operate the program established by this Act. The sum appropriated shall be expended by the department of business and economic development.

SECTION 5. This Act shall take effect on July 1, 1990.

(Approved June 8, 1990.)

Note

1. So in original.