



## **Sub. S.B. 10**

124th General Assembly  
(As Passed by the Senate)

**Sens. Armbruster, Harris, R.L. Gardner, Oelslager, Hagan, Austria, Mead, Amstutz, DiDonato, Espy, Johnson, Jordan, Mumper, Spada, Prentiss, Fingerhut, White**

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### **BILL SUMMARY**

- Establishes the Capital Access Loan Program in the Department of Development to assist participating financial institutions in making capital access loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing.
- Creates the Capital Access Loan Program Fund in the state treasury.
- Secures, in accordance with a specified procedure, a financial institution's risk associated with a capital access loan to an eligible business by a deposit of money from the Capital Access Loan Program Fund in the institution's program reserve account.

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### **CONTENT AND OPERATION**

#### **Capital Access Loan Program: in general**

The bill establishes the Capital Access Loan (CAL) Program in the Department of Development (DOD). The CAL Program is to assist participating *financial institutions* in making loans to *eligible businesses* that face barriers in accessing working capital and obtaining fixed asset financing. Although not specifically stated in the bill, the aim of the CAL Program appears to be the creation of new jobs or the preservation of existing jobs and employment opportunities and the improvement of the economic welfare of the people of the state. Under the CAL Program, a participating financial institution's risk in making a *capital access loan* to an eligible business is secured, in accordance with a specified procedure, by a deposit of money from the DOD's Capital Access Loan Program Fund into the financial institution's *program reserve account*. (Secs. 122.60(A) to (F), (I), and (J) and 122.602(A).)

### **Capital Access Loan Program Fund**

The bill establishes the Capital Access Loan Program (CALP) Fund in the state treasury. The fund consists of money deposited from two sources: (1) the Facilities Establishment Fund (see **COMMENT 1**) and (2) grants, gifts, and contributions of money, property, labor, and other things of value received by the Director of Development from individuals, private and public corporations, the United States or any agency of the United States, the state or any agency of the state, or any political subdivision of the state. The total amount of money deposited into the CALP Fund from the Facilities Establishment Fund cannot exceed \$3 million during any particular fiscal year. (Secs. 122.60(E), 122.601, and 122.602(A)(1).)

The DOD may disburse money from the CALP Fund only to pay the CAL Program's operating costs and only in keeping with the CAL Program's statutorily specified purposes. A primary purpose is to secure a financial institution's risk in making a capital access loan to an eligible business, in accordance with a specified procedure and by a deposit of money from the CALP Fund. (Sec 122.601.)

### **Director of Development functions: in general**

The Director of Development administers the CAL Program. The Director may receive and accept grants, gifts, and contributions of money, property, labor, and other things of value and must cause them to be held, used, and applied only for the purpose for which they were made. The Director also may adopt rules under the Administrative Procedure Act, engage in all other acts, and enter into necessary contracts and execute all necessary instruments, to carry out the purposes of the CAL Program. (Sec. 122.602(A).)

### **Qualification as an "eligible business"**

A business may participate in the CAL Program and obtain a capital access loan if certain requirements are met. To be an "*eligible business*," a business must satisfy all of the following (sec. 122.60(C)):

- (1) It is a for-profit business entity.
- (2) It had a total annual sales in its most recently completed fiscal year of less than \$10 million.
- (3) It has a principal place of business within Ohio.
- (4) The operation of the business in the state, either alone or in conjunction with other facilities, will create new jobs or preserve existing jobs and employment opportunities and will improve the economic welfare of the people of

Ohio. *New jobs* do not include existing jobs transferred from another facility within Ohio, and *existing jobs* means only existing jobs at facilities within the same municipal corporation or township in which the project, activity, or enterprise that is the subject of the capital access loan is located.

### **Qualification as a "participating financial institution"**

To be eligible to participate in the CAL Program, a financial institution must become a "participating financial institution" pursuant to requirements set forth in the bill.<sup>1</sup>

The DOD Director, pursuant to power granted in the bill, must determine the eligibility of a financial institution to participate. The Director may limit the number of financial institutions that participate in the CAL Program. (Sec. 122.602(B).)

A financial institution must enter into a "*participation agreement*" with the DOD prior to participating in the CAL Program. The agreement must set forth the terms and conditions under which the DOD will deposit money from the CALP Fund into the financial institution's *program reserve account* (discussed below), specify the criteria for loan qualification under the CAL Program, and contain additional terms the DOD Director considers necessary. (Secs. 122.601(F) and (G) and 122.602(C).)

### **Creation of a "program reserve account"**

Participating financial institutions must establish a "program reserve account," which is a dedicated account that is the property of the state but located at the financial institution. The account may be used by the financial institution only to cover any claim arising from a default on a capital access loan (discussed below). (Secs. 122.60(J) and 122.603(A)(1).)

The program reserve account must be interest-bearing and must contain only moneys deposited into it under the CAL Program plus the interest payable on those moneys. All interest on those moneys must be held in the account as an additional loss reserve. No more than twice in a fiscal year, the DOD Director may require that a portion or all of the accrued interest in the account be released to the DOD. When released, the accrued interest must be deposited into the CALP Fund by the DOD Director. (Sec. 122.603(A)(2).)

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<sup>1</sup> "*Financial institution*" includes any bank, trust company, savings bank, or savings and loan association that is chartered by and has a significant presence in Ohio, or any national bank, federal savings and loan association, or federal savings bank that has a significant presence in Ohio (sec. 122.60(D)).

## **Loan from a participating financial institution to an eligible business**

### **Loan fee**

A participating financial institution may make capital access loans to eligible businesses. When a participating financial institution makes such a loan, the business receiving it must pay a fee to the institution in the amount of not less than 1 ½% and not more than 3% of the principal amount of the loan. The financial institution must deposit the fee into its program reserve account. Additionally, the financial institution must deposit into the account an amount of money from its own funds equal to the amount of the collected fee. The financial institution may recover from the eligible business all or part of the amount of that money in any manner agreed to by the institution and the business. (Sec. 122.603(B).)

### **Loan certification**

Each time a participating financial institution makes a capital access loan, the institution must certify to the DOD Director, within a period specified by the Director, that the institution made the loan. The certification must include the amount of the loan, the amount of the fee received from the eligible business, the amount of the financial institution's own funds that were deposited into its program reserve account to reflect that fee, and any other information required by the DOD Director. (Sec. 122.603(C).)

### **Disbursement from the CALP Fund**

After the DOD Director receives a loan certification from a participating financial institution, the Director must disburse money from the CALP Fund to that institution for deposit into its program reserve account *if the Director makes certain determinations* (see below). The amount disbursed must be equal to 10% of the principal amount of the particular capital access loan. The disbursement of money from the CALP Fund to a participating financial institution does not require approval from the Controlling Board. (Secs. 122.602(D) and 122.603(D).)

### **Approval required**

The Director must disburse moneys if the Director determines that the financial institution's loan meets *all* of the following (sec. 122.602(D)(1) to (6)):

- (1) It will be made to an eligible business.
- (2) It will be used by the business for a project, activity, or enterprise that fosters economic development in the state.

(3) It will not be made to enroll in the CAL Program *prior debt* that is not covered under the Program and that is owed or was previously owed by an eligible business to the financial institution.

(4) It will not be utilized for a project or development related to the on-site construction or purchase of residential housing.

(5) It will not be used to finance passive real estate ownership. The bill generally defines "passive real estate ownership" as the ownership of real estate for the sole purpose of deriving income from it by speculation, trade, or rental (sec. 122.60(H)).

(6) The loan conforms to any other rules adopted by the DOD Director under the bill.

### **Limitations on approval**

Limitations on the approval of loans include the requirement that the Director may not approve a loan that exceeds \$250,000 for working capital or \$500,000 for the purchase of fixed assets. However, a business may apply for the maximum amount in each category in the same loan application (sec. 122.602(E)). Further, the Director may not approve a loan that refinances a nonprogram loan made by the same financial institution unless the amount of the refinanced loan exceeds the existing debt, and then, only the amount exceeding the existing debt is eligible for a loan under the program (sec. 122.602(I)).

### **Loan applications specifically permitted**

The bill specifically permits a financial institution to apply to the Director for approval of a loan to a business that is owned or operated by a person that has previously defaulted under a state financial assistance program (sec. 122.602(F)). It also permits a financial institution to apply for approval of a loan that refinances a nonprogram loan made by another financial institution (sec. 122.602(H)).

### **Compliance with ongoing law**

A business that applies for a loan under the bill must comply with the Application for Economic Development Assistance Law (sec. 9.66--not in the bill) (see **COMMENT 2**) (sec. 122.602(G)).

### **Collection of loans and payment from a program reserve account**

Under the bill, a participating financial institution determines the timing and amount of delinquency on a capital access loan in a manner consistent with its

normal method for making these determinations on similar nonprogram loans (sec. 122.604(C)).

If a financial institution determines that a portion or all of a capital access loan is *uncollectible*, the institution may submit a claim for principal plus accrued interest to the DOD. If the DOD approves the claim, moneys in the amount of the claim will be released from the financial institution's program reserve account. (Sec. 122.604(A).)

Financial institutions may claim the amount of the principal plus accrued interest owed. The amount of the principal included in the claim may not exceed the principal amount covered by the CAL Program. The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount. (Sec. 122.604(B).)

A participating financial institution may file more than one claim at a time. If two or more claims are filed at the same time or approximately the same time and there are insufficient funds in the institution's program reserve account at that time to cover the entire amount of the claims, the financial institution may specify an order of priority in which the DOD must approve the release of funds from the account in relation to the claims. (Sec. 122.604(D).)

If subsequent to the payment of a claim, a participating financial institution recovers any amount covered by the previously paid claim from an eligible business to which the loan was made, the institution must promptly deposit the amount recovered into its program reserve account, less any reasonable expenses incurred (sec. 122.604(E)).

### **Annual report**

Under the bill, each participating financial institution must submit an annual report to the DOD on or before March 31 of each year. The report must include or be accompanied by all of the following (sec. 122.605):

(1) Information regarding the institution's outstanding capital access loans, its capital access loan losses, and other related matters that the DOD considers appropriate;

(2) A statement of the total amount of the institution's capital access loans for which the DOD has made disbursements from the CALP Fund under the CAL Program;

(3) A copy of the institution's most recent financial statement.

### *Withdrawal of funds from financial institutions*

The DOD is permitted to remove moneys from a participating financial institution's program reserve account under specified circumstances. If the amount in the account exceeds 33% of the financial institution's outstanding capital access loans, the DOD may withdraw the excess amount and deposit it into the CALP Fund (sec. 122.603(E)).

In certain situations, the DOD *may cause* the withdrawal of the total amount in a participating financial institution's program reserve account. This step can be taken if any of the following occurs (sec 122.603(F)):

(1) The financial institution is no longer eligible to participate in the CAL Program.

(2) The participation agreement expires without renewal by the DOD or the financial institution.

(3) The financial institution has no outstanding capital access loans.

(4) The financial institution has not made a capital access loan within the preceding 24 months.

### *Miscellaneous changes*

The bill amends the Facilities Establishment Fund Law to include the CAL Program within its provisions. This allows moneys appropriated or transferred to the Facilities Establishment Fund to be released at the request of the DOD Director for the purpose of the CAL Program. (Sec. 166.03(B).)

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## **COMMENT**

1. The Facilities Establishment Fund is contained in the state treasury. It consists of proceeds from the issuance of certain bonds, notes, and other obligations; moneys received by the state from the repayment of certain loans and recovery on certain loan guarantees; service charges for certain loan guarantees and loans in connection with the allowable costs of economic development projects; any grants, gifts, or contributions of money received by the DOD Director to be used for the latter loans; and all other moneys appropriated or transferred to the Fund.

2. Under the Application for Economic Development Assistance Law, a person who applies to the state, a state agency, or a political subdivision for economic development assistance must indicate on the application for assistance

whether the person has any outstanding liabilities owed to the state, a state agency, or a political subdivision. Such a person also must authorize the state, state agency, or political subdivision to inspect the personal financial statements of the applicant, including tax records and other similar information not open to public inspection.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 91
Reported, S. Economic Development, Technology, & Aerospace	03-13-01	p. 200
Passed Senate (33-0)	03-13-01	p. 203

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