

**As Reported by the Senate Economic Development, Technology
and Aerospace Committee**

**124th General Assembly
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Sub. S. B. No. 10

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A B I L L

To amend section 166.03 and to enact sections 122.60, 1
122.601, 122.602, 122.603, 122.604, and 122.605 of 2
the Revised Code to establish the Capital Access 3
Loan Program in the Department of Development. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 166.03 be amended and sections 5
122.60, 122.601, 122.602, 122.603, 122.604, and 122.605 of the 6
Revised Code be enacted to read as follows: 7

Sec. 122.60. As used in sections 122.60 to 122.605 of the 8
Revised Code: 9

(A) "Capital access loan" means a loan made by a 10
participating financial institution to an eligible business that 11
may be secured by a deposit of money from the fund into the 12
participating financial institution's program reserve account. 13

(B) "Department" means the department of development. 14

(C) "Eligible business" means a for-profit business entity 15
that had total annual sales in its most recently completed fiscal 16
year of less than ten million dollars and that has a principal 17

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place of business within the state, the operation of which, 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 the state. As used in this division, "new jobs" does not include existing jobs transferred from another facility within the state, 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 a capital access loan is located.

(D) "Financial institution" means any bank, trust company, savings bank, or savings and loan association that is chartered by and has a significant presence in the state, or any national bank, federal savings and loan association, or federal savings bank that has a significant presence in the state.

(E) "Fund" means the capital access loan program fund.

(F) "Participating financial institution" means a financial institution that has a valid, current participation agreement with the department.

(G) "Participation agreement" means the agreement between a financial institution and the department under which a financial institution may participate in the program.

(H) "Passive real estate ownership" means the ownership of real estate for the sole purpose of deriving income from it by speculation, trade, or rental.

(I) "Program" means the capital access loan program created under section 122.602 of the Revised Code.

(J) "Program reserve account" means a dedicated account at each participating financial institution that is the property of the state and may be used by the participating financial institution only for the purpose of recovering a claim under

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section 122.604 of the Revised Code arising from a default on a loan made by the participating financial institution under the program.

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Sec. 122.601. There is hereby created in the state treasury the capital access loan program fund. The fund shall consist of money deposited into it from the facilities establishment fund pursuant to section 166.03 of the Revised Code and all money deposited into it pursuant to section 122.602 of the Revised Code. The total amount of money deposited into the fund from the facilities establishment fund shall not exceed three million dollars during any particular fiscal year of the department.

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The department shall disburse money from the capital access loan program fund only to pay the operating costs of the program and only in keeping with the purposes specified in sections 122.60 to 122.605 of the Revised Code.

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Sec. 122.602. (A) There is hereby created in the department of development the capital access loan program to assist participating financial institutions in making program loans to eligible businesses that face barriers in accessing working capital and obtaining fixed asset financing. In administering the program, the director of development may do any of the following:

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(1) Receive and accept grants, gifts, and contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which the grants, gifts and contributions are made, 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; agree to repay any contribution of money or return any property contributed or the value of that property at the times, in the amounts, and on the terms and conditions,

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excluding the payment of interest, that the director consents to at the time a contribution is made; and evidence obligations by notes, bonds, or other written instruments;

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(2) Adopt rules under Chapter 119. of the Revised Code to carry out the purposes of the program specified in sections 122.60 to 122.605 of the Revised Code;

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(3) Engage in all other acts, and enter into contracts and execute all instruments, necessary or appropriate to carry out the purposes specified in sections 122.60 to 122.605 of the Revised Code.

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(B) The director shall determine the eligibility of a financial institution to participate in the program and may set a limit on the number of financial institutions that may participate in the program.

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(C) To be considered eligible by the director to participate in the program, a financial institution shall enter into a participation agreement with the department that sets out the terms and conditions under which the department will deposit moneys from the fund into the financial institution's program reserve account, specifies the criteria for loan qualification under the program, and contains any additional terms the director considers necessary.

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(D) After receiving the certification required under division (C) of section 122.603 of the Revised Code, the director shall disburse moneys from the fund to a participating financial institution for deposit in its program reserve account if the director determines that the capital access loan involved meets all of the following criteria:

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(1) It will be made to an eligible business.

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(2) It will be used by the eligible business for a project, activity, or enterprise in the state that fosters economic

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development. 110

(3) It will not be made in order to enroll in the program 111
prior debt that is not covered under the program and that is owed 112
or was previously owed by an eligible business to the financial 113
institution. 114

(4) It will not be utilized for a project or development 115
related to the on-site construction or purchase of residential 116
housing. 117

(5) It will not be used to finance passive real estate 118
ownership. 119

(6) It conforms to the requirements of divisions (E), (F), 120
(G), (H), and (I) of this section, and to the rules adopted by the 121
director under division (A)(2) of this section. 122

(E) The director shall not approve a capital access loan to 123
an eligible business that exceeds two hundred fifty thousand 124
dollars for working capital or five hundred thousand dollars for 125
the purchase of fixed assets. An eligible business may apply for 126
the maximum amount for both working capital and the purchase of 127
fixed assets in the same capital access loan. 128

(F) A financial institution may apply to the director for the 129
approval of a capital access loan to any business that is owned or 130
operated by a person that has previously defaulted under any state 131
financial assistance program. 132

(G) Eligible businesses that apply for a capital access loan 133
shall comply with section 9.66 of the Revised Code. 134

(H) A financial institution may apply to the director for the 135
approval of a capital access loan that refinances a nonprogram 136
loan made by another financial institution. 137

(I) The director shall not approve a capital access loan that 138
refinances a nonprogram loan made by the same financial 139

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institution, unless the amount of the refinanced loan exceeds the 140
existing debt, in which case only the amount exceeding the 141
existing debt is eligible for a loan under the program. 142

Sec. 122.603. (A)(1) Upon approval by the director of 143
development and after entering into a participation agreement with 144
the department, a participating financial institution making a 145
capital access loan shall establish a program reserve account. The 146
account shall be an interest-bearing account and shall contain 147
only moneys deposited into it under the program and the interest 148
payable on the moneys in the account. 149

(2) All interest payable on the moneys in the program reserve 150
account shall be added to the moneys and held as an additional 151
loss reserve. The director may require that a portion or all of 152
the accrued interest so held in the account be released to the 153
department. If the director causes a release of accrued interest, 154
the director shall deposit the released amount into the fund. The 155
director shall not require the release of accrued interest more 156
than twice in a fiscal year. 157

(B) When a participating financial institution makes a 158
capital access loan, it shall require the eligible business to pay 159
to the participating financial institution a fee in an amount that 160
is not less than one and one-half per cent, and not more than 161
three per cent, of the principal amount of the loan. The 162
participating financial institution shall deposit the fee into its 163
program reserve account, and it also shall deposit into the 164
account an amount of its own funds equal to the amount of the fee. 165
The participating financial institution may recover from the 166
eligible business all or part of the amount that the participating 167
financial institution is required to deposit into the account 168
under this division in any manner agreed to by the participating 169
financial institution and the eligible business. 170

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(C) For each capital access loan made by a participating financial institution, the participating financial institution shall certify to the director, within a period specified by the director, that the participating financial institution has made the loan. The certification shall include the amount of the loan, the amount of the fee received from the eligible business, the amount of its own funds that the participating financial institution deposited into its program reserve account to reflect that fee, and any other information specified by the director. 171
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(D) On receipt of a certification made under division (C) of this section and subject to section 122.602 of the Revised Code, the director shall disburse to the participating financial institution from the fund an amount equal to ten per cent of the principal amount of the particular capital access loan for deposit into the participating financial institution's program reserve account. The disbursement of moneys from the fund to a participating financial institution does not require approval from the controlling board. 180
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(E) If the amount in a program reserve account exceeds an amount equal to thirty-three per cent of a participating financial institution's outstanding capital access loans, the department may cause the withdrawal of the excess amount and the deposit of the withdrawn amount into the fund. 189
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(F)(1) The department may cause the withdrawal of the total amount in a participating financial institution's program reserve account if any of the following applies: 194
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(a) The financial institution is no longer eligible to participate in the program. 197
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(b) The participation agreement expires without renewal by the department or the financial institution. 199
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(c) The financial institution has no outstanding capital 201

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<u>access loans.</u>	202
<u>(d) The financial institution has not made a capital access loan within the preceding twenty-four months.</u>	203
<u>(2) If the department causes a withdrawal under division (F)(1) of this section, the department shall deposit the withdrawn amount into the fund.</u>	204
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<u>(F)(1) of this section, the department shall deposit the withdrawn amount into the fund.</u>	206
<u>amount into the fund.</u>	207
<u>Sec. 122.604. (A) If a participating financial institution determines that a portion or all of a capital access loan is uncollectible, it may submit a claim to the department for approval of the release of moneys from its program reserve account.</u>	208
<u>determines that a portion or all of a capital access loan is uncollectible, it may submit a claim to the department for approval of the release of moneys from its program reserve account.</u>	209
<u>uncollectible, it may submit a claim to the department for approval of the release of moneys from its program reserve account.</u>	210
<u>approval of the release of moneys from its program reserve account.</u>	211
<u>account.</u>	212
<u>(B) The claim may include the amount of principal plus accrued interest owed. The amount of principal included in the claim may not exceed the principal amount covered by the program. The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount.</u>	213
<u>(B) The claim may include the amount of principal plus accrued interest owed. The amount of principal included in the claim may not exceed the principal amount covered by the program.</u>	214
<u>The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount.</u>	215
<u>The amount of accrued interest included in the claim may not exceed the accrued interest attributable to the covered principal amount.</u>	216
<u>amount.</u>	217
<u>amount.</u>	218
<u>(C) The participating financial institution shall determine the timing and amount of delinquency on a capital access loan in a manner consistent with the participating financial institution's normal method for making these determinations on similar nonprogram loans.</u>	219
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<u>manner consistent with the participating financial institution's normal method for making these determinations on similar nonprogram loans.</u>	221
<u>normal method for making these determinations on similar nonprogram loans.</u>	222
<u>nonprogram loans.</u>	223
<u>(D) If the participating financial institution files two or more claims at the same time or approximately the same time and there are insufficient funds in its program reserve account at that time to cover the entire amount of the claims, the participating financial institution may specify an order of priority in which the department shall approve the release of funds from the account in relation to the claims.</u>	224
<u>(D) If the participating financial institution files two or more claims at the same time or approximately the same time and there are insufficient funds in its program reserve account at that time to cover the entire amount of the claims, the participating financial institution may specify an order of priority in which the department shall approve the release of funds from the account in relation to the claims.</u>	225
<u>there are insufficient funds in its program reserve account at that time to cover the entire amount of the claims, the participating financial institution may specify an order of priority in which the department shall approve the release of funds from the account in relation to the claims.</u>	226
<u>participating financial institution may specify an order of priority in which the department shall approve the release of funds from the account in relation to the claims.</u>	227
<u>priority in which the department shall approve the release of funds from the account in relation to the claims.</u>	228
<u>funds from the account in relation to the claims.</u>	229
<u>funds from the account in relation to the claims.</u>	230
<u>(E) If subsequent to the payment of a claim, a participating</u>	231

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financial institution recovers from an eligible business any 232
amount covered by the paid claim, the participating financial 233
institution shall promptly deposit the amount recovered into its 234
program reserve account, less any reasonable expenses incurred. 235

Sec. 122.605. Each participating financial institution shall 236
submit an annual report to the department on or before the 237
thirty-first day of March of each year. The report shall include 238
or be accompanied by all of the following: 239

(A) Information regarding the participating financial 240
institution's outstanding capital access loans, its capital access 241
loan losses, and other related matters that the department 242
considers appropriate; 243

(B) A statement of the total amount of the participating 244
financial institution's capital access loans for which the 245
department has made disbursements from the fund under the program; 246

(C) A copy of the participating financial institution's most 247
recent financial statement. 248

Sec. 166.03. (A) There is hereby created the facilities 249
establishment fund within the state treasury, consisting of 250
proceeds from the issuance of obligations as specified under 251
section 166.08 of the Revised Code; the moneys received by the 252
state from the sources specified in section 166.09 of the Revised 253
Code; service charges imposed under sections 166.06 and 166.07 of 254
the Revised Code; any grants, gifts, or contributions of moneys 255
received by the director of development to be used for loans made 256
under section 166.07 of the Revised Code or for the payment of the 257
allowable costs of project facilities; and all other moneys 258
appropriated or transferred to the fund. Moneys in the loan 259
guarantee fund in excess of four per cent of the unpaid principal 260
amount of loan repayments guaranteed under section 166.06 of the 261

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Revised Code, but subject to the provisions and requirements of 262
any guarantee contracts, may be transferred to the facilities 263
establishment fund by the treasurer of state upon the order of the 264
director of development. Moneys received by the state under 265
Chapter 122. of the Revised Code, to the extent allocable to the 266
utilization of moneys derived from proceeds of the sale of 267
obligations pursuant to section 166.08 of the Revised Code, shall 268
be credited to the facilities establishment fund. 269

(B) All moneys appropriated or transferred to the facilities 270
establishment fund may be released at the request of the director 271
of development for payment of allowable costs or the making of 272
loans under this chapter, for transfer to the loan guarantee fund 273
established in section 166.06 of the Revised Code, or for use for 274
the purpose of or transfer to the funds established by sections 275
122.35, 122.42, 122.54, 122.55, 122.56, 122.561, 122.57, 122.601, 276
and 122.80 of the Revised Code and, until July 1, 2001, the funds 277
established by sections 122.26 and 166.031 of the Revised Code, 278
but only for such of those purposes as are within the 279
authorization of Section 13 of Article VIII, Ohio Constitution, in 280
all cases subject to the approval of the controlling board. 281

(C) The department of development, in the administration of 282
the facilities establishment fund, is encouraged to utilize and 283
promote the utilization of, to the maximum practicable extent, the 284
other existing programs, business incentives, and tax incentives 285
that department is required or authorized to administer or 286
supervise. 287

Section 2. That existing section 166.03 of the Revised Code 288
is hereby repealed. 289