



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 558

130th General Assembly  
(As Introduced)

Rep. Pillich

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## BILL SUMMARY

- Establishes the Disabled Veterans Small Business Loan Program to be administered by the Development Services Agency.
- Specifies that the Agency is to create and administer the program in consultation with the Director of Veterans Services.
- Provides eligibility criteria for an individual to receive a loan or loan guarantee under the program.
- Requires the Director of Development Services to verify the eligibility of an applicant and, if program funds are available, to make a loan or provide a loan guarantee to an eligible applicant.
- Establishes specifications that must be satisfied in order for the Director to make a loan or provide a loan guarantee.
- Requires the Director to enter into a contract with the loan or loan guarantee recipient that specifies the amount of the loan or loan guarantee and other terms and conditions of the loan or loan guarantee.
- Requires the Director to define the conditions under which a recipient of a loan is in default under the loan, and to specify how the Director is to verify amounts for which the Director becomes liable under loan guarantees.
- Requires the Director, in the event of a loan default or if the Director becomes liable on a loan guarantee, to attempt to recover from the loan or loan guarantee recipient and, if recovery is not made, to notify the Attorney General.

- Requires the Attorney General to commence and prosecute a civil action against a loan or loan guarantee recipient to recover an amount in default or for which the Director has become liable on a loan guarantee.
- Requires the Director to prepare an annual report describing operations of the program and to transmit the report to the Governor, majority and minority leadership of the Senate and House of Representatives, and the Director of Veterans Services.
- Creates the Disabled Veterans Small Business Loan Program Fund in the state treasury, which must be used to make loans and to create a reserve for loan guarantees under the program.
- Requires the Director to adopt rules under the Administrative Procedure Act to create and administer the program.
- Specifies that an individual who misrepresents himself or herself for purposes of obtaining a loan or loan guarantee under the program is guilty of theft by deception.

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## **CONTENT AND OPERATION**

### **Disabled Veterans Small Business Loan Program**

The bill establishes the Disabled Veterans Small Business Loan Program within the Development Services Agency. The Agency is to create and administer the program in consultation with the Director of Veterans Services. The purpose of the program is to provide assistance to disabled veterans who are establishing or operating a small business in the state, and thereby to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the state.<sup>1</sup> Under the bill, a "small business" means a sole proprietorship, partnership, corporation, limited liability company, or other business entity having fewer than 400 employees.<sup>2</sup> Under the program, an individual may apply for a loan or loan guarantee by completing and filing an application with the Director of Development Services on, and by attachments to, the prescribed form (see below).<sup>3</sup>

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<sup>1</sup> R.C. 122.011(A)(15).

<sup>2</sup> R.C. 5903.21.

<sup>3</sup> R.C. 5903.23.



## **Eligibility requirements for loan or loan guarantee**

To be eligible to receive a loan or loan guarantee from the program, an individual must: (1) be a disabled veteran, (2) plan to establish a small business in the state, operate a small business in the state, or own at least a 51% interest in an existing small business in the state, (3) demonstrate that the small business reflects a viable business model, (4) be unable to finance the small business through ordinary financial channels at comparable terms, and (5) previously have not defaulted on a loan or loan guarantee received from the Agency.<sup>4</sup>

## **Application for loan or loan guarantee**

The Director must prescribe an application form that elicits facts and documentation establishing the applicant's eligibility. The application form must include a space for the applicant to sign and date. The Director must provide a blank application form to an individual upon request. The Director also may enable a blank application to be downloaded from the Agency's website.<sup>5</sup>

The bill specifies that by signing and dating an application form, an applicant certifies that the applicant is eligible for a loan or loan guarantee under the program and that, if a loan or loan guarantee is received, the applicant will use the loan or loan money that is covered by a loan guarantee only to establish or operate a small business in the state.<sup>6</sup>

## **Provision of loan or loan guarantee to eligible applicants**

The Director must accept a properly completed application and must evaluate the application and verify whether the applicant is in fact eligible for a loan or loan guarantee. If an applicant satisfies the eligibility requirements, the Director may, to the extent funds are available in the Disabled Veterans Small Business Loan Program Fund, make a loan or provide a loan guarantee to the applicant.<sup>7</sup> The Director may not offer or agree to a loan or loan guarantee under the program unless the following are satisfied: (1) the loan or loan guarantee are consistent with the purpose of the program and the recipient's business model, (2) the amount of the loan or loan guarantee does not exceed 75% of the total amount the recipient proposes to spend on establishing or operating the small business, and (3) the amount loaned or guaranteed is secured by a first or second

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<sup>4</sup> R.C. 5903.22.

<sup>5</sup> R.C. 5903.23.

<sup>6</sup> R.C. 5903.23.

<sup>7</sup> R.C. 5903.24(A).

mortgage or other security interest on the small business or, if it is acceptable to the Director, by a first or second mortgage on, or other security interest in, other property of the recipient.

#### **Priority of loan or loan guarantee**

The bill specifies that, except as otherwise provided by law, a first mortgage or other security interest securing the amount loaned or guaranteed has priority over all other mortgages and security interests in the small business, but not over a mortgage or other security interest that was previously made by a financial institution in connection with the establishment, acquisition, or expansion of all or part of the small business. Also, except as otherwise provided by law, a second mortgage or security interest securing the amount loaned or guaranteed, including a mortgage securing a loan or guarantee when the previous exception applies, is subordinate to the first mortgage or security interest in the small business and has priority over all other mortgages or security interests.<sup>8</sup>

#### **Contract between Director and loan or loan guarantee recipient**

The bill requires the Director to enter into a contract with a recipient of a loan or loan guarantee under the program. A contract must specify the amount of the loan or loan guarantee, the interest rate on a loan, the amount of a loan guarantee, times for payment of principal and interest on a loan, service fees and charges, and other terms and conditions of the loan or loan guarantee.<sup>9</sup>

#### **Effect of default on a loan or when Director becomes liable under a loan guarantee**

The Director is required to define the conditions under which the recipient of a loan is in default under the loan. The Director also must specify how the Director is to verify an amount for which the Director becomes liable under a loan guarantee.<sup>10</sup> In the event a recipient defaults on a loan, or if the Director becomes liable under a loan guarantee, the bill requires the Director to attempt to recover from the recipient the amount in default or amount for which the Director is liable. If the Director is unable to recover from the recipient, the Director must notify the Attorney General. The Attorney

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<sup>8</sup> R.C. 5903.24(B).

<sup>9</sup> R.C. 5903.24(C).

<sup>10</sup> R.C. 5903.25(A).



General then must commence and prosecute a civil action to recover the amount in default or for which the Director has become liable.<sup>11</sup>

### **Report describing program operations**

Annually, not later than March 1, the Director must prepare a report describing operations of the program during the preceding calendar year. The report must include information regarding the number of applications received, rejected for improper completion, accepted, or denied; the number and amounts of loans and loan guarantees made classified into descriptive ranges; a description of the small businesses for which loans were made or guaranteed, and a discussion of how those businesses have created or preserved jobs and employment opportunities and improved the economic welfare of the people of the state; the number and amount of loans in default, the number and amount of loan guarantees that have resulted in liability, the number and amount of defaulted loans and guarantees paid out that have been recovered, all classified into descriptive ranges; and any other information the Director considers necessary to explain administration of the program during the preceding calendar year. The Director must transmit a copy of the report to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and the Director of Veterans Services.<sup>12</sup>

### **Disabled Veterans Small Business Loan Program Fund**

The bill creates the Disabled Veterans Small Business Loan Program Fund in the state treasury. The Director must use money in the fund to make loans and to create a reserve for loan guarantees under the program. Appropriations made to the program, and grants, gifts, bequests, and other contributions to the program, must be deposited into the fund. Money received from the repayment of a loan or accrual of liability under a loan guarantee must be deposited into the fund. Investment earnings of the fund must be credited to the fund.<sup>13</sup>

### **Director must adopt rules**

The bill requires the Director, under the Administrative Procedure Act, to adopt rules necessary to create and administer – and as it becomes advisable improve – the program.<sup>14</sup>

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<sup>11</sup> R.C. 5903.25(B).

<sup>12</sup> R.C. 5903.29.

<sup>13</sup> R.C. 5903.27.

<sup>14</sup> R.C. 5903.28.



## Misrepresentation by applicant

Under the bill, an individual who misrepresents himself or herself for purposes of obtaining a loan or loan guarantee under the program is guilty of theft by deception.<sup>15</sup>

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### HISTORY

ACTION	DATE
Introduced	05-22-14

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<sup>15</sup> R.C. 5903.26 & R.C. 2913.02 (not in bill).

