



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB2072

Introduced 2/22/2011, by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

20 ILCS 605/605-422 new

Amends the Department of Commerce and Economic Opportunity Law of the Civil Administrative Code of Illinois. Creates the Capital Access Loan Pilot Program. Creates the Capital Access Loan Loss Reserve Fund. Provides that the Department shall secure 10% of loans to eligible small businesses, if the participating financial institution would not offer the borrower a small business loan under the institution's prevailing credit standards without the 10% guarantee. Provides that the financial institution must submit an application to participate in the Program. Provides guidelines that the Department shall consider when determining whether a loan may be considered "eligible". Provides that an eligible business shall pay a one-time fee to the Department. Provides that the Department shall establish procedures under which participating financial institutions may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. Provides that the Department may promulgate rules to implement the Program.

LRB097 08823 PJG 48953 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Department of Commerce and Economic  
5 Opportunity Law of the Civil Administrative Code of Illinois is  
6 amended by adding Section 605-422 as follows:

7 (20 ILCS 605/605-422 new)

8 Sec. 605-422. Capital Access Loan Pilot Program.

9 (a) The Illinois General Assembly finds and declares that  
10 it is in the best interest of the State of Illinois to create  
11 the Capital Access Loan Pilot Program to assist small  
12 businesses in obtaining access to capital that will allow them  
13 to create jobs. Small businesses have difficulty gaining access  
14 to capital for start-up and expansion purposes. Small  
15 businesses owned by minorities, women, the disabled, and  
16 veterans, and those located in rural and low-income to  
17 moderate-income areas of our State, have special capital access  
18 difficulties. The General Assembly finds that improving access  
19 to capital for these small businesses will spur investment,  
20 create jobs, expand economic opportunities, assist in the  
21 recovery of communities affected by the economic downturn, and  
22 help sustain and strengthen the economic recovery of Illinois.

23 (b) As used in this Section, the following words and

1 phrases have the following meanings:

2 (1) "Financial institution" means any bank, savings  
3 and loan association, savings bank, or credit union  
4 organized under the laws of this State or another state, or  
5 organized under the laws of the United States, the accounts  
6 of which are insured by applicable law, and their  
7 subsidiaries and affiliates.

8 (2) "Capital Access Loan Loss Reserve Fund" means a  
9 fund created outside the State treasury, subject to the  
10 limitations and procedures set forth in this Section.

11 (3) "Department" means the Department of Commerce and  
12 Economic Opportunity.

13 (4) "Authority" means the Illinois Finance Authority.

14 (5) "Participating financial institution" means a  
15 financial institution, as defined in this Section, that has  
16 been approved by the Department to enroll eligible loans in  
17 the program and has agreed to all terms and conditions  
18 established in this Section and in administrative rules.

19 (6) "Eligible loan" means a loan or a portion of a loan  
20 made by a participating financial institution to an  
21 eligible small business for any business activity that will  
22 create or retain jobs in the State of Illinois and that  
23 meets the criteria of the Capital Access Loan Pilot Program  
24 established in this Section.

25 (7) "Eligible business" means a small business, as  
26 defined in this Section, that meets all of the following

1 criteria:

2 (A) It is a general or limited corporation, general  
3 or limited partnership, cooperative, or other entity,  
4 whether that entity is a nonprofit entity or an entity  
5 established for profit, that is authorized to conduct  
6 business in the State of Illinois.

7 (B) It has its primary business location in the  
8 State of Illinois.

9 (C) It has a physical presence in the State of  
10 Illinois.

11 (D) It is a business not in contravention of the  
12 public good.

13 (8) "Small business" means a business having fewer than  
14 100 employees and with annual gross receipts totaling less  
15 than \$5 million.

16 (9) "Program" means the Capital Access Loan Pilot  
17 Program.

18 (10) "Realized loss" means the amount of the principal  
19 balance remaining on the loan at the time a borrower  
20 defaults, less any amount subsequently recovered by the  
21 financial institution pursuant to collection efforts after  
22 loan default. The realized loss does not include any fees  
23 paid by the financial institution or on behalf of the  
24 borrower that are assessed by the State to participate in  
25 this Program.

26 (c) The Capital Access Loan Pilot Program is created. The

1 Program shall be administered by the Department and shall have  
2 an initial term of 2 years or until a full commitment of the  
3 Capital Access Loan Loss Reserve Fund has been made, whichever  
4 occurs first, running from the effective date of this  
5 amendatory Act of the 97th General Assembly. Before the second  
6 year of the program expires or before the Fund has been fully  
7 guaranteed, the Department shall provide to the General  
8 Assembly a report showing the amount of guarantees made by the  
9 State and the number of jobs created or retained. The  
10 Department's authority to enter into agreements and generate  
11 guarantees of small business loans shall cease at the end of  
12 the pilot program term, and the Department shall transfer back  
13 to the General Revenue Fund any portion of the Fund not serving  
14 as a guarantee, unless the General Assembly extends the Program  
15 by law.

16 (d) The Capital Access Loan Loss Reserve Fund is created,  
17 to be held outside the State treasury and to be administered by  
18 the Authority.

19 (1) The General Assembly, subject to appropriation,  
20 shall allocate \$15 million to the Fund, to be used by the  
21 Department to secure 10% of loans to eligible small  
22 businesses, if the participating financial institution  
23 would not offer the borrower a small business loan under  
24 the institution's prevailing credit standards without the  
25 incentive of the 10% guarantee.

26 (2) The Fund shall be interest-bearing, and interest

1 earned by the moneys held in this Fund shall remain in the  
2 Fund.

3 (3) Notwithstanding any other law to the contrary, the  
4 Fund is not subject to administrative charges or  
5 charge-backs that would in any way transfer any moneys from  
6 the Fund into any other fund of the State.

7 (e) The Department shall enter into agreements with  
8 financial institutions for the purpose of allowing the  
9 financial institution to participate in the Capital Access Loan  
10 Pilot Program established by this Section. The agreement shall  
11 provide for all of the following:

12 (1) The participating financial institution and the  
13 eligible business shall deposit the fees to the credit of  
14 the Capital Access Loan Loss Reserve Fund when the  
15 financial institution makes an eligible loan.

16 (2) The liability of the State and the Department to  
17 the financial institution under the agreement is limited to  
18 providing a guarantee of 10% of the outstanding principal  
19 balance on loans made by these participating financial  
20 institutions.

21 (3) Before any guarantee applies, the participating  
22 financial institution must submit an application to  
23 participate in the Program that includes the following:

24 (A) a certification from the small business  
25 identifying the number of jobs the business  
26 anticipates will be created or saved if the loan is

1           made; and

2                   (B) a certification from the participating  
3                   financial institution that the participating financial  
4                   institution would not offer the borrower the loan under  
5                   the institution's prevailing credit standards without  
6                   the incentive of the 10% guaratee.

7           (4) Before any guaratee applies, the participating  
8           financial institution shall provide any additional  
9           information that the Department may require, including  
10           financial information that is identifiable with, or  
11           identifiable from, the financial records of a particular  
12           small business seeking a loan through this Program.

13           (5) All loan applicants are encouraged to seek business  
14           plan development assistance from the Department's Small  
15           Business Development Center (SBDC) technical advisors. All  
16           new startup businesses and loan applicants eligible for the  
17           enhanced loan guaratee, available pursuant to subsection  
18           (o) of this Section, are required to seek business plan  
19           development assistance from an SBDC and certify to the  
20           Department that they have pursued that assistance as part  
21           of its application to the Department.

22           (f) The Department has the sole authority to determine  
23           whether a loan is considered "eligible" to merit the State's  
24           guaratee. The Department shall consider the following  
25           guidelines:

26                   (1) An eligible loan is a loan that would not be

1 extended to a small business under the institution's  
2 prevailing credit standards, but for the incentive of the  
3 guarantee provided for in this Section.

4 (2) An eligible loan may be made in the form of a line  
5 of credit, in which case the participating financial  
6 institution shall specify the amount of the line of credit  
7 to be covered under the Program, which may be equal to the  
8 maximum commitment under the line of credit or an amount  
9 that is less than that maximum commitment.

10 (3) An eligible loan made under the Program may be made  
11 with the interest rate, fees, and other terms and  
12 conditions agreed upon by the participating financial  
13 institution and the borrower, but the Department shall not  
14 approve as an eligible loan one where the interest rate  
15 charged to an eligible small business participating in this  
16 Program is higher than 4 points over the WSJ (Wall Street  
17 Journal) prime rate on the date of the loan closing.

18 (g) A financial institution that participates in this  
19 Program shall submit to the Department an application seeking  
20 approval of the loan guarantee as applied to that small  
21 business loan. If the small business meets the criteria  
22 established in subsection (o) of this Section, the  
23 participating financial institution shall provide the  
24 Department with substantiating documentation of meeting those  
25 criteria. The Department shall approve the loan guarantee and  
26 shall notify the participating financial institution of the



1 amount of the guarantee if all of the following criteria are  
2 met:

3 (1) The applicant is an eligible small business, as  
4 defined in this Section.

5 (2) The applicant has provided a certification  
6 indicating the number of jobs this loan will create or  
7 retain within the first year of the loan.

8 (3) The applicant meets other criteria that the  
9 Department deems relevant, in its discretion.

10 (h) Within 10 business days after an eligible loan closing,  
11 the participating financial institution shall notify the  
12 Department of the following, using a form approved by the  
13 Department:

14 (1) the date on which the loan closed;

15 (2) the principal amount of the loan;

16 (3) the interest rate applied to the loan; and

17 (4) the fees collected and deposited into the Capital  
18 Access Loan Loss Reserve Fund for this loan.

19 (i) After the Department certifies that this is an eligible  
20 loan to which the guarantee may be applied, the participating  
21 financial institution shall require the eligible business to  
22 which the loan is made to pay a one-time fee of no more than 25  
23 basis points, to be assessed in the discretion of the  
24 Department. The participating financial institution shall also  
25 pay a fee of the same amount. The participating financial  
26 institution shall deposit these fees into the Capital Access

1 Loan Loss Reserve Fund.

2 (j) The Department is authorized to offer the State of  
3 Illinois' 10% guarantee on eligible loans approved by the  
4 Department. The dollar amount of that guarantee shall be  
5 calculated against the original loan amount of the eligible  
6 loan.

7 (k) The Department shall seek available funds from federal  
8 and other sources, including a not-for-profit entity, for the  
9 purposes of this Section. Funds made available shall be  
10 deposited into the Capital Access Loan Loss Reserve Fund. The  
11 Department may not allocate more than the amounts appropriated  
12 for the loan guarantees under this Act.

13 (l) The Department shall establish procedures under which  
14 the participating financial institution may submit claims for  
15 reimbursement for losses incurred as a result of qualified loan  
16 defaults. These procedures shall be posted on the Department's  
17 website.

18 (m) If the eligible business receiving the loan defaults on  
19 the loan, as determined by the participating financial  
20 institution's guidelines, the participating financial  
21 institution shall notify the Department of the default  
22 contemporaneously with providing notification of default to  
23 the borrower. The participating financial institution shall  
24 also notify the Department of the realized loss suffered by the  
25 participating financial institution. After approving the  
26 realized loss amount, the Department is then authorized to

1 release that portion of moneys in the Capital Access Loan Loss  
2 Reserve Fund that amounts to the participating financial  
3 institution's realized loss, up to the amount of the guarantee  
4 for that eligible loan.

5 (n) After an eligible loan has been active for at least one  
6 year, the Department is authorized to seek records from the  
7 small business showing documentation of jobs created or  
8 retained, and all small businesses participating in this  
9 Program shall comply with any requests for information from the  
10 Department. If the small business receiving an eligible loan  
11 through this Program fails to save or create the number of jobs  
12 indicated in the Program application, or fails to comply with  
13 the Department's request for documentation pursuant to this  
14 Section, the Department may assess an additional fee of not  
15 more than 10% of the loan. This additional fee shall be added  
16 to the monthly payments collected by the participating  
17 financial institution, and the participating financial  
18 institution shall deposit the additional funds into the Capital  
19 Access Loan Loss Reserve Fund.

20 (o) The amount of the State's guarantee on an eligible loan  
21 shall be increased to 20% if the participating financial  
22 institution determines, and the Department confirms, that the  
23 loan is being made to a borrower that meets one or more of the  
24 following criteria:

25 (1) The small business is minority-owned, as certified  
26 by the State of Illinois.

1           (2) The small business is women-owned, as certified by  
2           the State of Illinois.

3           (3) The small business is owned by a person with a  
4           disability, as determined by the ADA (Americans with  
5           Disabilities Act).

6           (4) The small business is owned by a veteran of the  
7           U.S. military or National Guard.

8           (5) The chief operations of the small business are  
9           located in a low-income to moderate-income census tract.

10          (p) The State's guarantee shall cease when either of the  
11          following events occurs:

12           (1) the small business borrower defaults on the loan,  
13           and the guarantee is paid to the participating financial  
14           institution; or

15           (2) the loan becomes 5 years old, as measured from the  
16           date on which the loan originally closes.

17          (q) For all loans entered into pursuant to this Section,  
18          the Department's guarantee shall not exceed \$100,000 for any  
19          individual loan.

20          (r) The priority of issuance of the State's loan guarantees  
21          for eligible loan applicants shall be based solely on the  
22          chronological order in which applications are submitted.

23          (s) The Department may promulgate administrative rules to  
24          implement this Section, including but not limited to rules  
25          necessary for compliance with federal law.