



Rep. Lou Lang

Filed: 11/22/2010

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1 AMENDMENT TO HOUSE BILL 1420

2 AMENDMENT NO. _____. Amend House Bill 1420 by replacing
3 everything after the enacting clause with the following:

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

1 moderate-income areas of our State, have special capital access
2 difficulties. The General Assembly finds that improving access
3 to capital for these small businesses will spur investment,
4 create jobs, expand economic opportunities, assist in the
5 recovery of communities affected by the economic downturn, and
6 help sustain and strengthen the economic recovery of Illinois.

7 (b) As used in this Section, the following words and
8 phrases have the following meanings:

9 (1) "Financial institution" means any bank, savings
10 and loan association, savings bank, or credit union
11 organized under the laws of this State or another other
12 state, or organized under the laws of the United States,
13 the accounts of which are insured by applicable law, and
14 their subsidiaries and affiliates.

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

18 (3) "Department" means the Department of Commerce and
19 Economic Opportunity.

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

21 (5) "Participating financial institution" means a
22 financial institution, as defined in this Section, that has
23 been approved by the Department to enroll eligible loans in
24 the program and has agreed to all terms and conditions
25 established in this Section and in administrative rules.

26 (6) "Eligible loan" means a loan or a portion of a loan

1 made by a participating financial institution to an
2 eligible small business for any business activity that will
3 create or retain jobs in the State of Illinois and that
4 meets the criteria of the Capital Access Loan Pilot Program
5 established in this Section.

6 (7) "Eligible business" means a small business, as
7 defined in this Section, that meets all of the following
8 criteria:

9 (A) It is a general or limited corporation, general
10 or limited partnership, cooperative, or other entity,
11 whether that entity is a nonprofit entity or an entity
12 established for profit, that is authorized to conduct
13 business in the State of Illinois.

14 (B) It has its primary business location in the
15 State of Illinois.

16 (C) It has a physical presence in the State of
17 Illinois.

18 (D) It is a business not in contravention of the
19 public good.

20 (8) "Small business" means a business having fewer than
21 100 employees and with annual gross receipts totaling less
22 than \$5 million.

23 (9) "Program" means the Capital Access Loan Pilot
24 Program.

25 (10) "Realized loss" means the amount of the principal
26 balance remaining on the loan at the time a borrower

1 defaults, less any amount subsequently recovered by the
2 financial institution pursuant to collection efforts after
3 loan default. The realized loss does not include any fees
4 paid by the financial institution or on behalf of the
5 borrower that are assessed by the State to participate in
6 this Program.

7 (c) The Capital Access Loan Pilot Program is created. The
8 Program shall be administered by the Department and shall have
9 an initial term of 2 years or until a full commitment of the
10 Capital Access Loan Loss Reserve Fund has been made, whichever
11 occurs first, running from the effective date of this
12 amendatory Act of the 96th General Assembly. Before the second
13 year of the program expires or before the Fund has been fully
14 guaranteed, the Department shall provide to the General
15 Assembly a report showing the amount of guarantees made by the
16 State and the number of jobs created or retained. The
17 Department's authority to enter into agreements and generate
18 guarantees of small business loans shall cease at the end of
19 the pilot program term, and the Department shall transfer back
20 to the General Revenue Fund any portion of the Fund not serving
21 as a guarantee, unless the General Assembly extends the Program
22 by law.

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

26 (1) The General Assembly, subject to appropriation,

1 shall allocate \$15 million to the Fund, to be used by the
2 Department to secure 10% of loans to eligible small
3 businesses, if the participating financial institution
4 would not offer the borrower a small business loan under
5 the institution's prevailing credit standards without the
6 incentive of the 10% guarantee.

7 (2) The Fund shall be interest-bearing, and interest
8 earned by the moneys held in this Fund shall remain in the
9 Fund.

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

14 (e) The Department shall enter into agreements with
15 financial institutions for the purpose of allowing the
16 financial institution to participate in the Capital Access Loan
17 Pilot Program established by this Section. The agreement shall
18 provide for all of the following:

19 (1) The participating financial institution and the
20 eligible business shall deposit the fees to the credit of
21 the Capital Access Loan Loss Reserve Fund when the
22 financial institution makes an eligible loan.

23 (2) The liability of the State and the Department to
24 the financial institution under the agreement is limited to
25 providing a guarantee of 10% of the outstanding principal
26 balance on loans made by these participating financial

1 institutions.

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

5 (A) a certification from the small business
6 identifying the number of jobs the business
7 anticipates will be created or saved if the loan is
8 made; and

9 (B) a certification from the participating
10 financial institution that the participating financial
11 institution would not offer the borrower the loan under
12 the institution's prevailing credit standards without
13 the incentive of the 10% guarantee.

14 (4) Before any guarantee applies, the participating
15 financial institution shall provide any additional
16 information that the Department may require, including
17 financial information that is identifiable with, or
18 identifiable from, the financial records of a particular
19 small business seeking a loan through this Program.

20 (5) All loan applicants are encouraged to seek business
21 plan development assistance from the Department's Small
22 Business Development Center (SBDC) technical advisors. All
23 new startup businesses and loan applicants eligible for the
24 enhanced loan guarantee, available pursuant to subsection
25 (o) of this Section, are required to seek business plan
26 development assistance from an SBDC and certify to the

1 Department that they have pursued that assistance as part
2 of its application to the Department.

3 (f) The Department has the sole authority to determine
4 whether a loan is considered "eligible" to merit the State's
5 guarantee. The Department shall consider the following
6 guidelines:

7 (1) An eligible loan is a loan that would not be
8 extended to a small business under the institution's
9 prevailing credit standards, but for the incentive of the
10 guarantee provided for in this Section.

11 (2) An eligible loan may be made in the form of a line
12 of credit, in which case the participating financial
13 institution shall specify the amount of the line of credit
14 to be covered under the Program, which may be equal to the
15 maximum commitment under the line of credit or an amount
16 that is less than that maximum commitment.

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

25 (g) A financial institution that participates in this
26 Program shall submit to the Department an application seeking

1 approval of the loan guarantee as applied to that small
2 business loan. If the small business meets the criteria
3 established in subsection (o) of this Section, the
4 participating financial institution shall provide the
5 Department with substantiating documentation of meeting those
6 criteria. The Department shall approve the loan guarantee and
7 shall notify the participating financial institution of the
8 amount of the guarantee if all of the following criteria are
9 met:

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

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

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

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

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

22 (2) the principal amount of the loan;

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

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

26 (i) After the Department certifies that this is an eligible

1 loan to which the guarantee may be applied, the participating
2 financial institution shall require the eligible business to
3 which the loan is made to pay a one-time fee of no more than 25
4 basis points, to be assessed in the discretion of the
5 Department. The participating financial institution shall also
6 pay a fee of the same amount. The participating financial
7 institution shall deposit these fees into the Capital Access
8 Loan Loss Reserve Fund.

9 (j) The Department is authorized to offer the State of
10 Illinois' 10% guarantee on eligible loans approved by the
11 Department. The dollar amount of that guarantee shall be
12 calculated against the original loan amount of the eligible
13 loan.

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

20 (l) The Department shall establish procedures under which
21 the participating financial institution may submit claims for
22 reimbursement for losses incurred as a result of qualified loan
23 defaults. These procedures shall be posted on the Department's
24 website.

25 (m) If the eligible business receiving the loan defaults on
26 the loan, as determined by the participating financial

1 institution's guidelines, the participating financial
2 institution shall notify the Department of the default
3 contemporaneously with providing notification of default to
4 the borrower. The participating financial institution shall
5 also notify the Department of the realized loss suffered by the
6 participating financial institution. After approving the
7 realized loss amount, the Department is then authorized to
8 release that portion of moneys in the Capital Access Loan Loss
9 Reserve Fund that amounts to the participating financial
10 institution's realized loss, up to the amount of the guarantee
11 for that eligible loan.

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

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

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

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

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

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

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

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

19 (1) the small business borrower defaults on the loan,
20 and the guarantee is paid to the participating financial
21 institution; or

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

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

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

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

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".