

AMENDED IN ASSEMBLY JUNE 1, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 610

Introduced by Assembly Member Price

February 21, 2007

An act to amend Sections 14030, 14037, 14070, and 14076 of the Corporations Code, relating to small businesses.

LEGISLATIVE COUNSEL'S DIGEST

AB 610, as amended, Price. Small Business Expansion Fund.

The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or *loan* guarantees for the purpose of stimulating small business development and imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, which is created under ~~the~~ *that* law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations. Existing law specifies that the amount of guarantee liability outstanding at any one time shall not exceed 4 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the fund to another fund in state government, as specified. Existing law imposes a similar leverage ratio on the amount of guarantee liability outstanding with respect to a corporation's trust fund account. ~~Under existing~~ *Existing* law; *authorizes* the director ~~may to~~ authorize a corporation to exceed these specified leverage ratios pending annual reallocation of ~~funds~~; *funds*; however, a corporation may not exceed

an outstanding guarantee liability of more than 5 times its funds on deposit.

This bill would instead limit the amount of guarantee liability outstanding with respect to these funds to 5 times the amount of funds on deposit in the expansion fund or in a corporation’s trust fund account; and would, ~~in cases where the director authorizes a corporation to exceed that ratio, provide that the corporation may not exceed an outstanding guarantee liability of more than 6 times its funds on deposit~~ *delete the provision authorizing the director to allow a corporation to exceed that leverage ratio.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14030 of the Corporations Code is
 2 amended to read:
 3 14030. There is hereby created in the State Treasury the
 4 California Small Business Expansion Fund. All or a portion of the
 5 funds in the expansion fund may be paid out, with the approval of
 6 the Department of Finance, to a lending institution or financial
 7 company that will act as trustee of the funds. The expansion fund
 8 and the trust fund shall be used to pay for defaulted loan guarantees
 9 issued pursuant to Article 9 (commencing with Section 14070),
 10 administrative costs of corporations, and those costs necessary to
 11 protect a real property interest in a defaulted loan or guarantee.
 12 The amount of guarantee liability outstanding at any one time shall
 13 not exceed five times the amount of funds on deposit in the
 14 expansion fund plus any receivables due from funds loaned from
 15 the expansion fund to another fund in state government as directed
 16 by the Department of Finance pursuant to a statute enacted by the
 17 Legislature, including each of the trust fund accounts within the
 18 ~~trust fund, unless the director has permitted a higher leverage ratio~~
 19 ~~for an individual corporation pursuant to subdivision (b) of Section~~
 20 ~~14037: trust fund.~~
 21 SEC. 2. Section 14037 of the Corporations Code is amended
 22 to read:
 23 14037. (a) The state shall not be liable or obligated in any way
 24 beyond the state money that is allocated and deposited in the trust

1 fund account from state money and that is appropriated for these
2 purposes.

3 (b) The director may reallocate funds held within a corporation's
4 trust fund account.

5 ~~(1) The account. The~~ director shall reallocate funds based on
6 which corporation is most effectively using its guarantee funds. If
7 funds are withdrawn from a less effective corporation as part of a
8 reallocation, the office shall make that withdrawal only after giving
9 consideration to that corporation's fiscal solvency, its ability to
10 honor loan guarantee defaults, and its ability to maintain a viable
11 presence within the region it serves. Reallocation of funds shall
12 occur no more frequently than once per fiscal year. Any decision
13 made by the director pursuant to this subdivision may be appealed
14 to the board. The board has authority to repeal or modify any
15 decision to reallocate funds.

16 ~~(2) The director may authorize a corporation to exceed the~~
17 ~~leverage ratio specified in Section 14030, subdivision (b) of Section~~
18 ~~14070, and subdivision (a) of Section 14076 pending the annual~~
19 ~~reallocation of funds pursuant to this section. However, no~~
20 ~~corporation shall be permitted to exceed an outstanding guarantee~~
21 ~~liability of more than six times its portion of funds on deposit in~~
22 ~~the expansion fund.~~

23 SEC. 3. Section 14070 of the Corporations Code is amended
24 to read:

25 14070. (a) The corporate guarantee shall be backed by funds
26 on deposit in the corporation's trust fund account, or by receivables
27 due from funds loaned from the corporation's trust fund account
28 to another fund in state government as directed by the Department
29 of Finance pursuant to a statute enacted by the Legislature.

30 (b) Loan guarantees shall be secured by a reserve of at least 20
31 percent to be determined by the director, unless the director
32 authorizes a higher leverage ratio for an individual corporation
33 pursuant to subdivision (b) of Section 14037. *20 percent to be*
34 *determined by the director.*

35 (c) The expansion fund and trust fund accounts shall be used
36 exclusively to guarantee obligations and pay the administrative
37 costs of the corporations. A corporation located in a rural area may
38 utilize the funds for direct lending to farmers as long as at least 90
39 percent of the corporate fund farm loans, calculated by dollar
40 amount, and all expansion fund farm loans are guaranteed by the

1 United States Department of Agriculture. The amount of funds
2 available for direct farm lending shall be determined by the
3 director. In its capacity as a direct lender, the corporation may sell
4 in the secondary market the guaranteed portion of each loan so as
5 to raise additional funds for direct lending. The agency shall issue
6 regulations governing these direct loans, including the maximum
7 amount of these loans.

8 (d) In furtherance of the purposes of this part, up to one-half of
9 the trust funds may be used to guarantee loans utilized to establish
10 a Business and Industrial Development Corporation (BIDCO)
11 under Division 15 (commencing with Section 33000) of the
12 Financial Code.

13 (e) To execute the direct loan programs established in this
14 chapter, the director may loan trust funds to a corporation located
15 in a rural area for the express purpose of lending those funds to an
16 identified borrower. The loan authorized by the director to the
17 corporation shall be on terms similar to the loan between the
18 corporation and the borrower. The amount of the loan may be in
19 excess of the amount of a loan to any individual farm borrower,
20 but actual disbursements pursuant to the agency loan agreement
21 shall be required to be supported by a loan agreement between the
22 farm borrower and the corporation in an amount at least equal to
23 the requested disbursement. The loan between the agency and the
24 corporation shall be evidenced by a credit agreement. In the event
25 that any loan between the corporation and borrower is not
26 guaranteed by a governmental agency, the portion of the credit
27 agreement attributable to that loan shall be secured by assignment
28 of any note, executed in favor of the corporation by the borrower
29 to the agency. The terms and conditions of the credit agreement
30 shall be similar to the loan agreement between the corporation and
31 the borrower, which shall be collateralized by the note between
32 the corporation and the borrower. In the absence of fraud on the
33 part of the corporation, the liability of the corporation to repay the
34 loan to the agency is limited to the repayment received by the
35 corporation from the borrower except in a case where the United
36 States Department of Agriculture requires exposure by the
37 corporation in rule or regulation. The corporation may use trust
38 funds for loan repayment to the agency if the corporation has
39 exhausted a loan loss reserve created for this purpose. Interest and
40 principal received by the agency from the corporation shall be

1 deposited into the same account from which the funds were
2 originally borrowed.

3 (f) Upon the approval of the director, a corporation shall be
4 authorized to borrow trust funds from the agency for the purpose
5 of relending those funds to small businesses. A corporation shall
6 demonstrate to the director that it has the capacity to administer a
7 direct loan program, and has procedures in place to limit the default
8 rate for loans to startup businesses. Not more than 25 percent of
9 any trust fund account shall be used for the direct lending
10 established pursuant to this subdivision. A loan to a corporation
11 shall not exceed the amount of funds likely to be lent to small
12 businesses within three months following the loan to the
13 corporation. The maximum loan amount to a small business is fifty
14 thousand dollars (\$50,000). In the absence of fraud on the part of
15 the corporation, the repayment obligation pursuant to the loan to
16 the corporation shall be limited to the amount of funds received
17 by the corporation for the loan to the small business and any other
18 funds received from the agency that are not disbursed. The
19 corporation shall be authorized to charge a fee to the small business
20 borrower, in an amount determined by the director pursuant to
21 regulation. The program provided for in this subdivision shall be
22 available in all geographic areas of the state.

23 SEC. 4. Section 14076 of the Corporations Code is amended
24 to read:

25 14076. (a) It is the intent of the Legislature that the
26 corporations make maximal use of their statutory authority to
27 guarantee loans and surety bonds, including the authority to secure
28 loans with a minimum loan loss reserve of only 20 percent, ~~unless~~
29 ~~the agency authorizes a higher leverage ratio for an individual~~
30 ~~corporation pursuant to subdivision (b) of Section 14037,~~ so that
31 the financing needs of small business may be met as fully as
32 possible within the limits of corporations' loan loss reserves. The
33 agency shall report annually to the Legislature on the financial
34 status of the corporations and their portfolio of loans and surety
35 bonds guaranteed.

36 (b) Any corporation that serves an area declared to be in a state
37 of emergency by the Governor or a disaster area by the President
38 of the United States, the Administrator of the United States Small
39 Business Administration, or the United States Secretary of
40 Agriculture shall increase the portfolio of loan guarantees where

1 the dollar amount of the loan is less than one hundred thousand
2 dollars (\$100,000), so that at least 15 percent of the dollar value
3 of loans guaranteed by the corporation is for those loans. The
4 corporation shall comply with this requirement within one year of
5 the date the emergency or disaster is declared. Upon application
6 of a corporation, the director may waive or modify the rule for the
7 corporation if the corporation demonstrates that it made a good
8 faith effort to comply and failed to locate lending institutions in
9 the region that the corporation serves that are willing to make
10 guaranteed loans in that amount.

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