

AMENDED IN ASSEMBLY APRIL 30, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1695

Introduced by Assembly Member Bass

February 23, 2007

An act to *amend, repeal, and add Section 14030.2 of, and to add and repeal Section 14030.3 of, the Corporations Code, relating to small businesses, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1695, as amended, Bass. Small businesses: surety bond guarantees.

Existing law, the California Small Business Financial Development Law (Development Law) provides for the appointment of a director by the Secretary of the Business, Transportation and Housing Agency who is responsible for administering the provisions of the Development Law. The Development Law creates the California Small Business Expansion Fund in the State Treasury to pay for defaulted loan guarantees of a nonprofit California small business financial development corporation created under this law. The Development Law authorizes the director to establish accounts within the fund for loan guarantees and surety bond guarantees. *The Development Law requires the director to annually prepare a report, to be submitted to the Secretary of Business, Transportation and Housing for transmission to the Governor and the Legislature, regarding the loss experience for the expansion fund, as specified.*

This bill would create the Surety Bond Guarantee Account within the California Small Business Expansion Fund, which would be

administered by the director. The bill would transfer \$40,000,000 to the account from the State Highway Account, and would continuously appropriate the revenues to the director until ~~2011~~ 2013, as specified, to provide surety bond guarantees for small businesses, *as defined*, under the Development Law that contract to provide services for a state or federally financed transportation project, *subject to certain conditions*. The bill would require unobligated funds remaining in the account as of February 1, ~~2011~~ 2013, to be transferred to the State Highway Account and would also require the transfer of the remaining funds to the State Highway Account as the guarantees terminate. The bill would require, on or before March 1, ~~2011~~ 2013, that an amount equivalent to the interest that would have been earned on the \$40,000,000 if it had not been transferred to the Surety Bond Guarantee Account, be transferred to the State Highway Account. *The bill would require the director, commencing January 1, 2009, to January 1, 2014, inclusive, to report annually on the number of surety bond guarantees provided from the Surety Bond Guarantee Account, as specified.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 14030.2 of the Corporations Code is
2 amended to read:

3 14030.2. (a) The director may establish accounts within the
4 expansion fund for loan guarantees and surety bond guarantees,
5 including loan loss reserves. Each account is a legally separate
6 account, and shall not be used to satisfy loan or surety bond
7 guarantees or other obligations of another corporation. The director
8 shall recommend whether the expansion fund and trust fund
9 accounts are to be leveraged, and if so, by how much. Upon the
10 request of the corporation, the director’s decision may be repealed
11 or modified by a board resolution.

12 (b) Annually, not later than January 1 of each year commencing
13 January 1, 1996, the director shall prepare a report regarding the
14 loss experience for the expansion fund for loan guarantees and
15 surety bond guarantees for the preceding fiscal year. At a minimum,
16 the report shall also include data regarding numbers of surety bond

1 and loan guarantees awarded through the expansion fund, including
2 ethnicity and gender data of participating contractors and other
3 entities, and experience of surety insurer participants in the bond
4 guarantee program. The director shall submit that report to the
5 Secretary of Business, Transportation and Housing for transmission
6 to the Governor and the Legislature.

7 *(c) Annually, not later than January 1 of each year commencing*
8 *January 1, 2009, the director, in addition to the report specified*
9 *in subdivision (b), shall report on the number of surety guarantees*
10 *provided pursuant to Section 14030.3, in total, and as a percentage*
11 *of the total number of guarantees that were considered for that*
12 *year, a summary of the types of small businesses for which the*
13 *guarantees were provided, and the geographic location of those*
14 *small businesses. The report shall also include information*
15 *concerning the average and mean size of contracts awarded to*
16 *small business for which guarantees were provided. The director*
17 *shall submit that report to the Secretary of Business,*
18 *Transportation and Housing for transmission to the Governor and*
19 *the Legislature.*

20 *(d) This section shall become inoperative on January 1, 2015,*
21 *and as of that date is repealed, unless a later enacted statute that*
22 *is enacted before January 1, 2015, deletes or extends that date.*

23 *SEC. 2. Section 14030.2 is added to the Corporations Code,*
24 *to read:*

25 *14030.2. (a) The director may establish accounts within the*
26 *expansion fund for loan guarantees and surety bond guarantees,*
27 *including loan loss reserves. Each account is a legally separate*
28 *account, and shall not be used to satisfy loan or surety bond*
29 *guarantees or other obligations of another corporation. The*
30 *director shall recommend whether the expansion fund and trust*
31 *fund accounts are to be leveraged, and if so, by how much. Upon*
32 *the request of the corporation, the director's decision may be*
33 *repealed or modified by a board resolution.*

34 *(b) Annually, not later than January 1 of each year commencing*
35 *January 1, 2015, the director shall prepare a report regarding the*
36 *loss experience for the expansion fund for loan guarantees and*
37 *surety bond guarantees for the preceding fiscal year. At a*
38 *minimum, the report shall also include data regarding numbers*
39 *of surety bond and loan guarantees awarded through the expansion*
40 *fund, including ethnicity and gender data of participating*

1 *contractors and other entities, and experience of surety insurer*
2 *participants in the bond guarantee program. The director shall*
3 *submit that report to the Secretary of Business, Transportation*
4 *and Housing for transmission to the Governor and the Legislature.*

5 *(c) This section shall become operative January 1, 2015.*

6 **SECTION 1.**

7 **SEC. 3.** Section 14030.3 is added to the Corporations Code,
8 to read:

9 14030.3. (a) There is hereby created the Surety Bond
10 Guarantee Account within the expansion fund. The sum of forty
11 million dollars (\$40,000,000) shall be transferred from the State
12 Highway Account to the Surety Bond Guarantee Account as a loan
13 to be repaid pursuant to subdivisions (c) and (e).

14 (b) (1) The director shall administer the Surety Bond Guarantee
15 Account. Notwithstanding Section 13340 of the Government Code,
16 funds in the account are continuously appropriated to the director
17 without regard to fiscal year for disbursement in the manner and
18 for the purposes set forth in this section and shall be expended for
19 the sole purpose of providing surety bond guarantees for small
20 businesses, as defined in ~~Part 121 (commencing with Section~~
21 ~~121.101) of Chapter 1 of Title 13 of the Code of Federal~~
22 ~~Regulations~~ *subdivision (d) of Section 14837 of the Government*
23 *Code*, that contract to provide services for a transportation project
24 funded in whole or in part with state or federal funds. A minimum
25 of 25 percent of the total amount of the surety bonds guaranteed
26 under this section shall be retained in the account as a reserve to
27 secure the guarantees. Interest earnings on funds deposited in the
28 Surety Bond Guarantee Account may be used to pay the
29 administrative costs of the corporations and the agency associated
30 with the implementation of this section.

31 (2) Notwithstanding paragraph (1), no funds in the Surety Bond
32 Guarantee Account shall be encumbered to provide a surety bond
33 guarantee if the liability on the guarantee may be enforced on or
34 after January 1, ~~2014~~ 2013.

35 (3) *Notwithstanding paragraph (1), no funds in the Surety Bond*
36 *Guarantee Account shall be encumbered to provide a surety bond*
37 *guarantee unless a financial development corporation has received*
38 *a certification from an admitted surety that the small business for*
39 *which the guarantee is being requested has the capacity to perform*
40 *the transportation project and would otherwise qualify for the*

1 *surety bond without a guarantee, except for the small business'*
2 *financial condition. Upon receiving the surety's certification, the*
3 *financial development corporation shall determine if the small*
4 *business qualifies for a loan or surety guarantee, pursuant to*
5 *Section 14071, and shall provide one or more guarantees to assist*
6 *the small business to provide services on transportation projects*
7 *funded in whole or in part with state or federal funds.*

8 (c) The Director of Finance shall determine the amount of funds
9 in the Surety Bond Guarantee Account that on February 1, ~~2011~~
10 2013, are not obligated to provide a surety bond guarantee and
11 shall on that date, transfer those funds to the State Highway
12 Account. Funds that remain obligated on and after February 1,
13 ~~2011~~ 2013, to provide a surety bond guarantee shall be transferred
14 to the State Highway Account on the day each guarantee
15 terminates.

16 (d) The Department of Transportation may provide technical
17 assistance and supportive services to a small business for which a
18 surety bond guarantee was provided under this section.

19 (e) On or before March 1, ~~2011~~ 2013, the Department of Finance
20 shall calculate the amount of interest that would have been earned
21 on the amount described in subdivision (a) if it had not been
22 transferred to the Surety Bond Guarantee Account. The amount
23 of interest expended for administrative costs pursuant to paragraph
24 (1) of subdivision (b) shall be deducted from that interest amount,
25 and the balance shall be transferred on or before March 1, ~~2011~~
26 2013, to the State Highway Account.

27 (f) This section shall become inoperative on July 1, ~~2011~~ 2013,
28 and as of January 1, ~~2012~~ 2014, is repealed, unless a later enacted
29 statute that is enacted before January 1, ~~2012~~ 2014, deletes or
30 extends the dates on which it becomes inoperative and is repealed.

31 ~~SEC. 2.~~

32 *SEC. 4.* This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety within
34 the meaning of Article IV of the Constitution and shall go into
35 immediate effect. The facts constituting the necessity are:

36 To provide funding as soon as possible for the provision of surety
37 bond guarantees for small businesses contracting to provide
38 services for a transportation project funded in whole or in part with

- 1 state or federal funds, it is necessary that this act take effect
- 2 immediately.

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