AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1009

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

An act to amend Section 14030 of, and to add *and repeal* Section 14077 ~~to,~~ *of,* the Corporations Code, relating to small business, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1009, as amended, V. Manuel Perez. Small business: Direct Loan Program.

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, a continuously appropriated fund, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations.

This bill would require the secretary to develop and implement*, until January 1, 2015,* a Direct Loan Program to provide loans to small businesses meeting certain requirements. The bill would require the maximum loan limit to be $500,000 and would require all loans to have a guarantee from a federal agency or department. The bill would establish the Direct Loan Account in the California Small Business Expansion Fund and would continuously appropriate all moneys in that account for purposes of implementing and administering the program.

The bill would require the director, prior to distributing these funds to small businesses, to determine that the program is sufficiently capitalized. The bill would require the director to report annually on the activities of the program, as specified, and would also require the director~~, no later than January 1, 2012,~~ *by a specified date,* to submit to the Governor and the Legislature the results of ~~a specified~~ *an independent* audit of the program.

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

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

SECTION 1. Section 14030 of the Corporations Code, as amended by Section 1 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed five times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund.

(b) There is hereby created in the expansion fund the Direct Loan Account. Notwithstanding Section 13340 of the Government Code, all moneys in the Direct Loan Account shall be continuously appropriated for the purposes of implementing and administering the Direct Loan Program established pursuant to Section 14077.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 14030 of the Corporations Code, as added by Section 2 of Chapter 601 of the Statutes of 2007, is amended to read:

14030. (a) There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund, unless the director has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(b) There is hereby created in the expansion fund the Direct Loan Account. Notwithstanding Section 13340 of the Government Code, all moneys in the Direct Loan Account shall be continuously appropriated for the purposes of implementing and administering the Direct Loan Program established pursuant to Section 14077.

(c) This section shall become operative on January 1, 2013.

SEC. 3. Section 14077 is added to the Corporations Code, to read:

14077. (a) The secretary shall establish the Direct Loan Program for the purpose of providing business loans directly to qualified small businesses.

(b) The director shall provide for the development and implementation of the application and the review process for the program, including, but not limited to, defining the eligibility standards, rating and ranking criteria, and other appropriate policies and procedures for evaluating direct loans subject to the following provisions:

(1) The maximum loan limit shall be five hundred thousand dollars ($500,000). All direct loans shall have a guarantee from a federal agency or department.

(2) All loan applicants shall demonstrate that they will have reasonable access to business and management technical assistance during the term of the loan.

(3) Loans may be provided at terms and conditions below market to the extent that the overall revolving loan portion of the program remains financially viable.

(4) Loans shall be provided to applicants demonstrating that they cannot otherwise reasonably obtain a loan from a private lender.

(5) Loans shall only be provided to applicants demonstrating the ability to repay the loan.

(c) The director shall have the authority to administer the distribution of funds from the Direct Loan Account created in subdivision (b) of Section 14030. *However, prior to distributing these funds, the director shall make a determination that the Direct Loan Program is sufficiently capitalized.*

(d) To execute direct loans, the director may loan funds from the Direct Loan Account to a corporation for the purpose of lending those funds to an approved borrower.

(1) The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower and shall be evidenced by a credit agreement.

(2) In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the federal guarantor requires exposure by the corporation in rule or regulation.

(3) Interest and principal received by the agency from the corporation shall be deposited into the Direct Loan Account.

(e) The director shall annually report on the activities of the Direct Loan Program as part of his or her existing annual reporting requirements.

(f) The director shall~~, no later than January 1, 2012,~~ submit to the Governor and the Legislature the results of an audit of the Direct Loan Program undertaken by an independent entity. *The independent audit shall cover the first two full years of operation* *of the Direct Loan Program and it shall be submitted no later than six months after the close of the second full fiscal year of operation.*

(g) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

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