AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN SENATE JUNE 25, 2009

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 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. 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 authorize a public entity, as defined, to deposit moneys in this account in order to capitalize 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, by a specified date, to submit to the Governor and the Legislature the results of an independent audit of the program. *The bill would make certain findings and declarations of the Legislature.*

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. (a) The Legislature finds and declares all of the following:*

*(1) The California Small Business Financial Development Corporation Law was enacted in 1968 to provide a locally and regionally based network of financial development professionals to assist small businesses in meeting their capital formation needs. Over the years, financial development corporations have assisted small businesses in accessing capital by providing guarantees on loans and lines of credit, as well as offering direct loans to small farmers.*

*(2) On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) was signed into law by President Obama. The act authorizes the expenditure of over $187,000,000,000 nationally, of which California is expected to receive more than $80,000,000,000. In using these moneys, federal, state, and local public entities will have the opportunity to assist small businesses by providing direct loans. California's primary small business financial assistance program is administered by the Business, Transportation and Housing Agency through the financial development corporations.*

*(3) Given the limited term of the federal stimulus moneys and the immediate needs of California's small businesses, creating a*

*number of new loan programs in separate state departments and agencies is neither a prudent nor an efficient use of stimulus moneys.*

*(b) The Legislature therefore finds and declares that it is in the best interest of the state to leverage, to the greatest extent possible, the existing small business loan and guarantee program, and utilize the state's existing network of financial development professionals in offering loans and other financial services to the state's small businesses.*

~~SECTION 1.~~

*SEC. 2.* 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. A public entity, with the approval of the director, may deposit moneys in this account for the purpose of providing capitalization for the Direct Loan Program pursuant to Section 14077. For the purposes of this section, "public entity" means the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or the United States.

(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.~~

*SEC. 3.* 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. A public entity, with the approval of the director, may deposit moneys in this account for the purpose of providing capitalization for the Direct Loan Program pursuant to Section 14077. For the purposes of this section, "public entity" means the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or the United States.

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

~~SEC. 3.~~

*SEC. 4.* 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 Direct Loan Program may include individual special loan programs funded by moneys deposited by public entities pursuant to subdivision (b) of Section 14030. Each of these programs shall be administered pursuant to an agreement between the director and the respective funding public entity. These agreements shall specify any laws, rules, regulations, policies, and procedures governing the lawful use of the moneys, deposited by the public entity, to be administered by the director, who shall comply with the terms of these agreements in making direct loans.*

~~(b) The~~

*(c) Unless otherwise specified in an agreement pursuant to subdivision (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).

(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)~~

*(d)* 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)~~

*(e)* 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)~~

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

~~(f)~~

*(g)* The director shall 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)~~

*(h)* 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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