

Introduced by Senator DuchenyFebruary 25, 2009

An act to amend Section 14030 of, and to add Article 10 (commencing with Section 14077) to Chapter 1 of Part 5 of Division 3 of Title 1 of, the Corporations Code, relating to Indian tribes, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, as introduced, Ducheny. Indian tribes: economic development.

Existing law, 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 that law and is continuously appropriated, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations.

This bill would require the secretary to establish the Native American Business Revolving Loan and Guarantee Program for the purpose of providing nongaming business loans and loan guarantees to qualified Indian tribes, as defined. The bill would create the Native American Business Revolving Loan and Guarantee Program Account within the California Small Business Expansion Fund, solely for the purpose of receiving state, federal, or local government moneys, other public or private moneys, and tribal government contributions. The bill would continuously appropriate the moneys in the account to the director for the purpose of implementing and administering the program. By

authorizing the expenditure of funds from a continuously appropriated account, the bill would make an appropriation. The bill would require that the program and the steps necessary to implement it and make it operative not be undertaken until the secretary has determined that funds of a sufficient amount to create a loan pool and pay program administrative costs have been received into the account. The bill would require the director to provide for the development and implementation of the application review process for the program, subject to specified requirements. The bill would specify the maximum amount of a loan or loan guarantee granted under the program and would require a tribe applying for a loan to provide matching funds in a specified amount. The bill would create the Native American Business Finance Council, consisting of 9 members, who are appointed by, and serve at the pleasure of, the Governor, to provide policy and program guidance regarding the development and operation of the program. The bill would require the director to annually report to the secretary on the activities of the program, to include within that report information pertaining to the loss experience for loans and loan guarantees made pursuant to the program, and, no later than January 1, 2011, to report to the Governor and the Legislature the results of an independent audit of the program. The bill would enact other related provisions.

Vote: majority. 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 of the Corporations Code, as
2 amended by Section 1 of Chapter 601 of the Statutes of 2007, is
3 amended to read:
4 14030. (a) There is hereby created in the State Treasury the
5 California Small Business Expansion Fund. All or a portion of the
6 funds in the expansion fund may be paid out, with the approval of
7 the Department of Finance, to a lending institution or financial
8 company that will act as trustee of the funds. The expansion fund
9 and the trust fund shall be used to pay for defaulted loan guarantees
10 issued pursuant to Article 9 (commencing with Section 14070),
11 administrative costs of corporations, and those costs necessary to
12 protect a real property interest in a defaulted loan or guarantee.
13 The amount of guarantee liability outstanding at any one time shall
14 not exceed five times the amount of funds on deposit in the

1 expansion fund plus any receivables due from funds loaned from
2 the expansion fund to another fund in state government as directed
3 by the Department of Finance pursuant to a statute enacted by the
4 Legislature, including each of the trust fund accounts within the
5 trust fund.

6 *(b) There is hereby created in the California Small Business*
7 *Expansion Fund the Native American Business Revolving Loan*
8 *and Guarantee Program Account. The Native American Business*
9 *Revolving Loan and Guarantee Program Account is created solely*
10 *for the purpose of receiving state, federal, or local government*
11 *moneys, other public or private moneys, and tribal government*
12 *contributions, to make loans and loan guarantees pursuant to*
13 *Article 10 (commencing with Section 14077).*

14 *(c) Notwithstanding Section 13340 of the Government Code,*
15 *all moneys in the Native American Business Revolving Loan and*
16 *Guarantee Program Account shall be continuously appropriated*
17 *to the director for the purposes of implementing and administering*
18 *the program established pursuant to Article 10 (commencing with*
19 *Section 14077).*

20 ~~(b)~~

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

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

27 14030. (a) There is hereby created in the State Treasury the
28 California Small Business Expansion Fund. All or a portion of the
29 funds in the expansion fund may be paid out, with the approval of
30 the Department of Finance, to a lending institution or financial
31 company that will act as trustee of the funds. The expansion fund
32 and the trust fund shall be used to pay for defaulted loan guarantees
33 issued pursuant to Article 9 (commencing with Section 14070),
34 administrative costs of corporations, and those costs necessary to
35 protect a real property interest in a defaulted loan or guarantee.
36 The amount of guarantee liability outstanding at any one time shall
37 not exceed four times the amount of funds on deposit in the
38 expansion fund plus any receivables due from funds loaned from
39 the expansion fund to another fund in state government as directed
40 by the Department of Finance pursuant to a statute enacted by the

1 Legislature, including each of the trust fund accounts within the
2 trust fund, unless the director has permitted a higher leverage ratio
3 for an individual corporation pursuant to subdivision (b) of Section
4 14037.

5 *(b) There is hereby created in the California Small Business*
6 *Expansion Fund the Native American Business Revolving Loan*
7 *and Guarantee Program Account. The Native American Business*
8 *Revolving Loan and Guarantee Program Account is created solely*
9 *for the purpose of receiving state, federal, or local government*
10 *moneys, other public or private moneys, and tribal government*
11 *contributions, to make loans and loan guarantees pursuant to*
12 *Article 10 (commencing with Section 14077).*

13 *(c) Notwithstanding Section 13340 of the Government Code,*
14 *all moneys in the Native American Business Revolving Loan and*
15 *Guarantee Program Account shall be continuously appropriated*
16 *to the director for the purposes of implementing and administering*
17 *the program established pursuant to Article 10 (commencing with*
18 *Section 14077).*

19 ~~(b)~~

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

21 SEC. 3. Article 10 (commencing with Section 14077) is added
22 to Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations
23 Code, to read:

24

25 Article 10. Native American Business Revolving Loan and
26 Guarantee Program
27

27

28 14077. For purposes of this article, the following definitions
29 shall apply:

30 (a) "Account" means the Native American Business Revolving
31 Loan and Guarantee Program Account created pursuant to Section
32 14030.

33 (b) "Applicant" means an applicant for a loan or loan guarantee
34 pursuant to this article.

35 (c) "Council" means the Native American Business Finance
36 Council created pursuant to Section 14077.4.

37 (d) "Program" means the Native American Business Revolving
38 Loan and Guarantee Program established pursuant to Section
39 14077.1.

1 (e) “Qualified Indian tribe” means a federally recognized tribe
2 located in this state that receives payments from the Indian Gaming
3 Revenue Sharing Trust Fund.

4 14077.1. (a) The secretary shall establish the Native American
5 Business Revolving Loan and Guarantee Program for the purpose
6 of providing business loans and loan guarantees to qualified Indian
7 tribes.

8 (b) The program and the steps necessary to implement the
9 program to make it operative shall not be undertaken until the
10 secretary has determined that funds of a sufficient amount to create
11 a loan pool and pay program administrative costs have been
12 received into the account.

13 14077.2. (a) The director shall provide for the development
14 and implementation of the application review process for the
15 program, including, but not limited to, defining the eligibility
16 standards, the rating and ranking criteria, and other appropriate
17 policies and procedures for evaluating direct loans and loan
18 guarantees, subject to the following requirements:

19 (1) Loans and loan guarantees provided pursuant to the program
20 shall be for nongaming business and shall be used to start or expand
21 a business or to supply working capital to a business.

22 (2) An eligible applicant for a loan or loan guarantee under the
23 program shall be a qualified Indian tribe with a business located
24 either on Native American lands of a federally recognized tribe
25 that is also a qualified Indian tribe or on property within the state.

26 (3) The maximum loan limit shall be five hundred thousand
27 dollars (\$500,000). All direct loans shall have a federal guarantee.
28 Loan guarantees provided by the program shall have sufficient
29 reserves in the account to guarantee the loan. The maximum loan
30 guarantee shall be 90 percent of the loan amount, not to exceed
31 five hundred thousand dollars (\$500,000).

32 (4) A qualified Indian tribe applying for a loan pursuant to this
33 article shall provide matching funds in an amount equal to one-half
34 the amount of the loan requested. The matching funds shall come
35 from any source of funds within the control of the tribe and may
36 include in-kind contributions. However, in-kind contributions shall
37 be limited to one-quarter of the value of the requested loan.

38 (5) An applicant shall demonstrate that it will have reasonable
39 access to business and management technical assistance during
40 the term of the loan or loan guarantee.

- 1 (6) The qualified Indian tribe shall be the majority owner of the
2 business during the term of the loan or loan guarantee.
- 3 (7) Loans may be provided at terms and conditions below market
4 rates to the extent that the overall revolving loan portion of the
5 program remains financially viable.
- 6 (8) A qualified Indian tribe shall not be eligible to apply for
7 funds pursuant to this article unless any funds previously loaned
8 to the tribe pursuant to this article have been repaid in full.
- 9 (9) Priority for program outreach activities shall be for qualified
10 Indian tribes that have no existing business enterprise.
- 11 (10) In the first year of the program, loans shall be awarded
12 through a competitive request for proposal process. Applications
13 for loans shall be rated and ranked based on their ability to meet
14 the purposes of the program, as described in subdivision (b). In
15 subsequent years, loans may be awarded through an ongoing
16 evaluation process to the extent that the purposes of the program,
17 as described in subdivision (b), can still be achieved.
- 18 (b) Loans and loan guarantees provided through the program
19 shall provide for the general welfare of a qualified Indian tribe and
20 its members by promoting long-term tribal economic development
21 that creates or retains jobs, increases incomes, develops work skills
22 and business management capacity, and serves qualified Indian
23 tribes that have no existing business enterprise.
- 24 (c) The application review process developed pursuant to
25 subdivision (a) shall be approved by the council created pursuant
26 to Section 14077.4.
- 27 (d) In developing the program, the director shall seek to
28 maximize the ability of applicants to leverage other public and
29 private funding opportunities to the extent the addition of these
30 funds furthers the purposes of the program, as described in
31 subdivision (b). Key funding partners include, but are not limited
32 to, the United States Department of Agriculture, the Bureau of
33 Indian Affairs, the United States Department of Commerce, the
34 United States Department of Housing and Urban Development,
35 and foundations and other nonprofit organizations that share a
36 mission to expand entrepreneurship opportunities for small and
37 medium size businesses and historically underserved communities.
- 38 (e) In addition to other activities, the director shall routinely
39 seek the advice of the council on matters related to the management
40 and operation of the program.

1 (f) The director shall have the authority to administer the
2 distribution of funds from the account for the purposes of this
3 article.

4 14077.3. (a) The agency may contract with one or more
5 corporations to make loans and loan guarantees pursuant to this
6 article.

7 (b) To execute direct loans under the program, the director may
8 loan funds from the account to a corporation for the purpose of
9 lending those funds to an approved applicant. The loan authorized
10 by the director to the corporation shall be on terms similar to the
11 loan between the corporation and the applicant. The loan between
12 the agency and the corporation shall be evidenced by a credit
13 agreement. In the absence of fraud on the part of the corporation,
14 the liability of the corporation to repay the loan to the agency shall
15 be limited to the repayment received by the corporation from the
16 applicant, except in a case where the federal guarantor requires
17 exposure by the corporation in rule or regulation. Interest and
18 principal received by the agency from the corporation shall be
19 deposited into the account.

20 14077.4. (a) There is hereby created the Native American
21 Business Finance Council. The purpose of the council is to provide
22 policy and program guidance regarding the development and
23 operation of the program.

24 (b) The management and operation of the council shall meet all
25 of the following requirements:

26 (1) The council shall consist of nine members, who are
27 appointed by, and serve at the pleasure of, the Governor.

28 (2) The council shall include six members of federally
29 recognized Indian tribes in California, three of whom shall
30 represent tribes located in northern California and three of whom
31 shall represent tribes located in southern California.

32 (3) The council shall include at least one member with expertise
33 in each of the following areas: tribal government, business finance,
34 and economic development related to the purposes of the program.

35 (4) Each member shall serve for a term of four years, except
36 that in the first round of appointments, three members shall serve
37 for two years and three other members shall serve for three years.
38 Members shall not be reappointed to the council until a minimum
39 of one year has elapsed.

1 (5) A member of the council shall not vote on an application
2 from his or her own tribe.

3 (6) Five members of the council shall constitute a quorum. A
4 vote of the majority of the members present at a meeting at which
5 there is a quorum shall constitute the act of the council. A member
6 prohibited from voting under paragraph (5) shall not be included
7 in determining whether a quorum exists for a particular application.
8 In addition, the majority needed to approve an application shall
9 be reduced by the number of members prohibited from voting
10 under paragraph (5).

11 14077.5. (a) The director shall annually report on the activities
12 of the program to the secretary as part of his or her annual reporting
13 requirements under Section 14030.2. The director shall include
14 within that report information pertaining to the loss experience for
15 loans and loan guarantees made pursuant to the program.

16 (b) The director shall, no later than January 1, 2011, submit to
17 the Governor and the Legislature the results of an audit of the
18 program undertaken by an independent entity.