Assembly Bill No. 901

Passed the Assembly September 6, 2011

_____

Chief Clerk of the Assembly

Passed the Senate September 1, 2011

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2011, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 13997.2 of the Government Code, and to amend Sections 44559.1, 44559.2, and 44559.6 of the Health and Safety Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, V. Manuel Pérez. Economic development: small business.

(1) Existing law establishes the California Economic Development Fund in the State Treasury to receive economic development funds and loan repayment and grant proceeds and authorizes the Secretary of Business, Transportation and Housing, upon appropriation by the Legislature, to expend the fund's revenue to provide matching funds for economic development purposes. Existing law establishes certain definitions in this regard and defines a financial intermediary and a community development intermediary to include, among other things, microenterprise development organizations.

This bill would delete the reference to microenterprise development organizations in the definitions of financial intermediary and community development intermediary and would instead provide that a financial intermediary and a community development intermediary include microbusiness lenders, as defined.

(2) Existing law establishes the Capital Access Loan Program, which is administered by the California Pollution Control Financing Authority, and defines the term "financial institution," for purposes of that program. The authority is required to include specified terms in any contract that the authority enters into with a financial institution participating in the program, as specified. Existing law requires the authority to submit a report annually to the Governor and the Legislature that describes the financial condition and the programmatic results of the Capital Access Loan Program for small businesses.

This bill would revise the definition of the term "financial institution" to include a small business financial development corporation or microbusiness lender that meets standards that shall

be established by the authority and to include depository institutions, insured credit unions, and community development financial institutions, as defined pursuant to federal law.

This bill would require that the form contract used by the authority when contracting with a participating financial institution include provisions requiring the financial institution to provide information to the authority on the number of jobs created and the number of jobs retained relative to loans made by the financial institution under the program. The bill would also specify, for purposes of the annual report to the Governor and the Legislature, that programmatic results include, but are not limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector, as specified.

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

SECTION 1. Section 13997.2 of the Government Code is amended to read:

13997.2. (a) The Legislature finds and declares all of the following:

(1) California's economic development organizations and corporations are an integral component of the state job creation effort because they are a critical link between state economic development activities and the statewide business community, providing an excellent opportunity to leverage state resources.

(2) Economic development corporations and organizations provide broad public benefits to the residents of this state by alleviating unemployment, encouraging private investment, and diversifying local economies.

(3) Economic development corporations engage in a wide range of programs and strategies to attract, retain, and expand businesses, including marketing the community, small business lending, and other financial services, a wide range of technical assistance to small business, preparation of economic data, and business advocacy.

(4) By using public sector resources and powers to reduce the risks and costs that could prohibit investment, the public sector often sets the stage for employment-generating investment by the private sector.

(b) For purposes of this chapter, all of the following definitions apply:

(1) "Local economic development organization" means a public or public-private job creation activity recognized by cities and counties as the lead agency within that city or county for planning and implementation of job creation involving business expansion, business retention, and new business development.

(2) "Regional economic development organization" means an organization comprised of any of the following:

(A) A single county.

(B) More than one county.

(C) A subregion within a county established by the cities and county within that subregion.

(D) An economic development corporation.

(3) "Economic development corporation" means a local or regional nonprofit public-private economic development organization recognized in a defined region by the public and private sector as the lead agency for the planning and implementation of job creation involving business retention and new business development.

(4) "Regional economic development corporation" means a corporation comprised of any of the following:

(A) A single county.

(B) More than one county.

(C) A subregion within a single county established by a group of cities and counties.

(5) "Economic development" means any activity that enhances the factors of productive capacity, such as land, labor, capital, and technology, of a national, state, or local economy. "Economic development" includes policies and programs expressly directed at improving the business climate in business finance, marketing, neighborhood development, small business development, business retention and expansion, technology transfer, and real estate redevelopment. "Economic development" is an investment program designed to leverage private sector capital in such a way as to induce actions that have a positive effect on the level of business activity, employment, income distribution, and fiscal solvency of the community.

(6) "Local economic development" is a process of deliberate intervention in the normal economic process of a particular locality

to stimulate economic growth of the locality by making it more attractive, resulting in more jobs, wealth, better quality of life, and fiscal solvency. Prime examples of economic development include business attraction, business expansion and retention, and business creation.

(7) "Emerging domestic market" means people, places, or business enterprises with growth potential that face capital constraints due to systemic undervaluations as a result of imperfect market information. These markets include, but are not limited to, ethnic-owned and women-owned firms, urban and rural communities, companies that serve low-income or moderate-income populations, and other small- and medium-sized businesses.

(8) "Financial intermediary" means an institution, firm, organization, or individual who performs intermediation between two or more parties in a financial context, such as connecting sources of funds with users of funds. A financial intermediary is typically an entity that facilitates the channeling of funds between lenders, investors, foundations, or other entities that have money and are interested in connecting with businesses or communities where their money can be deployed. Financial intermediaries include, but are not limited to, banks, financial development corporations, economic developers, microbusiness lenders, and community development organizations.

(9) "Community development intermediary" means an institution, firm, organization, or individual that performs intermediation between two or more parties in a community development context, such as connecting people and organizations that have a stake in the future well-being of communities and individuals who may not easily have access to these stakeholders. A community development intermediary is typically an entity that channels financial and nonfinancial resources between government and foundations and other nonprofit organizations that have resources and are interested in connecting with small- and medium-size businesses and low- and moderate-income households and communities. Community development intermediaries include, but are not limited to, community development corporations, microbusiness lenders, and community development financial institutions.

(10) "Triple bottom line" means the economic, environmental, and social benefits arising from a project, investment, or community and economic development activity.

(11) "Small businesses" means a business with less than 100 employees and with a gross revenue of less than five million dollars ($5,000,000), or a business that is otherwise targeted by or participating in a federal or state program engaged in programs or services for small businesses. Application of this definition may only be used pursuant to a direct reference.

(12) "Community development" means a process designed to create conditions of economic and social prosperity for the whole community, or a targeted subset of the whole community, with the fullest possible reliance on the community's initiative and active participation.

(13) "Financial institution capital" means resources of a financial institution, including, but not limited to, a bank or credit union, that are legally available to be used to generate wealth for the financial institution.

(14) "California Council on Science and Technology" means the council established by California academic research institutions, including the University of California, the University of Southern California, the California Institute of Technology, Stanford University, and the California State University, in support of Assembly Concurrent Resolution No. 162 (Res. Ch. 148, Stats. 1988).

(15) "Microbusiness lender" means a nonprofit or nonbank lender that serves very small businesses in low- and moderate-income communities that experience barriers in accessing capital. These businesses are often owned by minorities, immigrants, women, and persons with disabilities. Microbusiness lenders generally provide loans under fifty thousand dollars ($50,000) and offer business technical assistance, both preloan and postloan, to improve an applicant's ability to qualify and successfully repay a loan.

SEC. 2. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) (A) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 13997.2 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, "financial institution" also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(B) A financial institution described in this paragraph shall be domiciled or have its principal office in the State of California.

(3) "Financial institution" also includes an insured depository institution, insured credit union, or community development financial institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and

maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) "Program" means the Capital Access Loan Program created pursuant to this article.

(i) "Qualified business" means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the

program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) "Qualified loan" does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(*l*) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.

(m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 3. Section 44559.2 of the Health and Safety Code is amended to read:

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete North American Industry Classification System (NAICS) for the qualified business, the number of jobs created, the number of jobs retained, and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California

Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

SEC. 4. Section 44559.6 of the Health and Safety Code is amended to read:

44559.6. The authority shall annually prepare a report to the Governor and the Legislature that describes the financial condition and programmatic results of the capital access loan program for small businesses authorized under this article. Programmatic results shall include, but not be limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector for all new loans issued since the report for the prior year.

Approved _____, 2011

_____

Governor