

ASSEMBLY BILL

No. 2671

Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members V. Manuel Pérez (Chair), Beall, Block, and Hueso)

March 5, 2012

An act to amend and repeal Sections 14070 and 14076 of the Corporations Code, relating to small business financial development corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, as introduced, Committee on Jobs, Economic Development, and the Economy. Small business financial development corporations: loans and loan guarantees.

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. The law 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.

Existing law requires a corporate guarantee to be backed by funds on deposit in the corporation's trust fund account, or by receivables due from the corporation's trust fund account to another fund in state government, as specified. Existing law, until January 1, 2013, requires that loan guarantees be secured by a reserve of at least 20%, to be determined by the director. Existing law, beginning January 1, 2013,

requires that loan guarantees be secured by a reserve of at least 25%, to be determined by the director.

This bill would eliminate the provision making the minimum 20% reserve requirement effective only until January 1, 2013 and would, thus, make those provisions effective indefinitely. The bill would repeal the provision that, beginning January 1, 2013, requires a minimum 25% reserve. The bill would make conforming changes.

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

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

1 SECTION 1. Section 14070 of the Corporations Code, as
2 amended by Section 5 of Chapter 601 of the Statutes of 2007, is
3 amended to read:

4 14070. (a) The corporate guarantee shall be backed by funds
5 on deposit in the corporation’s trust fund account, or by receivables
6 due from funds loaned from the corporation’s trust fund account
7 to another fund in state government as directed by the Department
8 of Finance pursuant to a statute enacted by the Legislature.

9 (b) Loan guarantees shall be secured by a reserve of at least 20
10 percent to be determined by the director.

11 (c) The expansion fund and trust fund accounts shall be used
12 exclusively to guarantee obligations and pay the administrative
13 costs of the corporations. A corporation located in a rural area may
14 utilize the funds for direct lending to farmers as long as at least 90
15 percent of the corporate fund farm loans, calculated by dollar
16 amount, and all expansion fund farm loans are guaranteed by the
17 United States Department of Agriculture. The amount of funds
18 available for direct farm lending shall be determined by the
19 director. In its capacity as a direct lender, the corporation may sell
20 in the secondary market the guaranteed portion of each loan so as
21 to raise additional funds for direct lending. The agency shall issue
22 regulations governing these direct loans, including the maximum
23 amount of these loans.

24 (d) In furtherance of the purposes of this part, up to one-half of
25 the trust funds may be used to guarantee loans utilized to establish
26 a Business and Industrial Development Corporation (BIDCO)
27 under Division 15 (commencing with Section 33000) of the
28 Financial Code.

1 (e) To execute the direct loan programs established in this
2 chapter, the director may loan trust funds to a corporation located
3 in a rural area for the express purpose of lending those funds to an
4 identified borrower. The loan authorized by the director to the
5 corporation shall be on terms similar to the loan between the
6 corporation and the borrower. The amount of the loan may be in
7 excess of the amount of a loan to any individual farm borrower,
8 but actual disbursements pursuant to the agency loan agreement
9 shall be required to be supported by a loan agreement between the
10 farm borrower and the corporation in an amount at least equal to
11 the requested disbursement. The loan between the agency and the
12 corporation shall be evidenced by a credit agreement. In the event
13 that any loan between the corporation and borrower is not
14 guaranteed by a governmental agency, the portion of the credit
15 agreement attributable to that loan shall be secured by assignment
16 of any note, executed in favor of the corporation by the borrower
17 to the agency. The terms and conditions of the credit agreement
18 shall be similar to the loan agreement between the corporation and
19 the borrower, which shall be collateralized by the note between
20 the corporation and the borrower. In the absence of fraud on the
21 part of the corporation, the liability of the corporation to repay the
22 loan to the agency is limited to the repayment received by the
23 corporation from the borrower except in a case where the United
24 States Department of Agriculture requires exposure by the
25 corporation in rule or regulation. The corporation may use trust
26 funds for loan repayment to the agency if the corporation has
27 exhausted a loan loss reserve created for this purpose. Interest and
28 principal received by the agency from the corporation shall be
29 deposited into the same account from which the funds were
30 originally borrowed.

31 (f) Upon the approval of the director, a corporation shall be
32 authorized to borrow trust funds from the agency for the purpose
33 of relending those funds to small businesses. A corporation shall
34 demonstrate to the director that it has the capacity to administer a
35 direct loan program, and has procedures in place to limit the default
36 rate for loans to startup businesses. Not more than 25 percent of
37 any trust fund account shall be used for the direct lending
38 established pursuant to this subdivision. A loan to a corporation
39 shall not exceed the amount of funds likely to be lent to small
40 businesses within three months following the loan to the

1 corporation. The maximum loan amount to a small business is fifty
2 thousand dollars (\$50,000). In the absence of fraud on the part of
3 the corporation, the repayment obligation pursuant to the loan to
4 the corporation shall be limited to the amount of funds received
5 by the corporation for the loan to the small business and any other
6 funds received from the agency that are not disbursed. The
7 corporation shall be authorized to charge a fee to the small business
8 borrower, in an amount determined by the director pursuant to
9 regulation. The program provided for in this subdivision shall be
10 available in all geographic areas of the state.

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

14 SEC. 2. Section 14070 of the Corporations Code, as added by
15 Section 6 of Chapter 601 of the Statutes of 2007, is repealed.

16 ~~14070. (a) The corporate guarantee shall be backed by funds~~
17 ~~on deposit in the corporation's trust fund account, or by receivables~~
18 ~~due from funds loaned from the corporation's trust fund account~~
19 ~~to another fund in state government as directed by the Department~~
20 ~~of Finance pursuant to a statute enacted by the Legislature.~~

21 ~~(b) Loan guarantees shall be secured by a reserve of at least 25~~
22 ~~percent to be determined by the director, unless the director~~
23 ~~authorizes a higher leverage ratio for an individual corporation~~
24 ~~pursuant to subdivision (b) of Section 14037.~~

25 ~~(c) The expansion fund and trust fund accounts shall be used~~
26 ~~exclusively to guarantee obligations and pay the administrative~~
27 ~~costs of the corporations. A corporation located in a rural area may~~
28 ~~utilize the funds for direct lending to farmers as long as at least 90~~
29 ~~percent of the corporate fund farm loans, calculated by dollar~~
30 ~~amount, and all expansion fund farm loans are guaranteed by the~~
31 ~~United States Department of Agriculture. The amount of funds~~
32 ~~available for direct farm lending shall be determined by the~~
33 ~~director. In its capacity as a direct lender, the corporation may sell~~
34 ~~in the secondary market the guaranteed portion of each loan so as~~
35 ~~to raise additional funds for direct lending. The agency shall issue~~
36 ~~regulations governing these direct loans, including the maximum~~
37 ~~amount of these loans.~~

38 ~~(d) In furtherance of the purposes of this part, up to one-half of~~
39 ~~the trust funds may be used to guarantee loans utilized to establish~~
40 ~~a Business and Industrial Development Corporation (BIDCO)~~

1 under Division 15 (commencing with Section 33000) of the
2 Financial Code.

3 (e) ~~To execute the direct loan programs established in this~~
4 ~~chapter, the director may loan trust funds to a corporation located~~
5 ~~in a rural area for the express purpose of lending those funds to an~~
6 ~~identified borrower. The loan authorized by the director to the~~
7 ~~corporation shall be on terms similar to the loan between the~~
8 ~~corporation and the borrower. The amount of the loan may be in~~
9 ~~excess of the amount of a loan to any individual farm borrower,~~
10 ~~but actual disbursements pursuant to the agency loan agreement~~
11 ~~shall be required to be supported by a loan agreement between the~~
12 ~~farm borrower and the corporation in an amount at least equal to~~
13 ~~the requested disbursement. The loan between the agency and the~~
14 ~~corporation shall be evidenced by a credit agreement. In the event~~
15 ~~that any loan between the corporation and borrower is not~~
16 ~~guaranteed by a governmental agency, the portion of the credit~~
17 ~~agreement attributable to that loan shall be secured by assignment~~
18 ~~of any note, executed in favor of the corporation by the borrower~~
19 ~~to the agency. The terms and conditions of the credit agreement~~
20 ~~shall be similar to the loan agreement between the corporation and~~
21 ~~the borrower, which shall be collateralized by the note between~~
22 ~~the corporation and the borrower. In the absence of fraud on the~~
23 ~~part of the corporation, the liability of the corporation to repay the~~
24 ~~loan to the agency is limited to the repayment received by the~~
25 ~~corporation from the borrower except in a case where the United~~
26 ~~States Department of Agriculture requires exposure by the~~
27 ~~corporation in rule or regulation. The corporation may use trust~~
28 ~~funds for loan repayment to the agency if the corporation has~~
29 ~~exhausted a loan loss reserve created for this purpose. Interest and~~
30 ~~principal received by the agency from the corporation shall be~~
31 ~~deposited into the same account from which the funds were~~
32 ~~originally borrowed.~~

33 (f) ~~Upon the approval of the director, a corporation shall be~~
34 ~~authorized to borrow trust funds from the agency for the purpose~~
35 ~~of relending those funds to small businesses. A corporation shall~~
36 ~~demonstrate to the director that it has the capacity to administer a~~
37 ~~direct loan program, and has procedures in place to limit the default~~
38 ~~rate for loans to startup businesses. Not more than 25 percent of~~
39 ~~any trust fund account shall be used for the direct lending~~
40 ~~established pursuant to this subdivision. A loan to a corporation~~

1 shall not exceed the amount of funds likely to be lent to small
2 businesses within three months following the loan to the
3 corporation. The maximum loan amount to a small business is fifty
4 thousand dollars (\$50,000). In the absence of fraud on the part of
5 the corporation, the repayment obligation pursuant to the loan to
6 the corporation shall be limited to the amount of funds received
7 by the corporation for the loan to the small business and any other
8 funds received from the agency that are not disbursed. The
9 corporation shall be authorized to charge a fee to the small business
10 borrower, in an amount determined by the director pursuant to
11 regulation. The program provided for in this subdivision shall be
12 available in all geographic areas of the state.

13 ~~(g) This section shall become operative on January 1, 2013.~~

14 SEC. 3. Section 14076 of the Corporations Code, as amended
15 by Section 7 of Chapter 601 of the Statutes of 2007, is amended
16 to read:

17 14076. (a) It is the intent of the Legislature that the
18 corporations make maximal use of their statutory authority to
19 guarantee loans and surety bonds, including the authority to secure
20 loans with a minimum loan loss reserve of only 20 percent, so that
21 the financing needs of small business may be met as fully as
22 possible within the limits of corporations' loan loss reserves. The
23 agency shall report annually to the Legislature on the financial
24 status of the corporations and their portfolio of loans and surety
25 bonds guaranteed.

26 (b) Any corporation that serves an area declared to be in a state
27 of emergency by the Governor or a disaster area by the President
28 of the United States, the Administrator of the United States Small
29 Business Administration, or the United States Secretary of
30 Agriculture shall increase the portfolio of loan guarantees where
31 the dollar amount of the loan is less than one hundred thousand
32 dollars (\$100,000), so that at least 15 percent of the dollar value
33 of loans guaranteed by the corporation is for those loans. The
34 corporation shall comply with this requirement within one year of
35 the date the emergency or disaster is declared. Upon application
36 of a corporation, the director may waive or modify the rule for the
37 corporation if the corporation demonstrates that it made a good
38 faith effort to comply and failed to locate lending institutions in
39 the region that the corporation serves that are willing to make
40 guaranteed loans in that amount.

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

4 SEC. 4. Section 14076 of the Corporations Code, as added by
5 Section 8 of Chapter 601 of the Statutes of 2007, is repealed.

6 ~~14076. (a) It is the intent of the Legislature that the~~
7 ~~corporations make maximal use of their statutory authority to~~
8 ~~guarantee loans and surety bonds, including the authority to secure~~
9 ~~loans with a minimum loan loss reserve of only 25 percent, unless~~
10 ~~the agency authorizes a higher leverage ratio for an individual~~
11 ~~corporation pursuant to subdivision (b) of Section 14037, so that~~
12 ~~the financing needs of small business may be met as fully as~~
13 ~~possible within the limits of corporations' loan loss reserves. The~~
14 ~~agency shall report annually to the Legislature on the financial~~
15 ~~status of the corporations and their portfolio of loans and surety~~
16 ~~bonds guaranteed.~~

17 ~~(b) Any corporation that serves an area declared to be in a state~~
18 ~~of emergency by the Governor or a disaster area by the President~~
19 ~~of the United States, the Administrator of the United States Small~~
20 ~~Business Administration, or the United States Secretary of~~
21 ~~Agriculture shall increase the portfolio of loan guarantees where~~
22 ~~the dollar amount of the loan is less than one hundred thousand~~
23 ~~dollars (\$100,000), so that at least 15 percent of the dollar value~~
24 ~~of loans guaranteed by the corporation is for those loans. The~~
25 ~~corporation shall comply with this requirement within one year of~~
26 ~~the date the emergency or disaster is declared. Upon application~~
27 ~~of a corporation, the director may waive or modify the rule for the~~
28 ~~corporation if the corporation demonstrates that it made a good~~
29 ~~faith effort to comply and failed to locate lending institutions in~~
30 ~~the region that the corporation serves that are willing to make~~
31 ~~guaranteed loans in that amount.~~

32 ~~(e) This section shall become operative on January 1, 2013.~~