

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 14030~~, 14070, and 14076 of the Corporations Code, relating to small business financial development corporations.

LEGISLATIVE COUNSEL'S DIGEST

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

The

(1) *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, until January 1, 2013, specifies that the amount of guarantee liability outstanding at any one time shall not exceed 5 times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the fund to another fund in*

state government, as specified. Existing law, beginning January 1, 2013, would instead provide that the amount of guarantee liability outstanding shall not exceed 4 times those amounts.

This bill would extend indefinitely the provisions limiting the amount of guarantee liability outstanding from exceeding 5 times the amount of funds on deposit in the expansion fund, as specified, and would also repeal the provisions that, beginning January 1, 2013, would limit the amount of guaranteed liability outstanding from exceeding 4 times the amount of those funds.

Existing

(2) 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~~-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.

1 The amount of guarantee liability outstanding at any one time shall
2 not exceed five times the amount of funds on deposit in the
3 expansion fund plus any receivables due from funds loaned from
4 the expansion fund to another fund in state government as directed
5 by the Department of Finance pursuant to a statute enacted by the
6 Legislature, including each of the trust fund accounts within the
7 trust fund.

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9 ~~and as of that date is repealed, unless a later enacted statute, that~~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

11 *SEC. 2. Section 14030 of the Corporations Code, as added by*
12 *Section 2 of Chapter 601 of the Statutes of 2007, is repealed.*

13 ~~14030. (a) There is hereby created in the State Treasury the~~
14 ~~California Small Business Expansion Fund. All or a portion of the~~
15 ~~funds in the expansion fund may be paid out, with the approval of~~
16 ~~the Department of Finance, to a lending institution or financial~~
17 ~~company that will act as trustee of the funds. The expansion fund~~
18 ~~and the trust fund shall be used to pay for defaulted loan guarantees~~
19 ~~issued pursuant to Article 9 (commencing with Section 14070),~~
20 ~~administrative costs of corporations, and those costs necessary to~~
21 ~~protect a real property interest in a defaulted loan or guarantee.~~
22 ~~The amount of guarantee liability outstanding at any one time shall~~
23 ~~not exceed four times the amount of funds on deposit in the~~
24 ~~expansion fund plus any receivables due from funds loaned from~~
25 ~~the expansion fund to another fund in state government as directed~~
26 ~~by the Department of Finance pursuant to a statute enacted by the~~
27 ~~Legislature, including each of the trust fund accounts within the~~
28 ~~trust fund, unless the director has permitted a higher leverage ratio~~
29 ~~for an individual corporation pursuant to subdivision (b) of Section~~
30 ~~14037.~~

31 ~~(b) This section shall become operative on January 1, 2013.~~

32 **SECTION 1.**

33 *SEC. 3. Section 14070 of the Corporations Code, as amended*
34 *by Section 5 of Chapter 601 of the Statutes of 2007, is amended*
35 *to read:*

36 14070. (a) The corporate guarantee shall be backed by funds
37 on deposit in the corporation's trust fund account, or by receivables
38 due from funds loaned from the corporation's trust fund account
39 to another fund in state government as directed by the Department
40 of Finance pursuant to a statute enacted by the Legislature.

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

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

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

21 (e) To execute the direct loan programs established in this
22 chapter, the director may loan trust funds to a corporation located
23 in a rural area for the express purpose of lending those funds to an
24 identified borrower. The loan authorized by the director to the
25 corporation shall be on terms similar to the loan between the
26 corporation and the borrower. The amount of the loan may be in
27 excess of the amount of a loan to any individual farm borrower,
28 but actual disbursements pursuant to the agency loan agreement
29 shall be required to be supported by a loan agreement between the
30 farm borrower and the corporation in an amount at least equal to
31 the requested disbursement. The loan between the agency and the
32 corporation shall be evidenced by a credit agreement. In the event
33 that any loan between the corporation and borrower is not
34 guaranteed by a governmental agency, the portion of the credit
35 agreement attributable to that loan shall be secured by assignment
36 of any note, executed in favor of the corporation by the borrower
37 to the agency. The terms and conditions of the credit agreement
38 shall be similar to the loan agreement between the corporation and
39 the borrower, which shall be collateralized by the note between
40 the corporation and the borrower. In the absence of fraud on the

1 part of the corporation, the liability of the corporation to repay the
2 loan to the agency is limited to the repayment received by the
3 corporation from the borrower except in a case where the United
4 States Department of Agriculture requires exposure by the
5 corporation in rule or regulation. The corporation may use trust
6 funds for loan repayment to the agency if the corporation has
7 exhausted a loan loss reserve created for this purpose. Interest and
8 principal received by the agency from the corporation shall be
9 deposited into the same account from which the funds were
10 originally borrowed.

11 (f) Upon the approval of the director, a corporation shall be
12 authorized to borrow trust funds from the agency for the purpose
13 of relending those funds to small businesses. A corporation shall
14 demonstrate to the director that it has the capacity to administer a
15 direct loan program, and has procedures in place to limit the default
16 rate for loans to startup businesses. Not more than 25 percent of
17 any trust fund account shall be used for the direct lending
18 established pursuant to this subdivision. A loan to a corporation
19 shall not exceed the amount of funds likely to be lent to small
20 businesses within three months following the loan to the
21 corporation. The maximum loan amount to a small business is fifty
22 thousand dollars (\$50,000). In the absence of fraud on the part of
23 the corporation, the repayment obligation pursuant to the loan to
24 the corporation shall be limited to the amount of funds received
25 by the corporation for the loan to the small business and any other
26 funds received from the agency that are not disbursed. The
27 corporation shall be authorized to charge a fee to the small business
28 borrower, in an amount determined by the director pursuant to
29 regulation. The program provided for in this subdivision shall be
30 available in all geographic areas of the state.

31 ~~SEC. 2.~~

32 *SEC. 4.* Section 14070 of the Corporations Code, as added by
33 Section 6 of Chapter 601 of the Statutes of 2007, is repealed.

34 ~~SEC. 3.~~

35 *SEC. 5.* Section 14076 of the Corporations Code, as amended
36 by Section 7 of Chapter 601 of the Statutes of 2007, is amended
37 to read:

38 14076. (a) It is the intent of the Legislature that the
39 corporations make maximal use of their statutory authority to
40 guarantee loans and surety bonds, including the authority to secure

1 loans with a minimum loan loss reserve of only 20 percent, so that
2 the financing needs of small business may be met as fully as
3 possible within the limits of corporations' loan loss reserves. The
4 agency shall report annually to the Legislature on the financial
5 status of the corporations and their portfolio of loans and surety
6 bonds guaranteed.

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

22 ~~SEC. 4.~~

23 *SEC. 6.* Section 14076 of the Corporations Code, as added by
24 Section 8 of Chapter 601 of the Statutes of 2007, is repealed.