

Assembly Bill No. 2581

CHAPTER 986

An act to amend Sections 14036, 14037, 14038, 14041, and 14070 of the Corporations Code, relating to business development, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed
with Secretary of State September 27, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2581, Baca. Business development.

Existing law authorizes the formation of small business development corporations, which make loans and loan guarantees to small businesses. Those loans and guarantees may be made or guaranteed using funds in the Small Business Expansion Fund. That law is administered by the Small Business Development Board and the Office of Small Business.

Existing law establishes the expansion fund, to pay for defaulted loan guarantees and administrative costs of corporations. Existing law establishes the loan account in the expansion fund, and provides for the transfer of funds from the loan account to a small business development corporation corporate fund. However, under existing law, funds appropriated to the expansion fund are to remain in the expansion fund and may not be transferred to any loan accounts or corporate funds.

This bill would provide that the loan account is allocated to a corporation's loan guarantee fund, rather than its corporate fund. It would eliminate the requirement that funds in the expansion fund remain in the expansion fund. It would provide that accounts within the expansion fund for loan guarantees and surety bond guarantees shall be transferred to the small business development loan guarantee fund in the corporate fund of those corporations previously using those funds in the expansion fund to guarantee loans and surety bonds, in accordance with criteria adopted by the office. Since the expansion fund is continuously appropriated, this would result in an appropriation. The bill would provide for a reallocation of funds if a corporation has failed to effectively use its guarantee funds.

Appropriation: yes.

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

SECTION 1. Section 14036 of the Corporations Code is amended to read:



14036. The loan account is created solely for the purpose of receiving state, federal, or local government money, and other public or private money, for subsequent allocation by the office, with the approval of the Department of Finance, to the small business development corporate loan guarantee fund.

SEC. 2. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

(b) On and after January 1, 1997, accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves established for the purpose of paying loan defaults, shall be transferred to the small business development loan guarantee fund in the corporate fund of those corporations previously using those funds in the expansion fund to guarantee loans and surety bonds.

(c) The office may reallocate funds held within a corporation's small business development loan guarantee fund. The office shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall not occur more frequently than annually commencing January 1, 1997. Any decision made by the office pursuant to this subdivision may be appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

SEC. 3. Section 14038 of the Corporations Code is amended to read:

14038. (a) The funds in the loan account shall be paid out to a small business development corporation loan guarantee fund by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated to the corporate fund to accounts, established solely to receive the funds, in lending institutions designated by that corporation. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

(b) The office shall reallocate and transfer money to corporate trust accounts based on performance-based criteria. The criteria shall include, but not be limited to, the following:

- (1) The default record of the corporation.



- (2) The number and amount of loans guaranteed by a corporation.
- (3) The number and amount of loans made by a corporation if state funds were used to make those loans.
- (4) The number and amount of surety bonds guaranteed by a corporation.

Any decision made by the office pursuant to this subdivision may be appealed to the board within 15 days of notice of the proposed action. The board may repeal or modify any reallocation and transfer decisions made by the office.

SEC. 4. Section 14041 of the Corporations Code is amended to read:

14041. (a) Except as provided in subdivisions (c) and (d) of Section 14070, the loan guarantee account, shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money that is allocated and deposited in the fund pursuant to this chapter, and that is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans and bonds to which a state guarantee is attached shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

(c) A summary of all loans made by a corporation shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

SEC. 5. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish



a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars (\$50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are



not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

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