

Date of Hearing: January 9, 2018

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sharon Quirk-Silva, Chair

AB 1547 (Quirk-Silva) – As Amended January 3, 2018

SUBJECT: California ADA Small Business Capital Access Loan Program

SUMMARY: Modifies the definition of small business under the California Americans with Disabilities Act Small Business Capital Access Loan Program (Small Business ADA Program) for the purpose of increasing the number of eligible applicants.

Specifically, **this bill** expands the definitions of a "small business" or "qualified small business" to include businesses with fewer than 30 full-time equivalent employees or having less than \$5 million in total gross annual income from all sources. Existing law limits the number of full-time equivalent employees to 15 and requires a business to also have less than \$5 million in total gross annual income from all sources.

EXISTING LAW:

- 1) Establishes the Capital Access Loan Program for Small Businesses (CalCAP), administered by the California Pollution Control Financing Authority (CPCFA), for the purpose of encouraging banks and other financial institutions to make loans to small businesses that have difficulty obtaining financing.
- 2) Establishes the ADA Small Business Program, administered by the CPCFA, for the purpose of encouraging private financial institutions to provide small business loans for activities related to compliance with the requirements of the Americans with Disabilities Act (ADA). The ADA Small Business Program is required to follow the terms and conditions for the CalCAP with additional program requirements, as specified.
- 3) Defines "small business" and a "qualified business" as a business concern that has a primary location within the boundaries of the state and is:
 - a) Independently owned and operated and which is not dominant in its field of operation;
 - b) Legally authorized to conduct business in the state; and
 - c) Legally organized as a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit.
- 4) Specifies that a business participating in the ADA Small Business program must also meet all of the following criteria:
 - a) Have 15 or fewer full-time equivalent employees;
 - b) Have less than \$5 million in total gross annual income from all sources; and,
 - c) Does not provide overnight accommodations.
- 5) Requires CPCFA adopt regulations that do the following:

- a) Establish a new loss reserve account for each participating lender enrolling loans in this program;
 - b) Obtain a certification from each participating lender and small business upon enrollment of a qualified loan that the proceeds of the loan will be used for the eligible costs of an eligible project;
 - c) Contribute an additional incentive from the fund for each loan enrolled for a qualified business located in a severely affected community or make nonreimbursable payments from other moneys to participating borrowers to offset all or a portion of the reasonable costs of architectural inspections;
 - d) Restrict the enrollment of a qualified loan in any other Capital Access Loan Program for small business offered by CPCFA as long as funds are available for this program;
 - e) Limit the term of loss coverage for each qualified loan to no more than five years; and
 - f) Recapture from the loss reserve account the authority's contribution for each enrolled loan upon the maturation of such loan or after five years from the date of enrollment, whichever ever happens first, to be deposited in the fund and applied to program and administrative costs.
- 6) Defines the following:
- a) "Eligible cost" means and includes all or any part of the price of construction, purchase price of real or personal property, the price of demolishing or removing any buildings or structures, the price of all machinery and equipment, the amount of financing charges and interest prior to, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the price of insurance during construction, the amount of funding or financing noncapital expenses, the amount of reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the price of engineering, financial and legal services and other service contracts, the price of plans, specifications, studies, surveys, estimates, administrative expenses, and any other expenses of funding or financing, that are necessary and allocable to the eligible project, and shall not include costs not directly related to physical alterations necessary for compliance with the ADA;
 - b) "Eligible project" means the physical alterations or retrofits to an existing small business facility of less than 10,000 square feet necessary to ensure that facility is in compliance with the ADA, and the financing necessary to pay eligible costs of the project; and
 - c) "Qualified loan" means a loan or portion of loan where the proceeds of the loan or portion of loan are limited to the eligible costs for an eligible project under this program, and where the loan or portion of loan does not exceed \$50,000.
- 7) Prohibits financing upgrades to a range of businesses and facilities, including those that offer overnight accommodation; gambling, liquor, tobacco, guns, escort services, speculative activities (wildcatting for oil and dealing in commodities futures); pyramid sales plans; or other similar activities.
- 8) Appropriates a sum of \$10 million from the General Fund to the California ADA Small Business Capital Access Loan Program Fund for the purpose of funding loss reserve accounts and administering the Small Business ADA Program.

FISCAL EFFECT: Unknown

POLICY FRAME: The federal ADA provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. In California, the Unruh Civil Rights Act (Unruh), provides that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. A violation of the ADA also constitutes a violation of Unruh, which subjects a person to actual damages incurred by an injured party, treble actual damages, and any attorney's fees as the court may determine to be proper.

The ADA and Unruh are important laws, and reflect essential American values of open opportunity and independence for all people. In retrofitting older buildings to meet the associated building and operation standards, some small business owners have had financial challenges. In 2015, the Legislature approved and funded (\$10 million) a new loss reserve program at the CPCFA to assist very small-size business in accessing capital to make the necessary changes to meet ADA requirements. Unfortunately, to date, no loans have resulted from the program.

This bill is intended to increase the number of eligible applicants. The analysis includes information on the California small business economy, the CalCap Program, the Small Business ADA Program, program oversight, and prior related legislation. Amendments are discussed in Comments 5 and 6.

COMMENTS:

- 1) **The Role of Small Business within the California Economy:** California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's \$2.6 trillion economy. Among other advantages, small businesses are crucial to the state's international competitiveness and are an important means for dispersing the positive economic impacts of trade within the California economy.

Nonemployer firms make up the single largest component of businesses in California, 3.1 million out of an estimated 4.1 million firms in 2015, representing over \$169 billion in revenues with the highest number of businesses in the professional, scientific, and technical services industry sector (548,841 establishments with \$28 billion in receipts). As these nonemployer businesses grow, they continue to serve as an important component of California's dynamic economy. Excluding nonemployer firms, businesses with less than 20 employees comprise nearly 84% of all businesses and employ approximately 18% of all workers. These non-employer and small employer firms create jobs, generate taxes, and revitalize communities.

In hard economic times, smaller size businesses often function as economic engines. The trend continued in this most recent recession with the number of nonemployer firms increasing from 2.6 million firms (\$137 billion in revenues) for 2008 to 2.8 million firms (\$138 billion in revenues) for 2010. In the post-recession economy, small businesses are expected to become increasingly important due to their ability to be more flexible and better suited to meet niche market needs. Their small size, however, results in certain challenges in meeting regulatory requirements, accessing capital, and marketing their goods and services. California's network of technical assistance providers help businesses with a range of services, including access to quality training, one-on-one counseling, mentoring, marketing data, and other business development resources.

- 2) **California Capital Access Program for Small Businesses:** CalCAP Loss Reserve Program was established through legislation enacted in 1994 for the purpose of incentivizing financial institutions to provide small businesses with the capital to maintain and grow their business.

The program uses a portfolio-based credit enhancement model, whereby a loss reserve account is established to offset losses incurred in connection with small business loans enrolled in the program. Funding in the loss reserve account consists of moneys paid by the participating borrower and financial institution, with CPCFA matching these contributions.

Unlike a loan guarantee which ensures payment based on a certain percentage of the defaulted loan (80% is covered in the state guarantee), under the loss reserve model, the amount of the default payment is based on the amount of funds available in the reserve account. This means a lender could potentially recover 100% of the value of the defaulted loan, if sufficient moneys are in the account. The model encourages lenders to maintain good underwriting practices because utilization of the loss reserve too often can quickly draw-down the reserve leaving little for future defaults.

CalCAP loans can be used to finance the acquisition of land, construction or renovation of buildings, the purchase of equipment, other capital projects and working capital. There are some limitations on real estate loans and loan refinancing. The maximum loan amount is \$2.5 million. Lenders set the terms and conditions of the loans and decide which loans to enroll into CalCAP. Loan fees, which are used to capitalize the loss reserve account, are set by the lender and are in the range of 2% to 3.5% of the total loan amount. Loans can be short- or long-term, have fixed or variable rates, be secured or unsecured, and bear any type of amortization schedule.

In 2016, CalCAP had 39 lenders enrolled in the CalCAP Loss Reserve Program, including: 23 state-chartered banks; 3 federally-chartered banks; 1 credit union; 9 non-profit CDFIs; 1 for-profit CDFI; and 2 community development corporations. These lenders enrolled 1,933 small business loans for \$96 million, representing \$106 million in total loan dollars. The average size loan was \$55,037. Enrolled loans came from small business located in 44 California counties. Since 1994, CalCAP has enrolled 16,314 loans, representing cumulative loans of \$1.68 billion. CPCFA processed and approved 96 claims from lenders against their loss reserve account in 2016. This represents a 5% default rate, which is an increase in payments of 116% from 2015.

- 3) **Small Business ADA Program:** In 2015, AB 1230 (Gomez) established the Small Business ADA Program to assist small businesses in obtaining financing to make ADA-related repairs. The Small Business ADA Program is administered through CPCFA's CalCAP Program, which serves as a credit enhancement to lower the default risk to traditional and nontraditional lenders.

The legislation was introduced as part of a larger response by the Legislature to address the need for greater ADA compliance within the commercial sector and an increasing number of "predatory lawsuits" for which the plaintiffs would agree to drop if financially compensated for their time. The Small Business ADA Program was intended to help small businesses proactively upgrade facilities and make other improvements necessary to comply with the ADA.

Eligible small business borrowers include those with fewer than 15 full-time equivalent employees and having an annual total income of under \$5 million. Financing can be used to physically alter or retrofit the business' existing business facilities of less than 10,000 square feet and any other costs necessary for compliance with the ADA. Eligible costs may include predevelopment cost, such as the cost of surveying facilities, estimating and planning eligible alterations, and other related expenses.

The credit enhancement offered through the Small Business ADA Program, however, may not be used for business expansion.

Similar to the broader CalCAP Loss Reserve Program, the terms of the individual loans are generally determined by the participating lender, however the size of enrolled loans are statutorily limited to smaller-size loans, \$50,000 under the Small Business ADA Program v. \$2.5 million under the broader program. Another program difference is the authority to recapture the full amount of the states contribution to the loss reserve fund when the loan is paid off or five years whichever is less. There are also additional steps in acquiring financing. Prior to receiving money, the small business must obtain an ADA assessment and report from a certified access specialist, as well as a cost estimate for the alterations or retrofits.

Even though the Small Business ADA Program is separately capitalized with \$10 million and builds upon a successful existing CalCAP Loss Reserve Program, the program has yet to enroll a single loan. Further, only three lenders have agreed to participate in the program, as compared to the 39 participating in the broader CalCAP Loss Reserve Program.

Last year, the State Treasurer sponsored AB 1553 (Cervantes and Gomez) Chapter 944, statutes of 2012 to make program adjustments to address certain implementation challenges, including:

- a) Authorizing direct payments to small businesses to offset all or a portion of the reasonable costs of architectural inspections obtained from a person who is certified as an access specialist; and
- b) Amending the definition of “small business” or “qualified business” by increasing the maximum gross annual income from \$1 million to \$5 million dollars.

According to the Senate policy analysis for AB 1533, the change to the size of business was appropriate in order to include more eligible applicants. "In determining eligibility, STO analyzed data for participants in that program and determined that only a very small number would qualify for a loan under the Small Business ADA Program and that the \$1 million threshold may actually be too low to assist even very small businesses."

AB 1547 further expands the definition for “small business” or “qualified business” to include additional employees 15 to 30, as well as allowing a business to qualify under its number of employees or its total revenues. The bill increases the number of full-time equivalent employees from 15 to 30.

- 4) **Funding for Loss Reserve Programs:** Moneys to operate CalCAP originally came from excess bond issuance fees. From 2004 to 2010, about \$35 million was allocated by CPCFA to finance the CalCAP Loss Reserve Program. In 2010, CalCAP received its first General Fund moneys as part of a comprehensive \$32 million small business budget proposal and in 2011 CalCAP was chosen to administer a portion of federal funds for a small business access to capital program. As noted earlier in the analysis, the Small Business ADA Program was separately capitalized when initially authorized. Currently, CalCAP Loss Reserve Program operates exclusively on funds received from federal and non-CPCFA sources.

NAICS Sector	Description	Number of Enrollments	Dollars Loaned	Dollars Enrolled
11	Agriculture, Forestry, Fishing and Hunting	15	\$804,492.21	\$392,182.00
21	Mining, Quarrying, and Oil and Gas Extraction	1	\$21,000.00	\$21,000.00
22	Utilities	2	\$37,242.45	\$37,242.45
23	Construction	132	\$5,929,329.77	\$5,685,290.93
31-33	Manufacturing	130	\$15,587,791.31	\$13,797,951.31
42	Wholesale Trade	71	\$7,686,876.64	\$7,257,627.08
44-45	Retail Trade	360	\$11,436,681.11	\$11,401,655.11
48-49	Transportation and Warehousing	364	\$17,001,771.57	\$13,088,079.62
51	Information	24	\$2,122,869.09	\$1,372,869.09
52	Finance and Insurance	23	\$1,355,709.71	\$1,355,709.71
53	Real Estate and Rental and Leasing	21	\$2,471,715.61	\$2,460,305.61
54	Professional, Scientific, and Technical Services	105	\$7,842,677.17	\$6,741,279.17
56	Administrative and Support and Waste Management and Remediation Services	126	\$4,611,271.31	\$3,963,062.31
61	Educational Services	23	\$1,600,319.83	\$1,600,319.83
62	Health Care and Social Assistance	71	\$6,933,192.36	\$6,863,192.36
71	Arts, Entertainment, and Recreation	22	\$1,083,250.88	\$1,083,250.88
72	Accommodation and Food Services	276	\$16,566,303.20	\$16,433,209.90
81	Other Services (except Public Administration)	167	\$3,293,597.03	\$3,227,097.03

Source: California Pollution Control Financing Authority June 16, 2017

Among CalCAP's other programs capitalized by specially designated funding sources, the authority operates the On-Road Heavy-Duty Diesel Vehicle Program for small business truck owners; a Proposition 1B Loan Assistance Program to help finance 2007 or newer heavy-duty diesel or LNG fueled trucks; and a program to assist small businesses and homeowners make seismic safety related improvements.

- 5) **Oversight Hearing:** The Assembly Committee on Jobs, Economic Development, and the Economy, is initiating a program review of the CPCFA, among other state financing authorities that were established and/or operate a program designed to serve the needs of California businesses, especially those related to manufacturing and small businesses. AB 1547 will serve as a vehicle for program changes that arise from this review.

In October 2017, the JEDE Committee met with the Treasurer's staff to talk about the oversight process and to discuss potential recommendations for policy improvements. The California State Treasurer serves as the chair to several of the state's independent financing authorities, including the CPCFA, the California Alternative Energy and Advanced Transportation Financing Authority, and the California Industrial Development Financing Advisory Commission. Central to these discussions was whether the existing system of independent financing authorities best serves private sector financing needs. The expansion to the definition of small business under the Small Business ADA Program was an earlier recommendation from the Treasurer's office.

More recently (December 27, 2017), State Treasurer Chiang recommended that the California Industrial Development Financing Advisory Commission could be eliminated and its review authority could be delegated to the California Debt Limit Allocation Committee, which he also chairs.

This recommendation is in line with the introduced version of AB 1547 and the committee staff recommend that the JEDE Committee consider this as an amendment to the bill at the January 9, 2018 hearing.

- 6) **Suggested Technical Amendment to the Small Business ADA Program:** Staff recommends that the Committee consider deleting the reference to a federal definition of "small business concern", and instead incorporate relevant portions of definition in state law. This method is used in other sections of law relating to small businesses, including small business provisions of state procurement law.

(b)(6) of Section 44559.13. of the health and Safety Code: "Small business" or "qualified business" means a business referred to in subdivisions (i) and is independently owned and operated and not dominate in its field ~~(m) of Section 44559.1~~, that meets both of the following additional criteria:

(A) It has 30 or fewer full-time equivalent employees, or it has less than five million dollars (\$5,000,000) in total gross annual income from all sources.

(B) It does not provide overnight accommodations.

- 7) **Related Legislation:** Below is a list of bills from the current and prior sessions.

a) Current Session:

- i) **AB 964 (Calderon, Gonzalez Fletcher, Gomez and Cervantes) California Affordable Clean Vehicle Program:** This bill establishes the California Affordable Clean Vehicle Program within CPCFA's Capitol Loan Access Program to assist low-income individuals purchase or lease zero-emission vehicles or plug-in hybrid electric vehicles for personal or commercial use by providing affordable financing mechanisms. Status: Pending in the Senate Committee on Appropriations.
- ii) **AB 1553 (Cervantes and Gomez) Direct Payments to Borrowers:** This bill expands the gross annual income limits in the definition of "small business" and "qualified business" from \$1 million to \$5 million under the California Americans with Disabilities Small Business Capital Access Loan Program, which is administered by the California Pollution Control Financing Authority. The bill also authorizes the use of monies in the Small Business Assistance Fund to provide direct incentives to borrowers or financial institutions to participate in the Program. Status: Signed by the Governor, Chapter 944, Statutes of 2017.
- iii) **SB 551 (Hueso) Transfer of the Loss Reserve Program:** Transfers the California Capital Access Program to the California Small Business Finance Center, operated under the California Infrastructure and Economic Development Bank. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.

b) Prior Sessions:

- i) **AB 796 (Blumenfield) Matching Funds:** This bill, as it related to CPCFA, would have increased the maximum contribution by the financial institution to \$200,000, if the matching contribution made by CPCFA is funded exclusively from funds made available pursuant to the federal Small Business Jobs Act of 2010. The bill would also have limited the amount of

matching funds used for deposits exceeding \$100,000 to not more than 50% of the available funds. Status: Vetoed by the Governor, 2012, for provisions unrelated to CFCFA.

- ii) **AB 901 (V. Manuel Pérez) Expand Financial Partners and Reporting Requirements:** This bill expanded the CPCFA's CalCAP definition of financial institution and increased reporting requirements. CalCAP is one of the programs which received multimillions of dollars in federal and state funding for small business through the federal and state Small Business Jobs Act of 2010. Status: Signed by the Governor, Chapter 483, Statutes of 2011.
- iii) **AB 981 (Hueso) Expand Financial Partners:** This bill expanded the California Capital Access Program's definition of financial institution, authorized the withdrawal of a lower portion of the interest or other income from a loss reserve account to cover program costs, and required additional financial assistance to qualified business in severely affected community such as an area with high unemployment. California Capital Access Program is one of the programs which received multimillions of dollars in federal and state funding for small business through the federal and state Small Business Jobs Act of 2010. Status: Signed by the Governor, Chapter 484, Statutes of 2011.
- iv) **AB 1230 (Gomez) ADA Program:** Establishes the California Americans with Disabilities Act Small Business Capital Access Loan Program to provide loans to small businesses so they can comply with the requirements of the Americans with Disabilities Act. Status: Signed by the Governor, Chapter 787, Statutes of 2015.
- v) **AB 1393 (Burke) Expanded Loss Reserve Program Authority:** This bill would have expanded the authority and program focus of the CPCFA from providing financial assistance to address the control and remediation of pollution and the capital access challenges of small businesses to offering unlimited types of financial products to an expansive list of public and private entities, as specified. Status: Held under submission on the Senate Appropriation Committees' Suspense File in 2015.
- vi) **AB 1632 (Blumenfeld) Small Business Capital Infusion:** This bill provided the necessary statutory changes in the area of job creation and small business development in order to implement the 2010 Budget Act. The bill transfers \$32.4 million from the General Fund to support four small-business and jobs programs that exist in current law. The funding appropriated in this bill goes to the Small Business Loan Guarantee Program (\$20 million); California Capital Access Fund (\$6 million); Small Business Development Centers (\$6 million); and the Federal Technology Centers (\$350,000). Status: Signed by the Governor, Chapter 731, Statutes of 2010.
- vii) **SB 225 (Simitian) Loss Reserve Accounts Trucking:** This bill authorized the authority to establish loss reserve accounts for the purposes of terminal rental adjustment clause leasing, if funds are available for contribution into the loss reserve account from any source other than the authority. Status: Signed by the Governor, Chapter 492, Statutes of 2011.
- viii) **SB 832 (Senate Committee on Environmental Quality) Code Maintenance:** This bill revised, under the tax-related provisions, the terms "project" and "pollution control facility", as defined in the California Pollution Control Financing Authority Act that are eligible for the sales and use tax (SUT) exclusion and includes public agencies in the definition of "participating parties" that are eligible for financial assistance in connection with the projects designed to

control or eliminate environmental pollution. Status: Signed by the Governor, Chapter 643, Statutes of 2009.

- ix) ***SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016) Budget Trailer Bill:*** Authorized California Capital Access Program to implement a loan loss reserve program to benefit an individual person engaged in an activity that furthers the state's policy objectives. Status: Signed by the Governor, Chapter 32, Statutes of 2016.
- x) ***SB 1311 (Simitian) Changes in Deposits and Withdrawals:*** This bill reduced the California Capital Access Program monetary contribution of the CPCFA to an amount equal to the amount of fees paid by a participating financial institution. The bill also authorizes the withdrawal of interest or other income from the loss reserve accounts for the purpose offsetting administrative costs and contributions. Status: The bill was signed by the Governor, Chapter 401, Statutes of 2008.

REGISTERED SUPPORT / OPPOSITION:

Support

None on File

Opposition

None on File

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