

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1230 (Gomez) – As Amended March 24, 2015

SUBJECT: California Americans with Disabilities Act Small Business Compliance Financing Act

SUMMARY: Establishes the California Americans with Disabilities Act Small Business Compliance Financing Authority (Authority) to provide loans to small businesses so they can comply with the requirements of the Americans with Disabilities Act (ADA). Specifically, **this bill:**

- 1) States that it is the intent of Legislature to establish a self-sustaining program to provide loans to assist small businesses in complying with the ADA.
 - a) Defines “Small business” as a business located in California that meets all of the following criteria:
 - i) Less than six full-time equivalent employees.
 - ii) Less than one million dollars (\$1,000,000) in total gross annual income from all sources; and,
 - iii) Does not provide overnight accommodations.
- 2) Specifies that that the Authority is composed of the following members:
 - a) The Treasurer, who shall serve as chair;
 - b) The Controller;
 - c) The Director of Finance;
 - d) The Director of General Services;
 - e) One member appointed by Senate Rules Committee who shall have special knowledge or experience with accessibility issues for people with disabilities;
 - f) One member appointed by the Speaker of the Assembly who shall be the owner of a small business or a member of organization that represents the interests of small businesses; and,
 - g) One member appointed by the Governor, subject to Senate confirmation who shall be a member of the State Bar of California with professional experience in consumer protection laws.
- 3) Provides that each member of the Authority shall serve a term of four years and at the

expiration of their term shall continue to hold office until the successor has been appointed and qualifies to begin serving. Allows a member of the Authority to be reappointed to a new term. Limits the application of these specific provisions to appointees of the Senate Committee on Rules, The Assembly Speaker and the Governor.

- 4) States that the State Treasurer, in his or her capacity as the chair, shall appoint an executive director who shall not be a member of the Authority and shall receive a compensation fixed by the Authority.
- 5) Requires the executive director or the person designated by the Authority in a resolution to keep a record of proceedings of the Authority and a copy of other records and documents of the Authority.
- 6) Provides for a majority vote of the Authority to take any action and that four members shall constitute a quorum.
- 7) Allows the Authority to issue revenue bonds.
- 8) Specifies that except as expressly provided otherwise by the Authority, revenue bonds shall be payable from any revenues or moneys of the Authority available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys. Negotiable bonds shall be and be deemed to be for all purposes negotiable instruments, notwithstanding that these bonds may be payable from a special fund, subject only to the provisions of these bonds for registration.
- 9) Allows the Authority's revenue bonds to be issued as serial bonds or as term bonds, or the Authority, in its discretion, may issue bonds of both types. The issuance of all revenue bonds shall be authorized by resolution of the Authority and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as the indenture, trust agreement, or resolution relating to these revenue bonds may provide. The Authority's revenue bonds or notes may be sold by the Treasurer at public or private sale, after giving due consideration to the recommendation of the participating small business, for the price or prices and upon the terms and conditions as the Authority shall determine. The Treasurer may sell these revenue bonds at a price below the par value thereof. However, the discount on any bonds so sold shall not exceed 6 percent of the par value thereof, except in the case of any bonds payable in whole or in part from moneys held under one or more outstanding resolutions or indentures. Pending preparation of the definitive bonds, the Authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for such definitive bonds.
- 10) Allows a resolution or resolutions authorizing the issuance of any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the Authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds.

- 11) Provides that neither the members of the Authority nor any person executing the revenue bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.
- 12) Permits the Authority to purchase its bonds with any moneys available to the Authority for this purpose. The Authority may exchange bonds for its bonds. The Authority may hold, pledge, exchange, cancel, or resell these bonds, subject to and in accordance with its agreements with bondholders.
- 13) Provides that revenue bonds issued shall not be deemed to constitute a debt or liability of the state or of a political subdivision thereof or a pledge of the faith and credit of the state or of that political subdivision, other than the Authority, but shall be payable solely from the moneys in the Fund. These bonds shall contain a statement to the effect that neither the State of California nor the Authority shall be obligated to pay the principal of, or the interest thereon, except from revenues of the Authority, and that neither the faith and credit nor the taxing power of the State of California or of a political subdivision thereof is pledged to the payment of the principal of or the interest on these bonds. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the state or a political subdivision thereof to levy or to pledge a form of taxation whatever therefor or to make an appropriation for their payment.
- 14) Specifies that any holder of revenue bonds issued or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such indenture or trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or indenture or trust agreement, and may enforce and compel the performance of all duties required or by such resolution, indenture, or trust agreement to be performed by the Authority or by any officer, employee or agent thereof.
- 15) Establishes the Americans with Disabilities Act Small Business Compliance Financing Authority Fund (Fund) in the state Treasury with all money in the Fund continuously appropriated to the Authority.
- 16) Provides that all moneys in the Fund derived from any source shall be held in trust for the security and payment of bonds of the Authority and shall not be used or pledged for any other purpose so long as the bonds are outstanding and unpaid.
- 17) Allows the Authority to pledge any or all of the moneys in the Fund as security for payment of the principal of, and interest on, any secured or unsecured loan made as necessary or convenient to the accomplish any purpose of the Authority.
- 18) Provides that the Authority may direct the Treasurer to invest moneys in the Fund that are not required for its current needs, including proceeds from the sale of any bonds, in the eligible securities as specified, or in interest-bearing accounts in state or national banks or other financial institutions having principal offices located in the state. The Authority may alternatively require the transfer of moneys in the Fund to the Surplus Money Investment

Fund for investment.

- 19) Specifies that all expenses of the Authority incurred shall be payable solely from funds and Authority provided to the Authority.
- 20) Requires the Authority to establish financial eligibility standards for each small business seeking financing from the Authority by studying the creditworthiness and earning capacity of the small business, the impact of new debt and the completion of the project on the small business, and the amount of pledged revenues, debt service coverage, and basic security.
- 21) Allows the Authority to do any of the following:
 - a) Adopt bylaws for the regulation of its affairs and the conduct of its business;
 - b) Adopt an official seal;
 - c) Sue and be sued in its name;
 - d) Receive and accept gifts, grants, or donations of money from any agency of the federal government, another state entity, a city, county, city and county, any other political subdivision of the state, an individual, association, or corporation;
 - e) Engage private consultants to provide professional and technical services and advice;
 - f) Determine the location and character of any project to be financed; acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate a project and enter into contracts for any or all of those purposes; enter into contracts for the management and operation of a project or other small business facilities owned by the Authority; designate a participating property manager as its agent to determine the location and character of a project undertaken by that participating small business and, as the agent of the Authority, acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the Authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of that project or other small business facilities owned by the Authority;
 - g) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value;
 - h) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating small business in connection with financing the costs of a project in accordance with an agreement between the Authority and the participating small business. However, the Authority shall not make any loan to a small business to finance the cost of a project that exceeds the lesser of \$50,000 or the total cost of the project, as determined by the participating small business and approved by the Authority;
 - i) Enter into any and all agreements or contracts, including agreements for liquidity or

credit enhancement, bond exchange agreements, interest rate swaps or hedges; execute any and all instruments; and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Authority or to carry out any power expressly granted; and

- j) Invest any moneys held in reserve or sinking funds or any moneys not required for immediate use or disbursement, at the discretion of the Authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.
- 22) Prohibits the Authority from making a loan to a small business with a repayment period of 60 months or longer, except if the project is located on real property that is leased. If the project is located on real property that is leased, the repayment period shall not exceed the term of the lease, excluding any option to extend the lease.
- 23) Specifies that the Authority shall only make a loan that includes an interest rate that equals the pooled money investment rate at the time the loan is approved and is sufficient to repay the reasonable pro rata expenses of the Authority to administer the loan, including, but not limited to, the costs of issuing revenue bonds to fund the loan.
- 24) Allows Authority to require any information it deems necessary and prudent prior to providing a loan to a small business and may require any term, condition, security, or repayment provision it deems necessary in the event the Authority chooses to provide a loan.
- 25) Provides that all moneys received, whether as proceeds from selling or incurring revenue bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided. Until the funds are applied, and notwithstanding any other provision of law, the moneys may be invested in any obligations or securities authorized by resolutions of the Authority authorizing the issuance of the bonds. Any officer with whom, or any bank or trust company with which, the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes hereof, subject to any regulations adopted and the resolution authorizing the issuance of the bonds or the indenture or trust agreement securing the bonds.
- 26) Allows the Authority to provide for the issuance of bonds of the Authority for the purpose of redeeming, refunding, or retiring any bonds or any series or issue of bonds then outstanding issued for the benefit of a participating small business to finance or refinance a project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption, purchase, or maturity of the bonds.
- 27) Provides that the proceeds of any bonds issued for the purpose of refunding of outstanding bonds may, in the discretion of the Authority, be applied to the purchase, redemption prior to maturity, or retirement at maturity of any outstanding bonds on their earliest redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the Authority's obligation or the applicable bond issuer's obligation to make the payments, and may, pending that application, be placed in escrow to be applied to the purchase, retirement at maturity, or redemption on the date or dates determined by the Authority or the participating small business.

- 28) Allows any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the Authority or as determined by the participating small business, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates or for payment of interest on the refunding bonds on or prior to the final date of redemption or payment of the bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by the Authority or the participating small business.
- 29) Provides that bonds issued by the Authority are hereby made securities in which all banks, bankers, savings banks, trust companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control; and such bonds, notes or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.
- 30) Specifies that bonds issued by the Authority are tax free.
- 31) Appropriates a sum of \$50,000,000 from the General Fund to the Fund for the purposes of funding the activities of the Authority.

EXISTING LAW: Provides for various financing authorities administered by the state Treasure including:

- 1) California Pollution Control Financing Authority (CPCFA): CPCFA is able to facilitate low cost financing to qualified waste and recycling projects. Other projects to control pollution and improve water supply can qualify for tax-exempt financing as allowed by federal tax law. Examples of recent assistance include projects to purchase clean-air vehicles by waste companies, construct and operate anaerobic digesters, recycle used oil, convert animal waste to clean burning fuel, and develop construction and demolition debris recycling programs.
- 2) The California Health Facilities Financing Authority (CHFFA) was established to be the State's vehicle for providing financial assistance to public and non-profit health care providers through loans, grants and tax-exempt bonds.
- 3) The California Educational Facilities Authority (CEFA) administers programs that provide tax-exempt, low-cost financing to private, non-profit higher educational facilities.
- 4) Additionally, CEFA manages the California Student Loan Authority, which has the authority to issue tax-exempt bonds to fund student loans and to purchase federally reinsured student

loans from eligible lending institutions.

- 5) California Transportation Financing Authority (CTFA). CTFA is authorized to issue, or approve the issuance of, revenue bonds to finance transportation projects. The CTFA will review proposed projects to ensure they are financially sound, and has the ability to approve tolls as part of the financing plans to repay revenue bonds.

FISCAL EFFECT: Provides an appropriation from the General Fund of \$50,000,000.

COMMENTS:

Need for the bill.

Every year, hundreds of lawsuits are filed against small businesses and “mom and pop stores,” claiming they are violating disability regulations. In fact, more than 40 percent of the nation’s ADA cases are filed in California. Often, these lawsuits are filed by a handful of attorneys, usually in limited jurisdiction, seeking only statutory penalty damages, as opposed to injunctive or remedial relief centered on securing substantial public value for the disabilities community. This type of predatory litigation arguably weakens the rights of the disabilities community by compelling small businesses to spend more money on legal fees and costs than on improving their establishments to improve accessibility.

Our solution is to create the California Americans with Disabilities, Small Business Compliance Financing Authority, a self-sustaining program to provide affordable loans to assist small businesses finance the costs of facility alterations and retrofits necessary to comply with the ADA.

AB 1230 would establish a related authority and continuously appropriate fund to finance the activities of the authority, while transferring \$50,000,000 from the state’s General fund to the California Americans with Disabilities Act Small Business Compliance Financing Authority Fund. This initial investment would be seed money for the loans and repayments will make the program self-sustaining.

AB 1230 establishes a two part system to help small businesses become ADA compliant. First, it establishes a direct loan program that would allow loans or the purchase of loans in connection with the financing of projects pursuant to an agreement between the Authority and qualifying businesses. In order to fund the operations and lending capacity of the Authority, the Authority would be able to issue revenue bonds. Initial costs of setting up this program would be covered via a transfer of \$50 million from the General Fund to the Authority.

Issues for consideration.

AB 1230 is a work in progress intended to address an important issue that effects Californian's with disabilities and small businesses. However as this bill moves forward the author may wish to consider resolving a few issues.

- 1) The process for loan repayment is unclear. Moving forward, the language should specify the repayment processes and loan servicing provisions.

- 2) AB 1230 specifies that bonds issued in accordance with the Program would be tax-exempt, yet these bonds may not fit the Internal Revenue Code requirements to receive tax-exempt status. From Internal Revenue Service Publication 4079:

Governmental bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are generally used to finance activities or facilities owned, operated, or used by that or another government for its own purposes. This can include financing the building, maintenance, or repair of various types of public infrastructure such as highways, schools, fire stations, libraries, or other types of municipal facilities. Ultimately, though, a tax-exempt governmental bond is a state or local bond that is neither a private activity bond, as defined in section 141 of the Code, nor an arbitrage bond within the meaning of section 148 of the Code.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081

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Matthew Dababneh, Chair

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SUMMARY: Establishes the California Americans with Disabilities Act Small Business Compliance Financing Authority (Authority) to provide loans to small businesses so they can comply with the requirements of the Americans with Disabilities Act (ADA). Specifically, **this bill:**

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- 10) Allows a resolution or resolutions authorizing the issuance of any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the Authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds.

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- 14) Specifies that any holder of revenue bonds issued or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such indenture or trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or indenture or trust agreement, and may enforce and compel the performance of all duties required or by such resolution, indenture, or trust agreement to be performed by the Authority or by any officer, employee or agent thereof.
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 - e) Engage private consultants to provide professional and technical services and advice;
 - f) Determine the location and character of any project to be financed; acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate a project and enter into contracts for any or all of those purposes; enter into contracts for the management and operation of a project or other small business facilities owned by the Authority; designate a participating property manager as its agent to determine the location and character of a project undertaken by that participating small business and, as the agent of the Authority, acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the Authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of that project or other small business facilities owned by the Authority;
 - g) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value;
 - h) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating small business in connection with financing the costs of a project in accordance with an agreement between the Authority and the participating small business. However, the Authority shall not make any loan to a small business to finance the cost of a project that exceeds the lesser of \$50,000 or the total cost of the project, as determined by the participating small business and approved by the Authority;
 - i) Enter into any and all agreements or contracts, including agreements for liquidity or

credit enhancement, bond exchange agreements, interest rate swaps or hedges; execute any and all instruments; and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Authority or to carry out any power expressly granted; and

- j) Invest any moneys held in reserve or sinking funds or any moneys not required for immediate use or disbursement, at the discretion of the Authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.
- 22) Prohibits the Authority from making a loan to a small business with a repayment period of 60 months or longer, except if the project is located on real property that is leased. If the project is located on real property that is leased, the repayment period shall not exceed the term of the lease, excluding any option to extend the lease.
- 23) Specifies that the Authority shall only make a loan that includes an interest rate that equals the pooled money investment rate at the time the loan is approved and is sufficient to repay the reasonable pro rata expenses of the Authority to administer the loan, including, but not limited to, the costs of issuing revenue bonds to fund the loan.
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- 25) Provides that all moneys received, whether as proceeds from selling or incurring revenue bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided. Until the funds are applied, and notwithstanding any other provision of law, the moneys may be invested in any obligations or securities authorized by resolutions of the Authority authorizing the issuance of the bonds. Any officer with whom, or any bank or trust company with which, the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes hereof, subject to any regulations adopted and the resolution authorizing the issuance of the bonds or the indenture or trust agreement securing the bonds.
- 26) Allows the Authority to provide for the issuance of bonds of the Authority for the purpose of redeeming, refunding, or retiring any bonds or any series or issue of bonds then outstanding issued for the benefit of a participating small business to finance or refinance a project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption, purchase, or maturity of the bonds.
- 27) Provides that the proceeds of any bonds issued for the purpose of refunding of outstanding bonds may, in the discretion of the Authority, be applied to the purchase, redemption prior to maturity, or retirement at maturity of any outstanding bonds on their earliest redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the Authority's obligation or the applicable bond issuer's obligation to make the payments, and may, pending that application, be placed in escrow to be applied to the purchase, retirement at maturity, or redemption on the date or dates determined by the Authority or the participating small business.

- 28) Allows any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the Authority or as determined by the participating small business, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates or for payment of interest on the refunding bonds on or prior to the final date of redemption or payment of the bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by the Authority or the participating small business.
- 29) Provides that bonds issued by the Authority are hereby made securities in which all banks, bankers, savings banks, trust companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control; and such bonds, notes or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.
- 30) Specifies that bonds issued by the Authority are tax free.
- 31) Appropriates a sum of \$50,000,000 from the General Fund to the Fund for the purposes of funding the activities of the Authority.

EXISTING LAW: Provides for various financing authorities administered by the state Treasure including:

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loans from eligible lending institutions.

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FISCAL EFFECT: Provides an appropriation from the General Fund of \$50,000,000.

COMMENTS:

Need for the bill.

Every year, hundreds of lawsuits are filed against small businesses and “mom and pop stores,” claiming they are violating disability regulations. In fact, more than 40 percent of the nation’s ADA cases are filed in California. Often, these lawsuits are filed by a handful of attorneys, usually in limited jurisdiction, seeking only statutory penalty damages, as opposed to injunctive or remedial relief centered on securing substantial public value for the disabilities community. This type of predatory litigation arguably weakens the rights of the disabilities community by compelling small businesses to spend more money on legal fees and costs than on improving their establishments to improve accessibility.

Our solution is to create the California Americans with Disabilities, Small Business Compliance Financing Authority, a self-sustaining program to provide affordable loans to assist small businesses finance the costs of facility alterations and retrofits necessary to comply with the ADA.

AB 1230 would establish a related authority and continuously appropriate fund to finance the activities of the authority, while transferring \$50,000,000 from the state’s General fund to the California Americans with Disabilities Act Small Business Compliance Financing Authority Fund. This initial investment would be seed money for the loans and repayments will make the program self-sustaining.

AB 1230 establishes a two part system to help small businesses become ADA compliant. First, it establishes a direct loan program that would allow loans or the purchase of loans in connection with the financing of projects pursuant to an agreement between the Authority and qualifying businesses. In order to fund the operations and lending capacity of the Authority, the Authority would be able to issue revenue bonds. Initial costs of setting up this program would be covered via a transfer of \$50 million from the General Fund to the Authority.

Issues for consideration.

AB 1230 is a work in progress intended to address an important issue that effects Californian's with disabilities and small businesses. However as this bill moves forward the author may wish to consider resolving a few issues.

- 1) The process for loan repayment is unclear. Moving forward, the language should specify the repayment processes and loan servicing provisions.

- 2) AB 1230 specifies that bonds issued in accordance with the Program would be tax-exempt, yet these bonds may not fit the Internal Revenue Code requirements to receive tax-exempt status. From Internal Revenue Service Publication 4079:

Governmental bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are generally used to finance activities or facilities owned, operated, or used by that or another government for its own purposes. This can include financing the building, maintenance, or repair of various types of public infrastructure such as highways, schools, fire stations, libraries, or other types of municipal facilities. Ultimately, though, a tax-exempt governmental bond is a state or local bond that is neither a private activity bond, as defined in section 141 of the Code, nor an arbitrage bond within the meaning of section 148 of the Code.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1230 (Gomez) – As Amended March 24, 2015

SUBJECT: California Americans with Disabilities Act Small Business Compliance Financing Act

SUMMARY: Establishes the California Americans with Disabilities Act Small Business Compliance Financing Authority (Authority) to provide loans to small businesses so they can comply with the requirements of the Americans with Disabilities Act (ADA). Specifically, **this bill:**

- 1) States that it is the intent of Legislature to establish a self-sustaining program to provide loans to assist small businesses in complying with the ADA.
 - a) Defines “Small business” as a business located in California that meets all of the following criteria:
 - i) Less than six full-time equivalent employees.
 - ii) Less than one million dollars (\$1,000,000) in total gross annual income from all sources; and,
 - iii) Does not provide overnight accommodations.
- 2) Specifies that that the Authority is composed of the following members:
 - a) The Treasurer, who shall serve as chair;
 - b) The Controller;
 - c) The Director of Finance;
 - d) The Director of General Services;
 - e) One member appointed by Senate Rules Committee who shall have special knowledge or experience with accessibility issues for people with disabilities;
 - f) One member appointed by the Speaker of the Assembly who shall be the owner of a small business or a member of organization that represents the interests of small businesses; and,
 - g) One member appointed by the Governor, subject to Senate confirmation who shall be a member of the State Bar of California with professional experience in consumer protection laws.
- 3) Provides that each member of the Authority shall serve a term of four years and at the

expiration of their term shall continue to hold office until the successor has been appointed and qualifies to begin serving. Allows a member of the Authority to be reappointed to a new term. Limits the application of these specific provisions to appointees of the Senate Committee on Rules, The Assembly Speaker and the Governor.

- 4) States that the State Treasurer, in his or her capacity as the chair, shall appoint an executive director who shall not be a member of the Authority and shall receive a compensation fixed by the Authority.
- 5) Requires the executive director or the person designated by the Authority in a resolution to keep a record of proceedings of the Authority and a copy of other records and documents of the Authority.
- 6) Provides for a majority vote of the Authority to take any action and that four members shall constitute a quorum.
- 7) Allows the Authority to issue revenue bonds.
- 8) Specifies that except as expressly provided otherwise by the Authority, revenue bonds shall be payable from any revenues or moneys of the Authority available therefor and not otherwise pledged, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys. Negotiable bonds shall be and be deemed to be for all purposes negotiable instruments, notwithstanding that these bonds may be payable from a special fund, subject only to the provisions of these bonds for registration.
- 9) Allows the Authority's revenue bonds to be issued as serial bonds or as term bonds, or the Authority, in its discretion, may issue bonds of both types. The issuance of all revenue bonds shall be authorized by resolution of the Authority and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as the indenture, trust agreement, or resolution relating to these revenue bonds may provide. The Authority's revenue bonds or notes may be sold by the Treasurer at public or private sale, after giving due consideration to the recommendation of the participating small business, for the price or prices and upon the terms and conditions as the Authority shall determine. The Treasurer may sell these revenue bonds at a price below the par value thereof. However, the discount on any bonds so sold shall not exceed 6 percent of the par value thereof, except in the case of any bonds payable in whole or in part from moneys held under one or more outstanding resolutions or indentures. Pending preparation of the definitive bonds, the Authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for such definitive bonds.
- 10) Allows a resolution or resolutions authorizing the issuance of any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the Authority with an individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of a particular issue of bonds.

- 11) Provides that neither the members of the Authority nor any person executing the revenue bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.
- 12) Permits the Authority to purchase its bonds with any moneys available to the Authority for this purpose. The Authority may exchange bonds for its bonds. The Authority may hold, pledge, exchange, cancel, or resell these bonds, subject to and in accordance with its agreements with bondholders.
- 13) Provides that revenue bonds issued shall not be deemed to constitute a debt or liability of the state or of a political subdivision thereof or a pledge of the faith and credit of the state or of that political subdivision, other than the Authority, but shall be payable solely from the moneys in the Fund. These bonds shall contain a statement to the effect that neither the State of California nor the Authority shall be obligated to pay the principal of, or the interest thereon, except from revenues of the Authority, and that neither the faith and credit nor the taxing power of the State of California or of a political subdivision thereof is pledged to the payment of the principal of or the interest on these bonds. The issuance of revenue bonds shall not directly or indirectly or contingently obligate the state or a political subdivision thereof to levy or to pledge a form of taxation whatever therefor or to make an appropriation for their payment.
- 14) Specifies that any holder of revenue bonds issued or any of the coupons appertaining thereto, and the trustee or trustees under any indenture or trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such indenture or trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or indenture or trust agreement, and may enforce and compel the performance of all duties required or by such resolution, indenture, or trust agreement to be performed by the Authority or by any officer, employee or agent thereof.
- 15) Establishes the Americans with Disabilities Act Small Business Compliance Financing Authority Fund (Fund) in the state Treasury with all money in the Fund continuously appropriated to the Authority.
- 16) Provides that all moneys in the Fund derived from any source shall be held in trust for the security and payment of bonds of the Authority and shall not be used or pledged for any other purpose so long as the bonds are outstanding and unpaid.
- 17) Allows the Authority to pledge any or all of the moneys in the Fund as security for payment of the principal of, and interest on, any secured or unsecured loan made as necessary or convenient to the accomplish any purpose of the Authority.
- 18) Provides that the Authority may direct the Treasurer to invest moneys in the Fund that are not required for its current needs, including proceeds from the sale of any bonds, in the eligible securities as specified, or in interest-bearing accounts in state or national banks or other financial institutions having principal offices located in the state. The Authority may alternatively require the transfer of moneys in the Fund to the Surplus Money Investment

Fund for investment.

- 19) Specifies that all expenses of the Authority incurred shall be payable solely from funds and Authority provided to the Authority.
- 20) Requires the Authority to establish financial eligibility standards for each small business seeking financing from the Authority by studying the creditworthiness and earning capacity of the small business, the impact of new debt and the completion of the project on the small business, and the amount of pledged revenues, debt service coverage, and basic security.
- 21) Allows the Authority to do any of the following:
 - a) Adopt bylaws for the regulation of its affairs and the conduct of its business;
 - b) Adopt an official seal;
 - c) Sue and be sued in its name;
 - d) Receive and accept gifts, grants, or donations of money from any agency of the federal government, another state entity, a city, county, city and county, any other political subdivision of the state, an individual, association, or corporation;
 - e) Engage private consultants to provide professional and technical services and advice;
 - f) Determine the location and character of any project to be financed; acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate a project and enter into contracts for any or all of those purposes; enter into contracts for the management and operation of a project or other small business facilities owned by the Authority; designate a participating property manager as its agent to determine the location and character of a project undertaken by that participating small business and, as the agent of the Authority, acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor, and regulate the same and, as the agent of the Authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of that project or other small business facilities owned by the Authority;
 - g) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value;
 - h) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating small business in connection with financing the costs of a project in accordance with an agreement between the Authority and the participating small business. However, the Authority shall not make any loan to a small business to finance the cost of a project that exceeds the lesser of \$50,000 or the total cost of the project, as determined by the participating small business and approved by the Authority;
 - i) Enter into any and all agreements or contracts, including agreements for liquidity or

credit enhancement, bond exchange agreements, interest rate swaps or hedges; execute any and all instruments; and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Authority or to carry out any power expressly granted; and

- j) Invest any moneys held in reserve or sinking funds or any moneys not required for immediate use or disbursement, at the discretion of the Authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.
- 22) Prohibits the Authority from making a loan to a small business with a repayment period of 60 months or longer, except if the project is located on real property that is leased. If the project is located on real property that is leased, the repayment period shall not exceed the term of the lease, excluding any option to extend the lease.
- 23) Specifies that the Authority shall only make a loan that includes an interest rate that equals the pooled money investment rate at the time the loan is approved and is sufficient to repay the reasonable pro rata expenses of the Authority to administer the loan, including, but not limited to, the costs of issuing revenue bonds to fund the loan.
- 24) Allows Authority to require any information it deems necessary and prudent prior to providing a loan to a small business and may require any term, condition, security, or repayment provision it deems necessary in the event the Authority chooses to provide a loan.
- 25) Provides that all moneys received, whether as proceeds from selling or incurring revenue bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided. Until the funds are applied, and notwithstanding any other provision of law, the moneys may be invested in any obligations or securities authorized by resolutions of the Authority authorizing the issuance of the bonds. Any officer with whom, or any bank or trust company with which, the moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes hereof, subject to any regulations adopted and the resolution authorizing the issuance of the bonds or the indenture or trust agreement securing the bonds.
- 26) Allows the Authority to provide for the issuance of bonds of the Authority for the purpose of redeeming, refunding, or retiring any bonds or any series or issue of bonds then outstanding issued for the benefit of a participating small business to finance or refinance a project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption, purchase, or maturity of the bonds.
- 27) Provides that the proceeds of any bonds issued for the purpose of refunding of outstanding bonds may, in the discretion of the Authority, be applied to the purchase, redemption prior to maturity, or retirement at maturity of any outstanding bonds on their earliest redemption date or dates, upon their purchase or maturity, or paid to a third person to assume the Authority's obligation or the applicable bond issuer's obligation to make the payments, and may, pending that application, be placed in escrow to be applied to the purchase, retirement at maturity, or redemption on the date or dates determined by the Authority or the participating small business.

- 28) Allows any proceeds placed in escrow may, pending their use, be invested and reinvested in obligations or securities authorized by resolutions of the Authority or as determined by the participating small business, payable or maturing at the time or times as are appropriate to assure the prompt payment of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded at maturity or redemption of the bonds to be refunded either at their earliest redemption date or dates or any subsequent redemption date or dates or for payment of interest on the refunding bonds on or prior to the final date of redemption or payment of the bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by the Authority or the participating small business.
- 29) Provides that bonds issued by the Authority are hereby made securities in which all banks, bankers, savings banks, trust companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control; and such bonds, notes or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.
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