

Date of Hearing: June 21, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 1155 (Dutton) – As Amended: April 12, 2010

SENATE VOTE: 34-0

SUBJECT: Capital access companies

SUMMARY: Makes changes to the Capital Access Company (CAC) Law. Specifically, this bill:

- 1) Changes the definition of a small business and adding a definition for a smaller business, exempting CACs from the Corporate Securities Law of 1968.
- 2) Exempts businesses from the CAC Law, if they are approved as Small Business Investment Companies by the federal Small Business Administration,
- 3) Replaces existing law conflict of interest provisions with conflict of interest provisions utilized by the federal Small Business Administration for its licensees, and making related changes, as specified.

EXISTING LAW

- 1) Provides for Investment Company Act of 1940, which requires investment companies with more than 100 shareholders to register with, and be regulated by, the Securities and Exchange Commission (SEC).
- 2) Authorizes exemptions from the Investment Company Act of 1940, pursuant to changes added to that law by the National Securities Markets Improvement Act of 1996. Under Section 6(a) (5) (A) of the Investment Company Act, an exemption is provided for “any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State.” To be eligible for an exemption, the company must also meet the following requirements:
 - a) The organizational documents must state that the activities of the company are limited to the promotion of economic, business, or industrial development in the state through the provision of financial or managerial assistance to enterprises doing business or proposing to do business in that state.
 - b) Immediately following each sale of securities of the company, at least 80 percent of the securities must be held by persons who reside in or who have a substantial business presence in that state.

- c) The securities must be sold only to accredited investors, as that term is defined under the Securities Act of 1933, or to other persons approved by the SEC.
 - d) The company must comply with specified criteria intended to ensure that it invests its funds in a relatively safe manner.
- 3) Provides for the CAC Law, which is administered by the Department of Corporations (DOC), and was formed for the express purpose of allowing companies to operate in California under the exemption described in Existing federal law number 2 above. Under the CAC Law [Corporations Code Section 28000 et seq.]:
- a) A company seeking to become a CAC must submit an application to DOC, and must be approved by DOC before it may sell securities under the exemption granted to specified companies under the Investment Company Act of 1940.
 - b) A small business firm is defined as one that proposes to transact, or transacts business on a regular and continuous basis in California, has fewer than 500 employees, and meets other conditions, as specified.
 - c) A CAC is required to use its best efforts to provide financing assistance to small business firms doing business or proposing to do business wholly or substantially in this state.
 - d) CACs must comply with the Corporate Securities Law of 1968, which authorizes the Commissioner of Corporations to regulate securities offerings in California.
 - e) CACs may not transfer or assign their licenses to other entities.
 - f) CACs must comply with specified conflict of interest provisions.
- 4) Exempts CACs from the requirement to obtain a permit from DOC before selling non-redeemable securities [Corporations Code Section 25102(p)], as long as the securities are sold to accredited investors, as specified.

FISCAL EFFECT: According to the Senate Appropriations Committee, costs will be offset by licensing fee revenue.

COMMENTS:

The logic behind the existing CAC Law is that small businesses can better attract seed capital, if they can approach a large number of investors. If a small business is reliant on 100 or fewer investors for its capital needs, it is likely to be harder to raise needed capital than if that same business could seek out 1,000 investors. The more investors a business can solicit the smaller amount the business needs to request from each investor. Yet, under existing law, a business that seeks out more than 100 investors must register with the SEC, a process that is prohibitively expensive for most start-ups, especially for small firms. Exemptions from the Investment Company Act of 1940 were created out of recognition that SEC registration requirements could pose an insurmountable barrier to small businesses.

The CAC Law was enacted in 1999, in an effort to utilize one of the exemptions from the Investment Company Act of 1940, and provide a source of capital to small businesses. However, to date, only one company has applied for permission to become a CAC, and that company ultimately withdrew its application. This bill is an attempt to take a law that has been unused since its enactment and encourage its usage.

No other states offer models that can be used by California when considering amendments to our law; according to the primary proponent of this bill, no other states have enacted laws similar to the CAC law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Black Chamber of Commerce Foundation
Connect
DoshaCare
Petillon Hiraide Loomis Zagzebski & Zagzebski LLP
The Optimize Group

Opposition

None on file.

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