

**ASSEMBLY BILL**

**No. 1247**

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**Introduced by Assembly Member Medina**

February 22, 2013

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An act to repeal and add Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, and to add Title 25 (commencing with Section 200000) to, to repeal Section 200009 of, and to repeal and add Sections 200020, 200022, and 200025 of, the Government Code, relating to business, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as introduced, Medina. Business investments: Small Business Financial Assistance Act of 2013.

Existing law, the California Small Business Financial Development Corporation Law, creates the California Small Business Board and the California Small Business Expansion Fund, a continuously appropriated fund, which includes General Fund moneys. Existing law authorizes the formation of small business financial development corporations to grant loans from, or guarantee loans made by a financial institution or financial company, as defined, against, moneys awarded to the corporation from the expansion fund for the purpose of stimulating small business development. Existing law authorizes a director designated by the Secretary of Business, Transportation and Housing to perform specified duties under that law. A violation of certain conflict-of-interest provisions by the director and other persons, as specified, is a crime.

This bill would revise and recast these provisions, and would transfer the administration of the California Small Business Financial

Development Corporation Law to the Governor’s Office of Business and Economic Development and an executive director designated by the director of the office, as specified. The bill would expand the definitions of “financial institution” and “financial company” for those purposes. Because the above-described conflict-of-interest provisions would apply to the director and executive director, and other officers and employees, as specified, the bill would extend the application of a crime, and impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Because this bill would expand the purposes for which a continuously appropriated fund is expended, the bill would make an appropriation.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. Chapter 1 (commencing with Section 14000) of  
2 Part 5 of Division 3 of Title 1 of the Corporations Code is repealed.

3 SEC. 2. Chapter 1 (commencing with Section 14000) is added  
4 to Part 5 of Division 3 of Title 1 of the Corporations Code, to read:

5  
6 CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL  
7 DEVELOPMENT CORPORATIONS

8  
9 Article 1. Introduction

10  
11 14000. This chapter shall be known and may be cited as the  
12 California Small Business Financial Development Corporation  
13 Law.

14 14001. (a) It is the intent of the Legislature in enacting this  
15 chapter to promote the economic development of small businesses  
16 by making available capital, general management assistance, and  
17 other resources, including loan and equity investment services,  
18 personnel, and business education to small business entrepreneurs,  
19 including women and minority owned businesses, for the purpose  
20 of promoting the health, safety, and social welfare of the citizens

1 of California, to eliminate unemployment of the economically  
2 disadvantaged of the state, and to stimulate economic development,  
3 employment, minority group, women, and disabled persons  
4 entrepreneurship.

5 (b) It is the further intent of the Legislature to provide a flexible  
6 means to mobilize and commit all available and potential resources  
7 in the various regions of the state to fulfill these objectives,  
8 including federal, state, and local public resources, and private  
9 debt and equity investment.

10 (c) It is the further intent of the Legislature that corporations  
11 operating pursuant to this law, shall to the maximum extent  
12 feasible, coordinate with other job and business development  
13 efforts within their region directed toward implementing the  
14 purpose of this part.

15 (d) It is the further intent of the Legislature to provide expanded  
16 resources allowing participation by small and emerging contractors  
17 in state public works contracts. Increased access to surety bonding  
18 resources will assist in supporting participation by those firms in  
19 public works contracts, and by stimulating increased participation  
20 by small firms, the state will benefit from increased competition  
21 and lower bid costs.

22 14002. If any provision of this chapter or the application thereof  
23 to any person or circumstances is held invalid, this invalidity shall  
24 not affect other provisions or applications of the chapter which  
25 can be given effect without the invalid provision or application,  
26 and to this end the provisions of this chapter are severable.

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## Article 2. Definitions

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30 14003. Unless the context otherwise requires, the definitions  
31 in this section shall govern the construction of this chapter.

32 (a) "Board of directors" means the board of directors of the  
33 corporation.

34 (b) "Corporation" means any nonprofit California small business  
35 financial development corporation created pursuant to this chapter.

36 (c) "Director" means the director of the Governor's Office of  
37 Business and Economic Development.

38 (d) "Executive director" means the person designated to this  
39 title by the director of the Governor's Office of Business and  
40 Economic Development.

- 1 (e) “Expansion fund” means the California Small Business
- 2 Expansion Fund.
- 3 (f) “Loan committee” means a committee appointed by the
- 4 board of directors of a corporation to determine the course of action
- 5 on a loan application pursuant to Title 25 (commencing with
- 6 Section 200000) of the Government Code.
- 7 (g) “Trust fund” means the money from the expansion fund that
- 8 is held in trust by financial institution or financial company. A
- 9 trust fund is not a deposit of state funds and is not subject to the
- 10 requirements of Section 16506 of the Government Code.
- 11 (h) “Trust fund account” means an account within the trust fund
- 12 that is allocated to a particular small business financial
- 13 development corporation for the purpose of paying loan defaults
- 14 and claims on bond guarantees for a specific small business
- 15 financial development corporation.

16  
17 Article 3. Executive Director

18  
19 14004. The executive director shall do all of the following:

- 20 (a) Administer this chapter.
- 21 (b) Expeditiously approve or disapprove the articles of
- 22 incorporation and any subsequent amendments to the articles of
- 23 incorporation of a corporation. This determination shall be based
- 24 upon the following:
  - 25 (1) Review of the articles of incorporation and bylaws of the
  - 26 corporation to determine whether they contain the provisions
  - 27 required by this chapter and conform with the regulations adopted
  - 28 pursuant to this chapter.
  - 29 (2) A determination as to whether the legislative intent expressed
  - 30 in Section 14001 shall be served by the proposed corporation.
  - 31 (3) A determination as to whether the responsibility, character,
  - 32 and general fitness of the individuals who will manage the
  - 33 corporation are such as to command the confidence of the state
  - 34 and to warrant the belief that the business of the proposed
  - 35 corporation will be honestly and efficiently conducted in
  - 36 accordance with the intent and purpose of this chapter and that
  - 37 they include representatives of the financial and business
  - 38 community, as well as the economically disadvantaged.
  - 39 (c) Have the accounts of each corporation formed under this
  - 40 chapter audited as of the close of business on June 30 of each year.

1 (d) Have the portfolio of each corporation audited a minimum  
2 of once a year. Material audit exceptions that are not corrected by  
3 the corporation within a reasonable period of time may result in  
4 the suspension of the corporation pursuant to Section 200008 of  
5 the Government Code.

6 (e) Review reports from the Department of Business Oversight  
7 and inform corporations as to what corrective action is required.

8 (f) Examine, or cause to be examined, at any reasonable time,  
9 all books, records, and documents of every kind, and the physical  
10 properties of a corporation. The inspection shall include the right  
11 to make copies, extracts, and search records.

12 (g) Attend and participate at corporation meetings. The executive  
13 director, or his or her designee, shall be an ex officio, nonvoting  
14 representative on the board of directors and loan committees of  
15 each corporation. The executive director shall meet with the board  
16 of directors of each corporation at least once each fiscal year,  
17 commencing January 1, 2014.

18  
19 Article 4. New Corporations  
20

21 14005. Upon approval by the executive director to become a  
22 corporation, an entity shall adopt or amend its articles of  
23 incorporation to comply with the following:

24 (a) The name of the corporation shall include the words “small  
25 business financial development corporation,” except for those  
26 corporations formed pursuant to this chapter prior to 2002, which  
27 may also be called “small business development corporations,” or  
28 those formed prior to 1985, which may also be called “rural or  
29 urban development corporations.”

30 (b) The purposes for which the corporation is formed, which  
31 shall be those specified in Section 14001. This requirement shall  
32 not be deemed to preclude a statement of powers.

33 (c) A geographical description of the corporation’s service area.

34 (d) The name and addresses of seven or more persons who are  
35 to act in the capacity of directors until the selection of their  
36 successors.

37 (e) That the corporation is organized pursuant to the California  
38 Small Business Financial Development Corporation Law.

39 14006. If the executive director determines that the facts  
40 disclosed by the investigation provided by Section 14004 are true

1 and finds that the proposed incorporation meets all the requirements  
2 of this chapter, the executive director shall approve the articles of  
3 incorporation and endorse the approval thereon and forward the  
4 same to the Secretary of State for his or her approval and filing.  
5 Likewise, the executive director shall approve or disapprove of all  
6 amendments to the articles. The executive director shall endorse  
7 the approval on the amendatory document before the document is  
8 forwarded to the Secretary of State for his or her approval and  
9 filing.

10 14007. The corporation's existence as a small business  
11 development corporation begins upon the filing of the articles with  
12 the Secretary of State and continues perpetually, unless otherwise  
13 expressly provided for by law.

14 14008. (a) Any request for proposal for selection of a  
15 corporation shall require the winning bidder to adopt or amend its  
16 bylaws to include provisions governing the election and  
17 qualification of directors, the establishment and functions of loan  
18 committees of the corporation, and the method of selecting the  
19 representative of the corporation on the board.

20 (b) The bylaws shall provide for removal of officers only by a  
21 two-thirds vote of the directors of the corporation.

22 14009. Each corporation shall have provisions establishing a  
23 grievance procedure for employees, clients, or potential clients,  
24 to appeal a decision or obtain redress of an action done by the staff  
25 or loan committee of the corporation. The procedures shall be  
26 established in writing during the probationary period of a new  
27 corporation.

28 14010. The executive director may authorize the establishment  
29 of a new corporation using a request for proposal process.

30 14011. The Nonprofit Public Benefit Corporation Law (Part  
31 2 (commencing with Section 5110) of Division 2 of this title)  
32 applies to corporations formed under this chapter, except as to  
33 matters otherwise provided for in this chapter.

34 14012. For six months following the establishment of a  
35 corporation, commencing upon filing of the articles of  
36 incorporation with the Secretary of State, a corporation shall be  
37 on probation. While on probation, a corporation may be suspended  
38 if suspension is recommended by the executive director. This  
39 suspension is nonappealable and not subject to the procedures for  
40 suspension applicable to a corporation not on probation.

1 Article 5. Corporation Board

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3 14013. The corporate powers of a corporation shall be exercised  
4 by the board of directors.

5 14014. A request for proposal for selection of a corporation  
6 shall require the winning bidder to adopt or amend its bylaws to  
7 state that:

8 (a) A person may not serve on a board of directors who is not  
9 a resident of, or person conducting business in, the service area  
10 described in the articles of incorporation.

11 (b) Each board of directors shall include representatives from  
12 all of the following:

13 (1) The financial community.

14 (2) The business community.

15 (3) The economically disadvantaged.

16 (c) Not more than one employee of the corporation may serve  
17 on the board of directors at any one time.

18 (d) A person who has a financial interest related to a matter over  
19 which the board has authority may not make, participate in making,  
20 or in any way attempt to influence that matter.

21 14015. If any director ceases to meet the qualifications  
22 established in Section 14014, he or she shall immediately vacate  
23 his or her position as a director and such position shall be deemed  
24 vacant.

25 14016. If any vacancy occurs in the elective membership of  
26 the board of directors through death, resignation, or otherwise, the  
27 remaining directors shall elect a person representing the appropriate  
28 category to fill the vacancy for the unexpired term.

29 14017. (a) The office shall establish new small business  
30 financial development corporations pursuant to the procedures  
31 otherwise established by this chapter in the following areas:

32 (1) San Jose.

33 (2) Santa Ana.

34 (3) San Fernando Valley.

35 (4) Ontario.

36 (b) Upon an appropriation in the annual Budget Act for this  
37 purpose, the office shall establish a small business financial  
38 development corporation in southeast Los Angeles.

39 (c) In furtherance of the purposes of this chapter, up to one-half  
40 of the trust funds may be used to guarantee loans utilized to

1 establish a Business and Industrial Development Corporation  
2 (BIDCO) under Division 15 (commencing with Section 31000)  
3 of the Financial Code.

4

5

Article 6. Corporations, Miscellaneous

6

7 14018. Every corporation shall provide for, and maintain a  
8 central staff to perform, all administrative requirements of the  
9 corporation, including all those functions required of a corporation  
10 by the director.

11 14019. Reasonable costs incurred by a corporation in the  
12 creation and maintenance of a central staff shall be paid to the  
13 corporation from state funds, including a portion of the interest  
14 earned on the expansion fund and the corporation’s trust fund  
15 account, if the corporation has a trust fund account, otherwise, on  
16 the expansion fund.

17 14020. A corporation shall report to the executive director, or  
18 his or her designated representative, all statistical and other reports  
19 required by this chapter, responses to audit reports, budget  
20 requirements, and other information relating to the establishment,  
21 monitoring, and suspension of a corporation.

22 14021. A corporation shall make a report to the executive  
23 director, as of the close of business on June 30 of each year,  
24 describing the corporation’s activities and any additional  
25 information requested by the executive director, on or before  
26 August 1 of each year.

27

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Article 7. Conflict of Interest

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30 14022. It shall be unlawful for the director, executive director,  
31 or any person who is an officer, director, or employee of a  
32 corporation, or who is a member of a loan committee, or who is  
33 an employee of the office to do any of the following:

- 34 (a) Ask for, consent, or agree to receive, any commission,
- 35 emolument, gratuity, money, property, or thing of value for his or
- 36 her own use, benefit, or personal advantage, for procuring or
- 37 endeavoring to procure for any person, partnership, joint venture,
- 38 association, or corporation, any loan, guarantee, financial, or other
- 39 assistance from any corporation.



1 (b) Borrow money, property, or to benefit knowingly, directly  
2 or indirectly, from the use of the money, credit, or property of any  
3 corporation.

4 (c) Make, maintain, or attempt to make or maintain, a deposit  
5 of the funds of a corporation with any other corporation or  
6 association on condition, or with the understanding, expressed or  
7 implied, that the corporation or association receiving the deposit  
8 shall pay any money or make a loan or advance, directly or  
9 indirectly, to any person, partnership, joint venture, association,  
10 or corporation, other than to a corporation formed under this  
11 chapter.

12 14023. It shall be unlawful for the director, executive director,  
13 or any person who is an officer or director of a corporation, or who  
14 is an employee of the office, to purchase or receive, or to be  
15 otherwise interested in the purchase or receipt, directly or  
16 indirectly, of any asset of a corporation, without paying to the  
17 corporation the fair market value of the asset at the time of the  
18 transaction.

19 14024. Violation of any provision of this article shall constitute  
20 a felony.

21 SEC. 3. Title 25 (commencing with Section 200000) is added  
22 to the Government Code, to read:

23  
24 TITLE 25. SMALL BUSINESS FINANCIAL ASSISTANCE  
25 ACT OF 2013

26  
27 CHAPTER 1. INTRODUCTION  
28

29 200000. This title shall be known and may be cited as the Small  
30 Business Financial Assistance Act of 2013.

31 200001. The Legislature finds that:

32 (a) Small businesses form the core of the California economy  
33 and that it is in the interest of the state to increase opportunities  
34 for entrepreneurs, the self-employed, and microbusiness and small  
35 business owners to have better access to capital and other technical  
36 resources.

37 (b) Unemployment in California is a matter of statewide concern  
38 requiring concerted public and private action to develop  
39 employment opportunities for the disadvantaged, youth, veterans,  
40 and unemployed persons.

1 (c) It is necessary to direct additional capital, general  
 2 management assistance, business education, and other resources  
 3 to encourage the development of small business opportunities,  
 4 particularly for minority, women, and disabled persons, to alleviate  
 5 unemployment.

6  
 7 CHAPTER 2. DEFINITIONS  
 8

9 200002. Unless the context otherwise requires, the definitions  
 10 in this section shall govern the construction of this title.

11 (a) "Corporation" means any nonprofit California small business  
 12 financial development corporation created pursuant to Chapter 1  
 13 (commencing with Section 14000) of Part 5 of Division 3 of Title  
 14 1 of the Corporations Code.

15 (b) "Director" means the director of the Governor's Office of  
 16 Business and Economic Development.

17 (c) "Employment incentive loan" means a loan to a qualified  
 18 business or to a business located within an enterprise zone, as  
 19 defined in subdivision (d) of Section 7072.

20 (d) "Executive director" means the person designated to this  
 21 title by the director of the Governor's Office of Business and  
 22 Economic Development.

23 (e) "Expansion fund" or "expansion fund" means the California  
 24 Small Business Expansion Fund.

25 (f) "Financial company" means banking organizations, including  
 26 national banks and trust companies, savings and loan associations,  
 27 state insurance companies, mutual insurance companies, and other  
 28 public and private banking, lending, retirement, and insurance  
 29 organizations.

30 (g) "Financial institution" means banking organizations,  
 31 including national banks and trust companies authorized to conduct  
 32 business in California and state-chartered commercial banks, trust  
 33 companies, community development financial institutions,  
 34 microlenders, and savings and loan associations.

35 (h) "Loan committee" means a committee appointed by the  
 36 board of directors of a corporation to determine the course of action  
 37 on a loan application pursuant to this title.

38 (i) "Office" means the Governor's Office of Business and  
 39 Economic Development.

1 (j) Unless otherwise defined by the director by regulation, “small  
2 business loan” means a loan to a business defined as an eligible  
3 small business as set forth in Section 121.3-10 of Part 121 of  
4 Chapter 1 of Title 13 of the Code of Federal Regulations, including  
5 those businesses organized for agricultural purposes that create or  
6 retain employment as a result of the loan. From time to time, the  
7 director shall provide guidelines as to the preferred ratio of jobs  
8 created or retained to total funds borrowed for guidance to the  
9 corporations.

10 (k) “Trust fund” means the money from the expansion fund that  
11 is held in trust by a financial institution or financial company. A  
12 trust fund is not a deposit of state funds and is not subject to the  
13 requirements of Section 16506.

14 (l) “Trust fund account” means an account within the trust fund  
15 that is allocated to a particular small business financial  
16 development corporation for the purpose of paying loan defaults  
17 and claims on bond guarantees for a specific small business  
18 financial development corporation.

19 (m) “Trustee” means the lending institution or financial company  
20 selected by the office to hold and invest the trust funds. An  
21 agreement made pursuant to this title and the trustee shall not be  
22 construed to be a deposit of state funds.

23

24 CHAPTER 3. PROGRAM PURPOSE

25

26 200003. (a) There is within the Governor’s Office of Business  
27 and Economic Development the California Business Investment  
28 Service, which shall, among other things, assist businesses seeking  
29 new capital resources.

30 (b) Pursuant to this title, the office may establish one or more  
31 programs administered regionally under contract with small  
32 business financial development corporations. Programs established  
33 pursuant to this title may include the following types of financial  
34 products:

- 35 (1) Loan guarantees.
- 36 (2) Direct loans.
- 37 (3) Disaster assistance loans.
- 38 (4) Surety bond guarantees.

1 (c) In all of their state-funded programs, the corporations shall,  
2 to the extent practicable, be complementary to, and not competitive  
3 with, commercial lenders and other state and federal programs.

4 200004. To implement its responsibilities, a corporation shall  
5 undertake a program that shall include, but not be limited to, the  
6 following:

7 (a) Outreach to low-resource small businesses and  
8 microbusinesses. The corporations located in rural areas shall give  
9 priority to low-resource farmers, rural, and agriculturally related  
10 businesses.

11 (b) Collaboration with other organizations and lenders to identify  
12 and assist those businesses that are creditworthy but face  
13 impediments to accessing conventional sources because of reasons,  
14 such as low equity, inadequate collateral, unacceptable legal  
15 structure (such as a co-op or nonprofit organization), management  
16 inadequacies, and language problems.

17 (c) To the extent possible, bringing all possible financial  
18 resources (low-interest lenders, BIDCOs, MESBICs, other  
19 guarantors, etc.) to bear on the borrower’s problems.

20 (d) Technical assistance to businesses receiving loans or  
21 guarantees that will maximize the probability of loan repayment.

22 (e) Ongoing strategies for increasing program resources through  
23 private sector involvement and nonstate funds.

24 (f) A program for collecting and liquidating defaulted loans so  
25 that the corporations can qualify to become full-service lenders  
26 under the Small Business Administration. Corporations located in  
27 rural areas shall, in addition, try to qualify for lender status under  
28 the Farmers Home Administration.

29 (g) Become an agent for other lenders and guarantors.

30

31 CHAPTER 4. ADMINISTRATIVE STRUCTURE

32

33 200005. If regulations have not already been adopted under  
34 Chapter 1 (commencing with Section 14000) of Part 5 of Division  
35 3 of Title 1 of the Corporations Code, as that chapter read on  
36 January 1, 2013, then the office shall adopt regulations concerning  
37 the implementation of this title, Chapter 1 (commencing with  
38 Section 14000) of Part 5 of Division 3 of Title 1 of the  
39 Corporations Code, and direct lending as emergency regulations  
40 in accordance with Chapter 3.5 (commencing with Section 11340)

1 of Part 1 of Division 3 of Title 2. The adoption of these regulations  
2 is an emergency and necessary for the immediate preservation of  
3 the public peace, health and safety, or general welfare within the  
4 meaning of subdivision (b) of Section 11346.1. Notwithstanding  
5 subdivision (e) of Section 11346.1, the regulations shall not remain  
6 in effect for more than 180 days unless the office complies with  
7 all provisions of Chapter 3.5 (commencing with Section 11340)  
8 of Part 1 of Division 3 of Title 2, as required by subdivision (e) of  
9 Section 11346.1. This section also applies to any direct loan  
10 program administered by the office.

11 200006. The executive director shall do all of the following:

12 (a) Administer this title.

13 (b) Contract for services under this title and Chapter 1  
14 (commencing with Section 14000) of Part 5 of Division 3 of Title  
15 1 of the Corporations Code.

16 (c) In accordance with available resources, use branch offices  
17 for the purposes of making the programs under this title accessible  
18 to all areas of the state.

19 (d) Require each corporation to submit an annual written plan  
20 of operation.

21 (e) Authorize the distribution, transfer, and withholding of  
22 moneys in the expansion fund and trust funds.

23 (f) Authorize the investment of expansion and trust fund moneys.

24 (g) Oversee the operations of one or more programs authorized  
25 pursuant to this title.

26 (h) Approve, suspend, or terminate a corporation's ability to  
27 participate in a program under this title.

28 (i) Advise the Governor, the director, and the Small Business  
29 Advocate regarding issues and programs affecting California's  
30 small business community, including, but not limited to, business  
31 innovation and expansion, export financing, state procurement,  
32 management and technical assistance, venture capital, and financial  
33 assistance.

34 200007. The use of state funds paid out to the trust fund and  
35 the return on those funds from investment pursuant to Section  
36 200014 is conditional pursuant to Sections 200008 and 200015.  
37 Each corporation shall enter into a written signed agreement with  
38 the state at the beginning of each fiscal year. The agreement shall  
39 govern the activities in which the corporations engage, the  
40 investment of state funds and its return, and the budgeted

1 administrative expenses the corporations may incur. In the event  
2 the state and corporation do not reach an agreement, or the state  
3 finds the corporation has violated the terms of an active agreement,  
4 the state may take any action under Section 200008 or 200015, or  
5 any other action as appropriate. In the event the state and  
6 corporation do not reach agreement or the state finds the  
7 corporation has violated the terms of an active agreement, the  
8 corporation shall have no authority to withdraw or encumber the  
9 trust fund or the return of those funds by the issuance of guarantees,  
10 by incurring expenses against the fund and its return in any manner  
11 whatsoever, and the state may take any action under Section  
12 200008 or 200015, or any other action as appropriate. Any  
13 guarantee or other encumbrance made by the corporation in  
14 violation of this section shall be null and void, and neither the state  
15 nor the trust fund will be liable therefor.

16 200008. (a) Upon a finding by the executive director that  
17 irreparable harm may occur if guarantee or direct loan authority  
18 is not temporarily withdrawn from a corporation, the executive  
19 director may temporarily withdraw guarantee or direct loan, or  
20 both, authority from a corporation. The notice of temporary  
21 withdrawal sent to the corporation shall specify the reasons for the  
22 action.

23 (1) As used in this section, “guarantee and direct loan authority”  
24 means the authority to make or guarantee any loan that encumbers  
25 funds in a trust fund account, any account or subaccount under the  
26 direct control of the office or other state entity, or the expansion  
27 fund.

28 (2) The executive director shall make one of the determinations  
29 specified in subdivision (c) within 30 days of the effective date of  
30 the temporary withdrawal, unless the corporation and the executive  
31 director mutually agree to an extension. The corporation shall have  
32 the opportunity to submit written material to the executive director  
33 addressing the items stated in the temporary withdrawal notice. If  
34 the executive director does not make any determinations within  
35 30 days, the temporary withdrawal shall be negated. The  
36 corporation’s yearly contract shall remain in effect during the  
37 period of temporary withdrawal, and the corporation shall continue  
38 to receive reimbursement of necessary operating expenses.

39 (b) Failure of a corporation to substantially comply with the  
40 following may result in the suspension of a corporation:

1 (1) Regulations implementing the California Small Business  
2 Development Corporation Law (Chapter 1 (commencing with  
3 Section 14000) of Part 5 of Division 3 of Title 1 of the  
4 Corporations Code).

5 (2) Fiscal and portfolio requirements, as contained in the fiscal  
6 and portfolio audits specified in Section 14004 of the Corporations  
7 Code.

8 (3) Milestones and scope of work as contained in the annual  
9 contract between the corporation and the office.

10 (c) Pursuant to subdivision (a) or (b), the executive director may  
11 do the following:

12 (1) Terminate the temporary withdrawal.

13 (2) Terminate the temporary withdrawal subject to the  
14 corporation's adoption of a specified remedial action plan.

15 (3) Temporarily withdraw, or continue to withdraw, guarantee  
16 authority until a specified time. This determination by the executive  
17 director shall require a finding that the corporation has failed to  
18 comply with the California Small Business Development  
19 Corporation Law (Chapter 1 (commencing with Section 14000)  
20 of Part 5 of Division 3 of Title 1 of the Corporations Code).

21 (4) Suspend the corporation.

22 (5) Suspend the corporation, with suspension stayed until the  
23 corporation provides a remedial action plan to the executive  
24 director, and the executive director decides whether to repeal or  
25 implement the stayed suspension.

26 (d) The determinations contained in paragraphs (4) and (5) of  
27 subdivision (c) require a finding that irreparable harm will occur  
28 unless the corporation is suspended.

29 (e) In considering a determination regarding the recommended  
30 suspension and possible remedial action plans, the executive  
31 director shall consider, along with other criteria as specified in  
32 subdivision (b), the corporation's history and past performance.

33 (f) Upon suspension of a corporation, the executive director  
34 shall transfer all funds, whether encumbered or not, in the trust  
35 fund account of the suspended corporation into either the expansion  
36 fund or temporarily transfer the funds to another corporation.

37 (g) If the executive director decides to take any action against  
38 the corporation pursuant to paragraphs (2) to (5), inclusive, of  
39 subdivision (c), the corporation shall be notified of the action 10  
40 days before the effective date of the action. The corporation shall

1 have the right to appeal the executive director's decision to the  
2 director within that 10-day period by sending notice to the director.  
3 Once the director receives notice that the action is being appealed,  
4 the executive director's action shall be stayed except for temporary  
5 withdrawal of guarantee authority. Upon receipt of the notice, the  
6 director shall consider and make a final determination on the appeal  
7 within 30 days. The director may elect to take any of the actions  
8 listed in subdivision (h). The temporary withdrawal of corporation  
9 guarantee authority shall remain in effect until the director issues  
10 a decision.

11 (h) Pursuant to subdivision (g), the director may do any of the  
12 following:

13 (1) Terminate the action taken by the executive director.

14 (2) Modify the action taken by the executive director subject to  
15 the adoption by the corporation of a specified remedial action plan.

16 (3) Affirm the action taken by the executive director.

17 (i) Following suspension, the corporation may continue its  
18 existence as a nonprofit corporation pursuant to the Nonprofit  
19 Public Benefit Corporation Law (Part 2 (commencing with Section  
20 5110) of Division 2 of Title 1 of the Corporations Code), but shall  
21 no longer be registered with the Secretary of State as a small  
22 business financial development corporation. A corporation shall  
23 not enjoy any of the benefits of a small business financial  
24 development corporation following suspension.

25 (j) The funds in the trust fund account of a corporation under  
26 temporary withdrawal shall be transferred to the expansion fund.  
27 Upon termination of the temporary withdrawal, unless the  
28 termination is caused by suspension, the funds of the corporation  
29 that were transferred to the expansion fund from the trust fund  
30 account shall be returned to the corporation's trust fund account,  
31 notwithstanding Section 200011. While the funds of a corporation's  
32 trust fund account reside in the expansion fund, use of the principal  
33 on the funds shall be governed by the implementing regulations  
34 specifying use of funds in the expansion fund. Interest on the funds  
35 moved from a corporation's trust fund account upon temporary  
36 withdrawal shall be limited to payment of the corporation's  
37 administrative expenses, as contained in the contract between the  
38 corporation and the state pursuant to this title.



CHAPTER 5. EXPANSION FUND

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200009. (a) There is hereby continued in existence in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds.

(b) The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to this title, surety bond losses, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee.

(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government money, and other public or private money to make loans, guarantees, and restricted investments pursuant to this title.

(d) One or more accounts may be created by the executive director for corporations participating in one or more programs authorized under this title. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation.

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

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

200009.5. (a) All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years, for the purposes of this title.

(b) Except as specified in subdivision (a) of Section 200011, the state shall not be liable or obligated in any way beyond the state money that is allocated in the expansion fund from moneys from the General Fund moneys appropriated for such purposes.

200010. (a) The executive director at his or her discretion, with the approval of the Director of Finance, may request the

1 trustee to invest those funds in the trust fund in any of the securities  
2 described in Section 16430. Returns from these investments shall  
3 be deposited in the expansion fund and shall be used to support  
4 the programs of this title.

5 (b) Any investments made in securities described in Section  
6 16430 shall be governed by the statement of investment policy  
7 prepared by the Treasurer pursuant to subdivision (a) of Section  
8 16481.2.

9 200011. (a) The state shall not be liable or obligated in any  
10 way beyond the money that is allocated and deposited in the  
11 corporation's trust fund account.

12 (b) The executive director may reallocate funds held within a  
13 corporation's trust fund account.

14 (1) The executive director shall reallocate funds based on which  
15 corporation is most effectively using its guarantee funds. If funds  
16 are withdrawn from a less effective corporation as part of a  
17 reallocation, the executive director shall make that withdrawal  
18 only after giving consideration to that corporation's fiscal solvency,  
19 its ability to honor loan guarantee defaults, and its ability to  
20 maintain a viable presence within the region it serves. Reallocation  
21 of funds shall occur no more frequently than once per fiscal year.  
22 Any decision made by the executive director pursuant to this  
23 subdivision may be appealed to the director. The director has  
24 authority to repeal or modify any decision to reallocate funds.

25 (2) The executive director may authorize a corporation to exceed  
26 the leverage ratio specified in Section 200009 or subdivision (a)  
27 of Section 200025, or subdivision (c) of Section 14017 of the  
28 Corporations Code, pending the annual reallocation of funds  
29 pursuant to this section. However, no corporation shall be permitted  
30 to exceed an outstanding guarantee liability of more than five times  
31 its portion of funds on deposit in the expansion fund.

32 200012. (a) There is hereby created in the State Treasury the  
33 Small Business Disaster Recovery Loan Loss Reserve Account,  
34 as part of the expansion fund. This account shall be used to pay  
35 for unrecovered losses resulting from loan guarantees issued  
36 pursuant to subdivision (a) of Section 200030 or subdivision (b)  
37 of this section, and disaster loan guarantees issued prior to the  
38 effective date of this section that are in default.

39 (b) Any lending institution that issues a low-interest loan that  
40 is guaranteed by resources in this account shall be fully reimbursed

1 for the guaranteed portion of principal and interest that result from  
2 a loan or loans that are in default. If there are insufficient funds in  
3 this account to fully satisfy all claimants, the full faith of the  
4 resources in the General Fund are pledged to satisfy the obligations  
5 of this account. This account may only guarantee as much loan  
6 dollar value as is specifically authorized by the Director of Finance  
7 with the concurrence of the Governor. This account shall receive  
8 all moneys transferred pursuant to Section 200013, and any  
9 unencumbered balances transferred to the California Small  
10 Business Expansion Fund pursuant to Chapters 11 and 12 of the  
11 First Extraordinary Session of the Statutes of 1989, and Chapter  
12 1525 of the Statutes of 1990, as of July 1, 1992.

13 (c) The Governor may utilize this authority to prevent business  
14 insolvencies and loss of employment in an area affected by a state  
15 of emergency within the state and declared a disaster by the  
16 President of the United States, by the Administrator of the United  
17 States Small Business Administration, or by the United States  
18 Secretary of Agriculture, or declared to be in a state of emergency  
19 by the Governor of California.

20 200013. The Director of Finance, with the approval of the  
21 Governor, may transfer moneys in the Special Fund for Economic  
22 Uncertainties to the California Small Business Expansion Fund  
23 for use as authorized by the director, in an amount necessary to  
24 make loan guarantees pursuant to this title.

25 200014. (a) The funds in the expansion fund shall be paid out  
26 to trust fund accounts by the Treasurer on warrants drawn by the  
27 Controller and requisitioned by the executive director, pursuant  
28 to the purposes of this title. The executive director may transfer  
29 funds allocated from the expansion fund to accounts, established  
30 solely to receive the funds, in lending institutions designated by  
31 the office to act as trustee. The lending institutions so designated  
32 shall be approved by the state for the receipt of state deposits.  
33 Interest earned on the trust fund accounts in lending institutions  
34 may be utilized by the corporations pursuant to the purposes of  
35 this title.

36 (b) Except as specified in subdivision (d), the executive director  
37 shall allocate and transfer money to trust fund accounts based on  
38 performance-based criteria. The criteria shall include, but not be  
39 limited to, the following:

40 (1) The default record of the corporation.

1 (2) The number and amount of loans guaranteed by a  
2 corporation.

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

5 (4) The number and amount of surety bonds guaranteed by a  
6 corporation.

7 (c) Any decision made by the executive director pursuant to  
8 subdivision (b) may be appealed to the director within 15 days of  
9 notice of the proposed action. The director may repeal or modify  
10 any reallocation and transfer decisions made by the executive  
11 director.

12 (d) The criteria specified in subdivision (b) shall not apply to a  
13 corporation that has been in existence for five years or less. If not  
14 already adopted, the office shall develop regulations specifying  
15 the basis for transferring account funds to those corporations that  
16 have been in existence for five years or less.

17 200015. Pursuant to this section and any regulations adopted  
18 pursuant to this title, the state has residual interest in the funds  
19 deposited by the state to a trust fund account and to the return on  
20 these funds from investments. On dissolution or suspension of the  
21 corporation, these funds shall be withdrawn by the executive  
22 director from the trust fund account and returned to the expansion  
23 fund or temporarily transferred to another trust fund account. This  
24 provision shall be contained in the trust instructions to the trustee.

25 200016. Each trust fund account shall consist of a loan  
26 guarantee account, and, upon recommendation by the executive  
27 director, a bond guarantee account, each of which is a legally  
28 separate account, and the assets of one account shall not be used  
29 to satisfy loan guarantees or other obligations of another  
30 corporation. Not more than one-third of a trust fund account shall  
31 be allocated to a bond guarantee account. A corporation shall not  
32 use trust fund accounts to secure a corporate indebtedness. State  
33 funds deposited in the trust fund accounts, with the exception of  
34 guarantees established pursuant to this title, shall not be subject  
35 to liens or encumbrances of the corporation or its creditors.

36 200017. (a) The financial institution that is to act as trustee of  
37 the trust fund shall be designated after review by the executive  
38 director. The corporation shall not receive money on deposit to  
39 support guarantees issued under this title without the approval of  
40 the executive director.

1 (b) State funds may not be used to finance an expense incurred  
2 by a corporation in a location not approved pursuant to a statewide  
3 plan. The prohibition against use of state funds also applies to the  
4 location of satellite offices, and the area served from a corporation  
5 office.

6  
7 CHAPTER 6. GUARANTEE PROGRAM  
8

9 200018. (a) The Small Business Loan Guarantee Program,  
10 which is hereby continued in existence, shall provide guarantees  
11 to loans offered by financial institutions to small businesses.

12 (b) The Legislature finds and declares that the Small Business  
13 Loan Guarantee Program has enabled participating small businesses  
14 that do not qualify for conventional business loans or Small  
15 Business Administration loans to secure funds to expand their  
16 businesses. These small businesses would not have been able to  
17 expand their businesses in the absence of the program. The program  
18 has also provided valuable technical assistance to small businesses  
19 to ensure growth and stability. The study commissioned by former  
20 Section 14069.6 of the Corporations Code, as added by Chapter  
21 919 of the Statutes of 1997, documented the return on investment  
22 of the program and the need for its services. The value of the  
23 program has also been recognized by the Governor through  
24 proposals contained in the May Revision to the Budget Act of  
25 2000 for the 2000–01 fiscal year.

26 200019. The executive director, following notification to the  
27 director, may do all of the following:

- 28 (a) Contract for services entered into pursuant to this title.
- 29 (b) Hold public hearings.
- 30 (c) Act as liaison between corporations, other state and federal  
31 agencies, lenders, and the Legislature.
- 32 (d) Process and tabulate on a monthly basis all corporate reports.
- 33 (e) Attend board meetings.
- 34 (f) Attend and participate at corporation meetings. The executive  
35 director, or his or her designee, shall be an ex officio, nonvoting  
36 representative on the board of directors and loan committees of  
37 each corporation. The executive director shall meet with the board  
38 of directors of each corporation at least once each fiscal year.

1 (g) Assist corporations in applying for public and private funding  
2 opportunities, and in obtaining program support from the business  
3 community.

4 200020. (a) The executive director shall recommend whether  
5 the expansion fund and trust fund accounts are to be leveraged,  
6 and if so, by how much. Upon the request of the corporation, the  
7 executive director's decision may be repealed or modified by an  
8 office resolution.

9 (b) The amount of guarantee liability outstanding at any one  
10 time shall not exceed five times the amount of funds on deposit in  
11 the expansion fund plus any receivables due from funds loaned  
12 from the expansion fund to another fund in state government as  
13 directed by the Department of Finance pursuant to a statute enacted  
14 by the Legislature, including each of the trust fund accounts within  
15 the trust fund.

16 (c) This section shall remain in effect only until January 1, 2018,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2018, deletes or extends that date.

19 200020. (a) The executive director shall recommend whether  
20 the expansion fund and trust fund accounts are to be leveraged,  
21 and if so, by how much. Upon the request of the corporation, the  
22 executive director's decision may be repealed or modified by an  
23 office resolution.

24 (b) The amount of guarantee liability outstanding at any one  
25 time shall not exceed four times the amount of funds on deposit  
26 in the expansion fund plus any receivables due from funds loaned  
27 from the expansion fund to another fund in state government as  
28 directed by the Department of Finance pursuant to a statute enacted  
29 by the Legislature, including each of the trust fund accounts within  
30 the trust fund, unless the executive director has permitted a higher  
31 leverage ratio for an individual corporation pursuant to subdivision  
32 (b) of Section 200011.

33 (c) This section shall become operative on January 1, 2018.

34 200022. (a) The corporate guarantee shall be backed by funds  
35 on deposit in the corporation's trust fund account, or by receivables  
36 due from funds loaned from the corporation's trust fund account  
37 to another fund in state government, as directed by the Department  
38 of Finance pursuant to a statute enacted by the Legislature.

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

1 (c) The expansion fund and trust fund accounts shall be used  
2 exclusively to guarantee obligations and pay the administrative  
3 costs of the corporations.

4 (d) This section shall remain in effect only until January 1, 2018,  
5 and as of that date is repealed, unless a later enacted statute, that  
6 is enacted before January 1, 2018, deletes or extends that date.

7 200022. (a) The corporate guarantee shall be backed by funds  
8 on deposit in the corporation's trust fund account, or by receivables  
9 due from funds loaned from the corporation's trust fund account  
10 to another fund in state government, as directed by the Department  
11 of Finance pursuant to a statute enacted by the Legislature.

12 (b) Loan guarantees shall be secured by a reserve of at least 25  
13 percent to be determined by the executive director, unless the  
14 executive director authorizes a higher leverage ratio for an  
15 individual corporation pursuant to subdivision (b) of Section  
16 200011.

17 (c) The expansion fund and trust fund accounts shall be used  
18 exclusively to guarantee obligations and pay the administrative  
19 costs of the corporations.

20 (d) This section shall become operative on January 1, 2018.

21 200024. A corporation may charge the borrower or financial  
22 institution a loan fee on all loans made or guaranteed by the  
23 corporation to defray the operating expenses of the corporation.  
24 The amount of the fee shall be determined by the executive  
25 director.

26 200025. (a) It is the intent of the Legislature that the  
27 corporations make maximal use of their statutory authority to  
28 guarantee loans and surety bonds, including the authority to secure  
29 loans with a minimum loan loss reserve of only 20 percent, so that  
30 the financing needs of small business may be met as fully as  
31 possible within the limits of corporations' loan loss reserves. The  
32 office shall report annually to the Legislature on the financial status  
33 of the corporations and their portfolio of loans and surety bonds  
34 guaranteed pursuant to Section 9795.

35 (b) Any corporation that serves an area declared to be in a state  
36 of emergency by the Governor or a disaster area by the President  
37 of the United States, the Administrator of the United States Small  
38 Business Administration, or the United States Secretary of  
39 Agriculture shall increase the portfolio of loan guarantees where  
40 the dollar amount of the loan is less than one hundred thousand

1 dollars (\$100,000), so that at least 15 percent of the dollar value  
2 of loans guaranteed by the corporation is for those loans. The  
3 corporation shall comply with this requirement within one year of  
4 the date the emergency or disaster is declared. Upon application  
5 of a corporation, the executive director may waive or modify the  
6 rule for the corporation if the corporation demonstrates that it made  
7 a good faith effort to comply and failed to locate lending  
8 institutions in the region that the corporation serves that are willing  
9 to make guaranteed loans in that amount.

10 (c) This section shall remain in effect only until January 1, 2018,  
11 and as of that date is repealed, unless a later enacted statute, that  
12 is enacted before January 1, 2018, deletes or extends that date.

13 200025. (a) It is the intent of the Legislature that the  
14 corporations make maximal use of their statutory authority to  
15 guarantee loans and surety bonds, including the authority to secure  
16 loans with a minimum loan loss reserve of only 25 percent, unless  
17 the office authorizes a higher leverage ratio for an individual  
18 corporation pursuant to subdivision (b) of Section 200011, so that  
19 the financing needs of small business may be met as fully as  
20 possible within the limits of corporations' loan loss reserves. The  
21 office shall report annually to the Legislature on the financial status  
22 of the corporations and their portfolio of loans and surety bonds  
23 guaranteed pursuant to Section 9795.

24 (b) Any corporation that serves an area declared to be in a state  
25 of emergency by the Governor or a disaster area by the President  
26 of the United States, the Administrator of the United States Small  
27 Business Administration, or the United States Secretary of  
28 Agriculture shall increase the portfolio of loan guarantees where  
29 the dollar amount of the loan is less than one hundred thousand  
30 dollars (\$100,000), so that at least 15 percent of the dollar value  
31 of loans guaranteed by the corporation is for those loans. The  
32 corporation shall comply with this requirement within one year of  
33 the date the emergency or disaster is declared. Upon application  
34 of a corporation, the executive director may waive or modify the  
35 rule for the corporation if the corporation demonstrates that it made  
36 a good faith effort to comply and failed to locate lending  
37 institutions in the region that the corporation serves that are willing  
38 to make guaranteed loans in that amount.

39 (c) This section shall become operative on January 1, 2018.



1 200026. (a) A corporation shall establish one or more loan  
2 committees, each of which shall be composed of five or more  
3 persons, a majority of whom shall be experienced in banking and  
4 lending operations.

5 (b) A loan committee shall review applications to the corporation  
6 for a loan or guarantee and shall do each of the following:

7 (1) Determine the feasibility of the proposed transaction. The  
8 loan committee shall recommend approval of the application only  
9 upon a determination that there is a reasonable chance that the loan  
10 will be repaid.

11 (2) On the basis of that determination, recommend to the board  
12 of directors any action that the loan committee deems appropriate  
13 under the circumstances, or, in the event that approval authority  
14 has been delegated to the loan committee by the board of directors,  
15 approve or disapprove the loan application.

16 (c) A loan committee shall expeditiously act to accept or reject  
17 loan applications.

18 (d) A person who has a financial interest related to a matter over  
19 which the loan committee has authority may not make, participate  
20 in making, or in any way attempt to influence that matter.

21 200027. Unless delegated to its loan committee, the  
22 corporation's board of directors, upon a recommendation from its  
23 loan committee shall do all of the following:

24 (a) Emphasize consideration to applications that will increase  
25 employment of disadvantaged, disabled, or unemployed persons,  
26 or increase employment of youth residing in areas of high youth  
27 unemployment and high youth delinquency.

28 (b) Give consideration to applications from traditional and  
29 safety-net providers of Medi-Cal services that will promote access  
30 to quality medical care for individuals enrolled in Medi-Cal  
31 managed health care networks that are contracting with or owned  
32 or operated by a county board of supervisors, a county health  
33 commission, or a county health authority organized pursuant to  
34 Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or  
35 14087.9605 of the Welfare and Institutions Code.

36 (c) Not grant a loan or guarantee, unless it determines that the  
37 conditions of Section 200033 are satisfied.

38 200028. (a) Among other priorities, corporations shall give  
39 high priority to the issuance of loan guarantees to small business  
40 incubators, and to businesses that lease space in incubators.

- 1 (b) For the purposes of this section, “incubator” means a facility
- 2 that allows new small businesses to increase their probability of
- 3 success by sharing needed capital equipment, services, and
- 4 facilities, which may include, but is not limited to, the following:
- 5 (1) Reception and meeting area.
- 6 (2) Secretarial services, such as collating, telephone answering,
- 7 or mailhandling.
- 8 (3) Accounting and bookkeeping services.
- 9 (4) Research libraries.
- 10 (5) Onsite financial and management counseling.
- 11 (6) Parking.
- 12 (7) Flexible lease arrangements for flexible space.
- 13 (8) Computer or word processing facilities.
- 14 (9) Day care facilities.
- 15 (10) Office furniture rentals.
- 16 (11) A graduation policy sometimes requiring firms to leave
- 17 after three to five years in a subsidized, nurturing environment.
- 18 (12) Employee training and placement services.
- 19 (c) Among other priorities, corporations shall give high priority
- 20 to marketing their services to Phase 1 or Phase 2 Small Business
- 21 Innovation Research (SBIR) recipients and providing loan
- 22 guarantees, whenever possible.

23  
24 CHAPTER 7. DIRECT LENDING

- 25
- 26 200029. (a) A corporation may utilize funds for direct lending
- 27 as long as at least 80 percent of the corporate funds, calculated by
- 28 dollar amount, and all expansion funds are guaranteed by another
- 29 public or private financial institution.
- 30 (b) The amount of funds available for direct lending shall be
- 31 determined by the executive director. In its capacity as a direct
- 32 lender, the corporation may sell in the secondary market the
- 33 guaranteed portion of each loan so as to raise additional funds for
- 34 direct lending. The office shall issue regulations governing these
- 35 direct loans, including the maximum amount of these loans.
- 36 (c) To execute the direct loan programs established in this
- 37 chapter, the executive director may loan trust funds to a corporation
- 38 located in a rural area for the express purpose of lending those
- 39 funds to an identified borrower. The loan authorized by the

1 executive director to the corporation shall be on terms similar to  
2 the loan between the corporation and the borrower.

3 (d) The amount of the loan may be in excess of the amount of  
4 a loan to any individual borrower, but actual disbursements  
5 pursuant to the office loan agreement shall be required to be  
6 supported by a loan agreement between the borrower and the  
7 corporation in an amount at least equal to the requested  
8 disbursement. The loan between the office and the corporation  
9 shall be evidenced by a credit agreement. In the event that any  
10 loan between the corporation and borrower is not guaranteed by  
11 a governmental agency, the portion of the credit agreement  
12 attributable to that loan shall be secured by assignment of any note,  
13 executed in favor of the corporation by the borrower to the office.  
14 The terms and conditions of the credit agreement shall be similar  
15 to the loan agreement between the corporation and the borrower,  
16 which shall be collateralized by the note between the corporation  
17 and the borrower.

18 (e) In the absence of fraud on the part of the corporation, the  
19 liability of the corporation to repay the loan to the office is limited  
20 to the repayment received by the corporation from the borrower,  
21 except in a case where the United States Department of Agriculture  
22 requires exposure by the corporation in rule or regulation. The  
23 corporation may use trust funds for loan repayment to the office  
24 if the corporation has exhausted a loan loss reserve created for this  
25 purpose. Interest and principal received by the office from the  
26 corporation shall be deposited into the same account from which  
27 the funds were originally borrowed.

28 (f) Upon the approval of the executive director, a corporation  
29 shall be authorized to borrow trust funds from the office for the  
30 purpose of relending those funds to small businesses. A corporation  
31 shall demonstrate to the executive director that it has the capacity  
32 to administer a direct loan program, and has procedures in place  
33 to limit the default rate for loans to startup businesses. Not more  
34 than 25 percent of any trust fund account shall be used for the  
35 direct lending established pursuant to this subdivision. A loan to  
36 a corporation shall not exceed the amount of funds likely to be  
37 lent to small businesses within three months following the loan to  
38 the corporation.

39 (g) The maximum loan amount to a small business is fifty  
40 thousand dollars (\$50,000). In the absence of fraud on the part of

1 the corporation, the repayment obligation pursuant to the loan to  
 2 the corporation shall be limited to the amount of funds received  
 3 by the corporation for the loan to the small business and any other  
 4 funds received from the office that are not disbursed. The  
 5 corporation shall be authorized to charge a fee to the small business  
 6 borrower, in an amount determined by the executive director  
 7 pursuant to regulation. The program provided for in this subdivision  
 8 shall be available in all geographic areas of the state.

9  
 10 CHAPTER 8. DISASTER LOAN GUARANTEES

11  
 12 200030. (a) A corporation may, in an area affected by a state  
 13 of emergency within the state and declared a disaster by the  
 14 President of the United States, the Administrator of the United  
 15 States Small Business Administration, or the United States  
 16 Secretary of Agriculture, or declared to be in a state of emergency  
 17 by the Governor of California, provide loan guarantees from funds  
 18 allocated in Section 200013 to small businesses, small farms,  
 19 nurseries, and agriculture-related enterprises that have suffered  
 20 actual physical damage or significant economic injury as a result  
 21 of the disaster.

22 (b) If regulations have not otherwise been adopted, the office  
 23 may adopt or readopt regulations to implement the loan guarantee  
 24 program authorized by this section. The office may adopt these  
 25 regulations as emergency regulations in accordance with Chapter  
 26 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 27 Title 2, and for purposes of that chapter, including Section 11349.6,  
 28 the adoption of the regulations shall be considered by the Office  
 29 of Administrative Law to be necessary for the immediate  
 30 preservation of the public peace, health and safety, and general  
 31 welfare. Notwithstanding subdivision (e) of Section 11346.1, the  
 32 regulations shall be repealed within 180 days after their effective  
 33 date unless the office complies with Chapter 3.5 (commencing  
 34 with Section 11340) of Part 1 of Division 3 of Title 2, as provided  
 35 in subdivision (e) of Section 11346.1.

36 (c) Allocations pursuant to subdivision (a) shall be deemed to  
 37 be for extraordinary emergency or disaster response operations  
 38 costs incurred by the office.

1                   CHAPTER 9. ENERGY EFFICIENCY LOANS

2  
3       200031. (a) Corporations may grant energy efficiency  
4 improvement loans.

5       (b) The office shall enter into an agreement with the California  
6 Energy Extension Service of the Office of Planning and Research  
7 to assist small business owners in reducing their energy costs  
8 through low-interest loans and by providing assistance and  
9 information.

10  
11                   CHAPTER 10. SURETY BONDS

12  
13       200033. In furtherance of the purposes set forth in Section  
14 200001 of this code and Section 14002 of the Corporations Code,  
15 a corporation may do any one or more of the following activities,  
16 but only to the extent that the activities are authorized pursuant to  
17 the contract between the office and corporation: guarantee, endorse,  
18 or act as surety on the bonds, notes, contracts, or other obligations  
19 of, or assist financially, any person, firm, corporation, or  
20 association, and may establish and regulate the terms and  
21 conditions with respect to any such loans or financial assistance  
22 and the charges for interest and service connected therewith, except  
23 that the corporation shall not make or guarantee any loan, unless  
24 and until it determines:

25       (a) There is no probability that the loan or other financial  
26 assistance would be granted by a financial company under  
27 reasonable terms or conditions, and the borrower has demonstrated  
28 a reasonable prospect of repayment of the loan.

29       (b) The loan proceeds shall be used exclusively in this state.

30       (c) The loan qualifies as a small business loan or an employment  
31 incentive loan.

32       (d) That the borrower has a minimum equity interest in the  
33 business as determined by the director.

34       (e) As a result of the loan, the jobs generated or retained  
35 demonstrate reasonable conformance to the regulations specifying  
36 employment criteria.

37       200034. (a) In addition to the authority granted by Section  
38 200033, upon approval of the executive director, a corporation  
39 may act as guarantor on a surety bond for any small business

1 contractor, including, but not limited to, women, minority, and  
2 disabled veteran contractors.

3 (b) The provisions of subdivision (a) allowing a corporation to  
4 act as a guarantor on surety bonds may be funded through  
5 appropriate federal funding sources. Federal funds shall be  
6 deposited in the Federal Trust Fund in the State Treasury in  
7 accordance with Section 16360, for transfer to the expansion fund.

8  
9 CHAPTER 11. REPORTING

10  
11 200035. (a) Except as otherwise provided in this title, the trust  
12 fund account shall be used solely to make loans, guarantee bonds,  
13 and guarantee loans, approved by the corporation, that meet the  
14 loan criteria under this title. The state shall not be liable or  
15 obligated in any way as a result of the allocation of state money  
16 to a trust fund account beyond the state money that is allocated  
17 and deposited in the fund pursuant to this title, and that is not  
18 otherwise withdrawn by the state pursuant to this title.

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

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

25 200036. (a) Annually, not later than January 1 of each year  
26 commencing January 1, 2014, the executive director shall prepare  
27 a report regarding the loss experience for the expansion fund for  
28 loan guarantees, loss reserves, and surety bond guarantees for the  
29 preceding fiscal year. At a minimum, the report shall also include  
30 data regarding numbers of surety bond and loan guarantees awarded  
31 through the expansion fund, including ethnicity and gender data  
32 of participating contractors and other entities, and experience of  
33 surety insurer participants in the bond guarantee program. The  
34 report shall include the information described in Section 200025.  
35 The executive director shall submit that report to the Governor  
36 and the Legislature pursuant to Section 9795.

37 (b) A corporation shall also report to the executive director, or  
38 his or her designated representative, all statistical and other reports  
39 required by this title, responses to audit reports, budget

1 requirements, invoices submitted for payment by the state, and  
2 information concerning loans made or guaranteed.

3 200037. Pursuant to subdivision (f) of Section 8684.2, within  
4 60 days of the conclusion of the period for guaranteeing loans  
5 under any small business disaster loan guarantee program  
6 conducted for a disaster as authorized by Section 8684.2 or 200030,  
7 the office shall provide a report to the Legislature on loan  
8 guarantees approved and rejected by gender, ethnic group, type of  
9 business and location, and each participating loan institution  
10 pursuant to Section 9795. The office need only submit one report  
11 to comply with this section and subdivision (f) of Section 8684.2.

12 SEC. 4. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.