

AMENDED IN SENATE JUNE 5, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1247

Introduced by Assembly Member Medina

February 22, 2013

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 Chapter 6 (commencing with Section 63088) to Division 1 of Title 6.7 to, to repeal Sections 63089.5, 63089.63, 63089.64, and 63089.66 of, the Government Code, relating to business, ~~and~~ making an appropriation therefor, *and declaring the urgency thereof to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, as amended, 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 California Infrastructure and Economic Development Bank and a program manager designated by the executive director of the Infrastructure and Economic Development Bank, 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.

This bill would declare that it is to take effect immediately as an urgency statute.

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.

1 14001. (a) It is the intent of the Legislature in enacting this
2 chapter to promote the economic development of small businesses
3 by making available capital, general management assistance, and
4 other resources, including loan and equity investment services,
5 personnel, and business education to small business entrepreneurs,
6 including women and minority owned businesses, for the purpose
7 of promoting the health, safety, and social welfare of the citizens
8 of California, to eliminate unemployment of the economically
9 disadvantaged of the state, and to stimulate economic development,
10 employment, minority group, women, and disabled persons
11 entrepreneurship.

12 (b) It is the further intent of the Legislature to provide a flexible
13 means to mobilize and commit all available and potential resources
14 in the various regions of the state to fulfill these objectives,
15 including federal, state, and local public resources, and private
16 debt and equity investment.

17 (c) It is the further intent of the Legislature that corporations
18 operating pursuant to this law, shall to the maximum extent
19 feasible, coordinate with other job and business development
20 efforts within their region directed toward implementing the
21 purpose of this ~~part~~ chapter.

22 (d) It is the further intent of the Legislature to provide expanded
23 resources allowing participation by small and emerging contractors
24 in state public works contracts. Increased access to surety bonding
25 resources will assist in supporting participation by those firms in
26 public works contracts, and by stimulating increased participation
27 by small firms, the state will benefit from increased competition
28 and lower bid costs.

29 14002. If any provision of this chapter or the application thereof
30 to any person or circumstances is held invalid, this invalidity shall
31 not affect other provisions or applications of the chapter which
32 can be given effect without the invalid provision or application,
33 and to this end the provisions of this chapter are severable.

34

35 Article 2. Definitions

36

37 14003. Unless the context otherwise requires, the definitions
38 in this section shall govern the construction of this chapter.

39 (a) "Bank board" means the board of directors of the California
40 Infrastructure and Economic Development Bank.

- 1 (b) “Board” means the California Small Business Board.
- 2 (c) “Board of directors” means the board of directors of the
- 3 corporation.
- 4 (d) “Corporation” means any nonprofit California small business
- 5 financial development corporation created pursuant to this chapter.
- 6 (e) “Executive director” means the executive director of the
- 7 Infrastructure and Economic Development Bank.
- 8 (f) “Expansion fund” means the California Small Business
- 9 Expansion Fund.
- 10 (g) “Financial company” means banking organizations, including
- 11 national banks and trust companies, savings and loan associations,
- 12 certified community development financial institutions,
- 13 ~~microlenders~~, *microbusiness lenders*, state insurance companies,
- 14 mutual insurance companies, and other public and private banking,
- 15 lending, retirement, and insurance organizations.
- 16 (h) “Financial institution” means regulated banking
- 17 organizations, including national banks and trust companies
- 18 authorized to conduct business in the state and state-chartered
- 19 commercial banks, trust companies, credit unions, and savings and
- 20 loan associations.
- 21 (i) “Loan committee” means a committee appointed by the board
- 22 of directors of a corporation to determine the course of action on
- 23 a loan application pursuant to Chapter 6 (commencing with Section
- 24 63088) of Division 1 of Title 6.7 of the Government Code.
- 25 (j) “Program Manager” means ~~the person~~ *manager of a specific*
- 26 *program as* designated to this title by the executive director of the
- 27 Infrastructure and Economic Development Bank.
- 28 (k) “Trust fund” means the money from the expansion fund that
- 29 is held in trust by *a* financial institution or financial company. A
- 30 trust fund is not a deposit of state funds and is not subject to the
- 31 requirements of Section 16506 of the Government Code.
- 32 (l) “Trust fund account” means an account within the trust fund
- 33 that is allocated to a particular small business financial
- 34 development corporation for the purpose of paying loan defaults
- 35 and claims on bond guarantees for a specific small business
- 36 financial development corporation.

Article 3. Program Manager

40 14004. (a) The program manager shall do all of the following:

1 (1) Administer this chapter.

2 (2) Make recommendations to the board on the approval or
3 disapproval of the articles of incorporation. This determination
4 shall be based upon the following:

5 (A) Review of the articles of incorporation and bylaws of the
6 corporation to determine whether they contain the provisions
7 required by this chapter and conform with the regulations adopted
8 pursuant to this chapter.

9 (B) A determination as to whether the legislative intent
10 expressed in Section 14001 shall be served by the proposed
11 corporation.

12 (C) A determination as to whether the responsibility, character,
13 and general fitness of the individuals who will manage the
14 corporation are such as to command the confidence of the state
15 and to warrant the belief that the business of the proposed
16 corporation will be honestly and efficiently conducted in
17 accordance with the intent and purpose of this chapter and that
18 they include representatives of the financial and business
19 community, as well as the economically disadvantaged.

20 (3) Have the accounts of each corporation formed under this
21 chapter audited as of the close of business on June 30 of each year.

22 (4) Have the portfolio of each corporation audited a minimum
23 of once a year. Material audit exceptions that are not corrected by
24 the corporation within a reasonable period of time may result in
25 the suspension of the corporation pursuant to Section 63089.3 of
26 the Government Code.

27 (5) Review reports from the Department of Business Oversight
28 and inform corporations as to what corrective action is required.

29 (6) Examine, or cause to be examined, at any reasonable time,
30 all books, records, and documents of every kind, and the physical
31 properties of a corporation. The inspection shall include the right
32 to make copies, extracts, and search records.

33 (b) The program manager may attend and participate at
34 corporation meetings. The program manager, or his or her designee,
35 shall be an ex officio, nonvoting representative on the board of
36 directors and loan committees of each corporation. The program
37 manager shall meet with the board of directors of each corporation
38 at least once each fiscal year, commencing January 1, 2014.

1 ~~1404.1.~~

2 *14004.1.* (a) The California Small Business Board is hereby
3 continued and created as a ~~subcommittee~~ *of an advisory board* to
4 the California Infrastructure and Economic Development Bank
5 Board, *the executive director, and the program manager.* The
6 California Small Business Board consists of the following
7 membership:

8 (1) The Director of Finance or his or her designee.

9 (2) The Director of the Office of the Small Business Advocate
10 or his or her designee.

11 (3) The Treasurer or his or her designee.

12 (4) Two corporations selected by the corporations.

13 (5) Two members appointed by the Governor, one of whom
14 will serve as chair of the board, who are actively involved in the
15 California small business community.

16 (6) *Two persons actively involved in the business or agricultural*
17 *communities, one appointed by the Speaker of the Assembly and*
18 *one appointed by the Senate Committee on Rules.*

19 (7) *Two Members of the Legislature, or their designees, one*
20 *appointed by the Speaker of the Assembly and one appointed by*
21 *the Senate Committee on Rules, so long as it does not conflict with*
22 *the duties of their duties as legislators.*

23 (b) The California Small Business Board shall do each of the
24 following:

25 (1) Advise the program manager on matters regarding this part
26 and Chapter 6 (commencing with Section 63088) of Division 1 of
27 Title 6.7 of the Government Code.

28 (2) Approve new corporations recommended by the program
29 manager, based on an examination of each of the following:

30 (A) Review of the articles of incorporation and bylaws of the
31 corporation to determine whether they contain the provisions
32 required by this chapter and conform with the regulations adopted
33 pursuant to this part.

34 (B) Determination as to whether the legislative intent expressed
35 in Section 14002 will be served by the proposed corporation.

36 (C) Determination as to whether the responsibility, character,
37 and general fitness of the individuals who will manage the
38 corporation are able to command the confidence of the state and
39 to warrant the belief that the business of the proposed corporation
40 will be honestly and efficiently conducted in accordance with the

1 intent and purpose of this chapter and that they include
2 representatives of the financial and business community, as well
3 as the economically disadvantaged.

4 (c) The public members of the board, at the discretion of the
5 bank board, may be reimbursed per diem and travel expenses
6 pursuant to state law.

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Article 4. New Corporations

10 14005. Upon approval by the board to become a corporation,
11 an entity shall adopt or amend its articles of incorporation to
12 comply with the following:

13 (a) The name of the corporation shall include the words “small
14 business financial development corporation,” except for those
15 corporations formed pursuant to this chapter prior to 2002, which
16 may also be called “small business development corporations,” or
17 those formed prior to 1985, which may also be called “rural or
18 urban development corporations.”

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

22 (c) A geographical description of the corporation’s primary
23 service area.

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

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

29 14006. If the board determines that the facts disclosed by the
30 investigation provided by Section 14004 are true and finds that
31 the proposed incorporation meets all the requirements of this
32 chapter, the program manager shall approve the articles of
33 incorporation and endorse the approval thereon and forward the
34 same to the Secretary of State for his or her approval and filing.
35 Likewise, the program manager shall review all amendments to
36 the articles to ensure consistency with the purposes of the article.

37 14007. (a) The corporation’s existence as a small business
38 development corporation begins upon the filing of the articles with
39 the Secretary of State and continues perpetually, unless otherwise
40 expressly provided for by law.

1 (b) If a corporation is suspended, the corporation may continue
2 its existence as a nonprofit corporation pursuant to the Nonprofit
3 Public Benefit Corporation Law (Part 2 (commencing with Section
4 5110) of Division 2 of Title 1 of the Corporations Code), but shall
5 no longer be registered with the Secretary of State as a small
6 business financial development corporation. A corporation shall
7 not enjoy any of the benefits of a small business financial
8 development corporation following suspension.

9 14008. (a) Any request for proposal for selection of a
10 corporation shall be approved by the bank and require the winning
11 bidder to adopt or amend its bylaws to include provisions governing
12 the election and qualification of directors, the establishment and
13 functions of loan committees of the corporation, and the method
14 of selecting the representative of the corporation on the board.

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

17 14009. Each corporation shall have provisions establishing a
18 grievance procedure for employees, clients, or potential clients,
19 to appeal a decision or obtain redress of an action done by the staff
20 or loan committee of the corporation. The procedures shall be
21 established in writing during the probationary period of a new
22 corporation.

23 14010. The program manager may authorize the establishment
24 of a new corporation using a request for proposal process.

25 14011. The Nonprofit Public Benefit Corporation Law (Part
26 2 (commencing with Section 5110) of Division 2 of this title)
27 applies to corporations formed under this chapter, except as to
28 matters otherwise provided for in this chapter.

29 14012. For six months following the establishment of a
30 corporation, commencing upon filing of the articles of
31 incorporation with the Secretary of State, a corporation shall be
32 on probation. While on probation, a corporation may be suspended
33 if suspension is recommended by the program manager. This
34 suspension is nonappealable and not subject to the procedures for
35 suspension applicable to a corporation not on probation.

36

37 Article 5. Corporation Board

38

39 14013. The corporate powers of a corporation shall be exercised
40 by the board of directors.

1 14014. A request for proposal for selection of a corporation
2 shall require the winning bidder to adopt or amend its bylaws to
3 state that:

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

7 (b) Each board of directors shall include representatives from
8 all of the following:

9 (1) The financial community.

10 (2) The business community.

11 (3) The economically disadvantaged.

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

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

17 14015. If any director ceases to meet the qualifications
18 established in Section 14014, he or she shall immediately vacate
19 his or her position as a director and such position shall be deemed
20 vacant.

21 14016. If any vacancy occurs in the elective membership of
22 the board of directors through death, resignation, or otherwise, the
23 remaining directors shall elect a person representing the appropriate
24 category to fill the vacancy for the unexpired term.

25 14017. (a) The California Infrastructure and Economic
26 Development Bank shall establish new small business financial
27 development corporations pursuant to the procedures otherwise
28 established by this chapter. In approving the request for proposal,
29 the bank shall ensure small businesses in all areas of the state
30 would have reasonable access to the financial ~~programs~~, *programs*
31 in which they are eligible. Establishment of a new corporation is
32 dependent upon sufficient funding being available.

33 (b) Additional corporations have been proposed in the following
34 areas:

35 (1) San Jose.

36 (2) Santa Ana.

37 (3) San Fernando Valley.

38 (4) Ontario.

39 (c) Upon an appropriation in the annual Budget Act for this
40 purpose, the California Infrastructure and Economic Development

1 Bank shall approve the issuance of a request for a proposal to
2 establish a small business financial development corporation in
3 southeast Los Angeles.

4 (d) In furtherance of the purposes of this chapter, up to one-half
5 of the trust funds may be used to guarantee loans utilized to
6 establish a Business and Industrial Development Corporation
7 (BIDCO) under Division 15 (commencing with Section 31000)
8 of the Financial Code.

9

10 Article 6. Corporations, Miscellaneous

11

12 14018. Every corporation shall provide for, and maintain a
13 central staff to perform, all administrative requirements of the
14 corporation, including all those functions required of a corporation
15 by the director.

16 14019. Reasonable costs incurred by a corporation in the
17 creation and maintenance of a central staff shall be paid to the
18 corporation from state funds, including a portion of the interest
19 earned on the expansion fund and the corporation’s trust fund
20 account, if the corporation has a trust fund account, otherwise, on
21 the expansion fund.

22 14020. A corporation shall report to the program manager, or
23 his or her designated representative, all statistical and other reports
24 required by this chapter, responses to audit reports, budget
25 requirements, and other information relating to the establishment,
26 monitoring, and suspension of a corporation.

27 14021. A corporation shall make a report to the program
28 manager, as of the close of business on June 30 of each year,
29 describing the corporation’s activities and any additional
30 information requested by the program manager, on or before
31 August 1 of each year.

32

33 Article 7. Conflict of Interest

34

35 14022. It shall be unlawful for the executive director, program
36 manager, or any person who is an officer, director, or employee
37 of a corporation, or who is a member of a loan committee, or who
38 is an employee of the California Infrastructure and Economic
39 Development Bank to do any of the following:

1 (a) Ask for, consent, or agree to receive, any commission,
2 emolument, gratuity, money, property, or thing of value for his or
3 her own use, benefit, or personal advantage, for procuring or
4 endeavoring to procure for any person, partnership, joint venture,
5 association, or corporation, any loan, guarantee, financial, or other
6 assistance from any corporation.

7 (b) Borrow money, property, or to benefit knowingly, directly
8 or indirectly, from the use of the money, credit, or property of any
9 corporation.

10 (c) Make, maintain, or attempt to make or maintain, a deposit
11 of the funds of a corporation with any other corporation or
12 association on condition, or with the understanding, expressed or
13 implied, that the corporation or association receiving the deposit
14 shall pay any money or make a loan or advance, directly or
15 indirectly, to any person, partnership, joint venture, association,
16 or corporation, other than to a corporation formed under this
17 chapter.

18 14023. It shall be unlawful for the executive director, program
19 manager, or any person who is an officer or director of a
20 corporation, or who is an employee of the California Infrastructure
21 and Economic Development Bank to purchase or receive, or to be
22 otherwise interested in the purchase or receipt, directly or
23 indirectly, of any asset of a corporation, without paying to the
24 corporation the fair market value of the asset at the time of the
25 transaction.

26 14024. Violation of any provision of this article shall constitute
27 a felony.

28 SEC. 3. Chapter 6 (commencing with Section 63088) is added
29 to Division 1 of Title 6.7 of the Government Code, to read:

30

31 CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF
32 2013

33

34 Article 1. Introduction

35

36 63088. This chapter shall be known, and may be cited, as the
37 Small Business Financial Assistance Act of 2013.

38 63088.1. The Legislature finds all of the following:

39 (a) Small businesses form the core of the California economy
40 and that it is in the interest of the state to increase opportunities

1 for entrepreneurs, the self-employed, and microbusiness and small
2 business owners to have better access to capital and other technical
3 resources.

4 (b) Unemployment in California is a matter of statewide concern
5 requiring concerted public and private action to develop
6 employment opportunities for the disadvantaged, unemployed
7 persons, veterans, and youth.

8 (c) It is necessary to direct additional capital, general
9 management assistance, business education, and other resources
10 to encourage the development of small business opportunities,
11 particularly for minorities, women, and disabled persons, to
12 alleviate unemployment.

13
14

Article 2. Definitions

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16 63088.3. Unless the context otherwise requires, the definitions
17 in this section shall govern the construction of this chapter.

18 (a) “Bank” means the California Infrastructure and Economic
19 Development Bank.

20 (b) “Bank board” means the board of directors of the California
21 Infrastructure and Economic Development Bank.

22 (c) “Board” means the California Small Business Board.

23 (d) “Corporation” means any nonprofit California small business
24 financial development corporation created pursuant to Chapter 1
25 (commencing with Section 14000) of Part 5 of Division 3 of Title
26 1 of the Corporations Code.

27 (e) “Employment incentive loan” means a loan to a qualified
28 business or to a business located within an enterprise zone, as
29 defined in subdivision (d) of Section 7072.

30 (f) “Executive director” means the executive director of the
31 Infrastructure and Economic Development Bank.

32 (g) “Expansion fund” means the California Small Business
33 Expansion Fund.

34 (h) “Financial company” means banking organizations, including
35 national banks and trust companies, savings and loan associations,
36 certified community development financial institutions,
37 microlenders, state insurance companies, mutual insurance
38 companies, and other public and private banking, lending,
39 retirement, and insurance organizations.

1 (i) “Financial institution” means regulated banking
2 organizations, including national banks and trust companies
3 authorized to conduct business in California and state-chartered
4 commercial banks, trust companies, credit unions, and savings and
5 loan associations.

6 (j) “Loan committee” means a committee appointed by the board
7 of directors of a corporation to determine the course of action on
8 a loan application pursuant to this title.

9 (k) “Program manager” means the person designated to this title
10 by the executive director of the California Infrastructure and
11 Economic Development Bank.

12 (l) Unless otherwise defined by the executive director by
13 regulation, “small business loan” means a loan to a business
14 defined as an eligible small business as set forth in Section
15 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal
16 Regulations, including those businesses organized for agricultural
17 purposes that create or retain employment as a result of the loan.
18 From time to time, the executive director shall provide guidelines
19 as to the preferred ratio of jobs created or retained to total funds
20 borrowed for guidance to the corporations.

21 (m) “Trust fund” means the moneys from the expansion fund
22 that is held in trust by a financial institution or financial company.
23 A trust fund is not a deposit of state funds and is not subject to the
24 requirements of Section 16506.

25 (n) “Trustee” means the lending institution or financial company
26 selected by the office to hold and invest the trust funds. An
27 agreement made pursuant to this title and the trustee shall not be
28 construed to be a deposit of state funds.

29 (o) “Trust fund account” means an account within the trust fund
30 that is allocated to a particular small business financial
31 development corporation for the purpose of paying loan defaults
32 and claims on bond guarantees for a specific small business
33 financial development corporation.

34

35 Article 3. Program Purpose

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37 63088.5. (a) There is within the Governor’s Office of Business
38 and Economic Development the California Infrastructure and
39 Economic Development Bank, which shall, among other things,
40 assist businesses seeking new capital resources.

1 (b) Pursuant to this title, the bank may establish one or more
2 programs administered regionally under contract with small
3 business financial development corporations. Programs established
4 pursuant to this title may include the following types of financial
5 products:

6 (1) Loan guarantees.

7 (2) Direct loans.

8 (3) Disaster assistance loans.

9 (4) Surety bond guarantees.

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

13 (d) In carrying out this chapter the bank may call on the
14 California Small Business Board for advice and recommendations.
15 All actions by the California Small Business Board are advisory
16 except where specifically assigned a duty and authority.

17 (e) The Small Business Board may also advise the Governor,
18 the director, and the Small Business Advocate regarding issues
19 and programs affecting California's small business community,
20 including, but not limited to, business innovation and expansion,
21 export finance, state procurement, management and technical
22 assistance, venture capital, and financial assistance.

23 63088.6. To implement its responsibilities, a corporation shall
24 undertake a program that shall include, but not be limited to, the
25 following:

26 (a) Outreach to low-resource small businesses and
27 microbusinesses. The corporations located in rural areas shall give
28 priority to low-resource farmers and rural and agriculturally related
29 businesses.

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

36 (c) To the extent possible, bringing all possible financial
37 resources (low-interest lenders, BIDCOs, MESBICs, other
38 guarantors, etc.) to bear on the borrower's problems.

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

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

3 (f) A program for collecting and liquidating defaulted loans so
4 that the corporations can qualify to become full-service lenders
5 under the Small Business Administration. Corporations located in
6 rural areas shall, in addition, try to qualify for lender status under
7 the United States Department of Agriculture’s Rural Development
8 and Farm Services Agency.

9 (g) Become an agent for other financial institutions and financial
10 companies.

11
12 Article 4. Administrative Structure

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14 63089. If regulations have not already been adopted under
15 Chapter 1 (commencing with Section 14000) of Part 5 of Division
16 3 of Title 1 of the Corporations Code, as that chapter read on
17 January 1, 2013, then the bank shall adopt regulations concerning
18 the implementation of this title, Chapter 1 (commencing with
19 Section 14000) of Part 5 of Division 3 of Title 1 of the
20 Corporations Code, and direct lending as emergency regulations
21 in accordance with Chapter 3.5 (commencing with Section 11340)
22 of Part 1 of Division 3 of Title 2. The adoption of these regulations
23 is an emergency and necessary for the immediate preservation of
24 the public peace, health and safety, or general welfare within the
25 meaning of subdivision (b) of Section 11346.1. Notwithstanding
26 subdivision (e) of Section 11346.1, the regulations shall not remain
27 in effect for more than 180 days unless the office complies with
28 all provisions of Chapter 3.5 (commencing with Section 11340)
29 of Part 1 of Division 3 of Title 2, as required by subdivision (e) of
30 Section 11346.1. This section also applies to any direct loan
31 program administered by the bank.

32 63089.1. The program manager shall do all of the following:

33 (a) Administer this chapter.

34 (b) Contract for services under this chapter and Chapter 1
35 (commencing with Section 14000) of Part 5 of Division 3 of Title
36 1 of the Corporations Code.

37 (c) In accordance with available resources, use branch offices
38 for the purposes of making these programs under this chapter
39 accessible to all areas of the state.

- 1 (d) Require each corporation to submit an annual written plan
- 2 of operation.
- 3 (e) Authorize the distribution, transfer, and withholding of
- 4 moneys in the expansion fund and trust funds.
- 5 (f) Authorize the investment of expansion and trust fund moneys.
- 6 (g) Oversee the operations of one or more programs authorized
- 7 pursuant to this title.
- 8 (h) Approve, suspend, or terminate a corporation’s ability to
- 9 participate in a program under this title.
- 10 63089.2. The use of state funds paid out to the trust fund and
- 11 the return on those funds from investment pursuant to Section
- 12 63089.56 is conditional pursuant to Sections 63089.3 and 63089.57.
- 13 Each corporation shall enter into a written signed agreement with
- 14 the state at the beginning of each fiscal year. The agreement shall
- 15 govern the activities in which the corporations engage, the
- 16 investment of state funds and its return, and the budgeted
- 17 administrative expenses the corporations may incur. In the event
- 18 the state and corporation do not reach an agreement, or the state
- 19 finds the corporation has violated the terms of an active agreement,
- 20 the state may take any action under Section 63089.3 or 63089.57,
- 21 or any other action as appropriate. In the event the state and
- 22 corporation do not reach agreement or the state finds the
- 23 corporation has violated the terms of an active agreement, the
- 24 corporation shall have no authority to withdraw or encumber the
- 25 trust fund or the return of those funds by the issuance of guarantees,
- 26 by incurring expenses against the fund and its return in any manner
- 27 whatsoever, and the state may take any action under Section
- 28 63089.3 or 63089.57, or any other action as appropriate. Any
- 29 guarantee or other encumbrance made by the corporation in
- 30 violation of this section shall be null and void, and neither the state
- 31 nor the trust fund will be liable therefor.
- 32 63089.3. (a) Upon a finding by the program manager that
- 33 irreparable harm may occur if guarantee or direct loan authority
- 34 is not temporarily withdrawn from a corporation, the program
- 35 manager may temporarily withdraw guarantee or direct loan, or
- 36 both, authority from a corporation. The notice of temporary
- 37 withdrawal sent to the corporation shall specify the reasons for the
- 38 action.
- 39 (1) As used in this section, “guarantee and direct loan authority”
- 40 means the authority to make or guarantee any loan that encumbers

1 funds in a trust fund account, any account or subaccount under the
2 direct control of the office or other state entity, or the expansion
3 fund.

4 (2) The program manager shall make one of the determinations
5 specified in subdivision (c) within 30 days of the effective date of
6 the temporary withdrawal, unless the corporation and the executive
7 director mutually agree to an extension. The corporation shall have
8 the opportunity to submit written material to the program manager
9 addressing the items stated in the temporary withdrawal notice. If
10 the program manager does not make any determinations within
11 30 days, the temporary withdrawal shall be negated. The
12 corporation's yearly contract shall remain in effect during the
13 period of temporary withdrawal, and the corporation shall continue
14 to receive reimbursement of necessary operating expenses.

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

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

21 (2) Fiscal and portfolio requirements, as contained in the fiscal
22 and portfolio audits specified in Section 14004 of the Corporations
23 Code.

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

26 (c) Pursuant to subdivision (a) or (b), the program manager may
27 do the following:

28 (1) Terminate the temporary withdrawal.

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

31 (3) Temporarily withdraw, or continue to withdraw, guarantee
32 authority until a specified time. This determination by the program
33 manager shall require a finding that the corporation has failed to
34 comply with the California Small Business Development
35 Corporation Law (Chapter 1 (commencing with Section 14000)
36 of Part 5 of Division 3 of Title 1 of the Corporations Code).

37 (4) Suspend the corporation.

38 (5) Suspend the corporation, with suspension stayed until the
39 corporation provides a remedial action plan to the executive

1 director, and the executive director decides whether to repeal or
2 implement the stayed suspension.

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

6 (e) In considering a determination regarding the recommended
7 suspension and possible remedial action plans, the program
8 manager shall consider, along with other criteria as specified in
9 subdivision (b), the corporation's history and past performance.

10 (f) Upon suspension of a corporation, the program manager
11 shall transfer all funds, whether encumbered or not, in the trust
12 fund account of the suspended corporation into either the expansion
13 fund or temporarily transfer the funds to another corporation.

14 (g) If the program manager decides to take any action against
15 the corporation pursuant to paragraphs (2) to (5), inclusive, of
16 subdivision (c), the corporation shall be notified of the action 10
17 days before the effective date of the action. The corporation shall
18 have the right to appeal the program manager's decision to the
19 director of the California Small Business Board within that 10-day
20 period by sending notice to the executive director. Once the
21 executive director receives notice that the action is being appealed,
22 the program manager's action shall be stayed except for temporary
23 withdrawal of guarantee authority. Upon receipt of the notice from
24 the corporation, the executive director shall notify the small
25 business board within three working days. The California Small
26 Business Board shall consider and make a final determination on
27 the appeal within 30 days of receiving notice. The small business
28 board may elect to take any of the actions listed in subdivision (h).
29 The temporary withdrawal of corporation guarantee authority shall
30 remain in effect until the executive director small business board
31 issues a decision.

32 (h) Pursuant to subdivision (g), the small business board may
33 do any of the following:

34 (1) Terminate the action taken by the program manager.

35 (2) Modify the action taken by the program manager subject to
36 the adoption by the corporation of a specified remedial action plan.

37 (3) Affirm the action taken by the program manager.

38 (i) Following suspension, the corporation may continue its
39 existence as a nonprofit corporation pursuant to the Nonprofit
40 Public Benefit Corporation Law (Part 2 (commencing with Section

1 5110) of Division 2 of Title 1 of the Corporations Code), but shall
2 no longer be registered with the Secretary of State as a small
3 business financial development corporation. A corporation shall
4 not enjoy any of the benefits of a small business financial
5 development corporation following suspension.

6 (j) The funds in the trust fund account of a corporation under
7 temporary withdrawal shall be transferred to the expansion fund.
8 Upon termination of the temporary withdrawal, unless the
9 termination is caused by suspension, the funds of the corporation
10 that were transferred to the expansion fund from the trust fund
11 account shall be returned to the corporation's trust fund account,
12 notwithstanding Section 63089.53. While the funds of a
13 corporation's trust fund account reside in the expansion fund, use
14 of the principal on the funds shall be governed by the implementing
15 regulations specifying use of funds in the expansion fund. Interest
16 on the funds moved from a corporation's trust fund account upon
17 temporary withdrawal shall be limited to payment of the
18 corporation's administrative expenses, as contained in the contract
19 between the corporation and the state pursuant to this title.

20
21 Article 5. Expansion Fund

22
23 63089.5. (a) There is hereby continued in existence in the State
24 Treasury the California Small Business Expansion Fund. All or a
25 portion of the funds in the expansion fund may be paid out, with
26 the approval of the Department of Finance, to a lending institution
27 or financial company that will act as trustee of the funds.

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

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

37 (d) One or more accounts may be created by the program
38 manager for corporations participating in one or more programs
39 authorized under this title. Each account is a legally separate

1 account, and shall not be used to satisfy loan or surety bond
2 guarantees or other obligations of another corporation.

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

10 (f) 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 63089.51. (a) All money deposited in the expansion fund is
14 hereby continuously appropriated, without regard to fiscal years,
15 for the purposes of this title.

16 (b) Except as specified in subdivision (a) of Section 63089.53,
17 the state shall not be liable or obligated in any way beyond the
18 state money that is allocated in the expansion fund from moneys
19 from the General Fund moneys appropriated for those purposes.

20 63089.52. (a) The program manager at his or her discretion,
21 with the approval of the Director of Finance, may request the
22 trustee to invest those funds in the trust fund in any of the securities
23 described in Section 16430. Returns from these investments shall
24 be deposited in the expansion fund and shall be used to support
25 the programs of this title.

26 (b) Any investments made in securities described in Section
27 16430 shall be governed by the statement of investment policy
28 prepared by the Treasurer pursuant to subdivision (a) of Section
29 16481.2.

30 63089.53. (a) The state shall not be liable or obligated in any
31 way beyond the money that is allocated and deposited in the
32 corporation's trust fund account.

33 (b) The program manager may reallocate funds held within a
34 corporation's trust fund account.

35 (1) The program manager shall reallocate funds based on which
36 corporation is most effectively using its guarantee funds. If funds
37 are withdrawn from a less effective corporation as part of a
38 reallocation, the program manager shall make that withdrawal only
39 after giving consideration to that corporation's fiscal solvency, its
40 ability to honor loan guarantee defaults, and its ability to maintain

1 a viable presence within the region it serves. Reallocation of funds
2 shall occur no more frequently than once per fiscal year. Any
3 decision made by the program manager pursuant to this subdivision
4 may be appealed to the bank board unless otherwise specified. The
5 program manager has the authority to repeal or modify any decision
6 to reallocate funds.

7 (2) The program manager may authorize a corporation to exceed
8 the leverage ratio specified in Section 63089.5 or subdivision (a)
9 of Section 63089.66, or subdivision (c) of Section 14017 of the
10 Corporations Code, pending the annual reallocation of funds
11 pursuant to this section. However, no corporation shall be permitted
12 to exceed an outstanding guarantee liability of more than five times
13 its portion of funds on deposit in the expansion fund.

14 63089.54. (a) There is hereby created in the State Treasury
15 the Small Business Disaster Recovery Loan Loss Reserve Account,
16 as part of the expansion fund. This account shall be used to pay
17 for unrecovered losses resulting from loan guarantees issued
18 pursuant to subdivision (a) of Section 63089.90 or subdivision (b)
19 of this section, and disaster loan guarantees issued prior to the
20 effective date of this section that are in default.

21 (b) Any lending institution that issues a low-interest loan that
22 is guaranteed by resources in this account shall be fully reimbursed
23 for the guaranteed portion of principal and interest that result from
24 a loan or loans that are in default. If there are insufficient funds in
25 this account to fully satisfy all claimants, the full faith of the
26 resources in the General Fund are pledged to satisfy the obligations
27 of this account. This account may only guarantee as much loan
28 dollar value as is specifically authorized by the Director of Finance
29 with the concurrence of the Governor. This account shall receive
30 all moneys transferred pursuant to Section 63089.55, and any
31 unencumbered balances transferred to the California Small
32 Business Expansion Fund pursuant to Chapters 11 and 12 of the
33 First Extraordinary Session of the Statutes of 1989, and Chapter
34 1525 of the Statutes of 1990, as of July 1, 1992.

35 (c) The Governor may utilize this authority to prevent business
36 insolvencies and loss of employment in an area affected by a state
37 of emergency within the state and declared a disaster by the
38 President of the United States, by the Administrator of the United
39 States Small Business Administration, or by the United States

1 Secretary of Agriculture, or declared to be in a state of emergency
2 by the Governor of California.

3 63089.55. The Director of Finance, with the approval of the
4 Governor, may transfer moneys in the Special Fund for Economic
5 Uncertainties to the California Small Business Expansion Fund
6 for use as authorized by the bank board, in an amount necessary
7 to make loan guarantees pursuant to this title.

8 63089.56. (a) The funds in the expansion fund shall be paid
9 out to trust fund accounts by the Treasurer on warrants drawn by
10 the Controller and requisitioned by the executive director, pursuant
11 to the purposes of this title. The program manager may transfer
12 funds allocated from the expansion fund to accounts, established
13 solely to receive the funds, in lending institutions designated by
14 the office to act as trustee. The lending institutions so designated
15 shall be approved by the state for the receipt of state deposits.
16 Interest earned on the trust fund accounts in lending institutions
17 may be utilized by the corporations pursuant to the purposes of
18 this title.

19 (b) Except as specified in subdivision (d), the program manager
20 shall allocate and transfer money to trust fund accounts based on
21 performance-based criteria. The criteria shall include, but not be
22 limited to, the following:

23 (1) The default record of the corporation.

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

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

28 (4) The number and amount of surety bonds guaranteed by a
29 corporation.

30 (c) Any decision made by the executive director pursuant to
31 subdivision (b) may be appealed to the director within 15 days of
32 notice of the proposed action. The director may repeal or modify
33 any reallocation and transfer decisions made by the executive
34 director.

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

1 63089.57. Pursuant to this section and any regulations adopted
 2 pursuant to this title, the state has residual interest in the funds
 3 deposited by the state to a trust fund account and to the return on
 4 these funds from investments. On dissolution or suspension of the
 5 corporation, these funds shall be withdrawn by the executive
 6 director from the trust fund account and returned to the expansion
 7 fund or temporarily transferred to another trust fund account. This
 8 provision shall be contained in the trust instructions to the trustee.

9 63089.58. Each trust fund account shall consist of a loan
 10 guarantee account, and, upon recommendation by the program
 11 manager, a bond guarantee account, each of which is a legally
 12 separate account, and the assets of one account shall not be used
 13 to satisfy loan guarantees or other obligations of another
 14 corporation. Not more than one-third of a trust fund account shall
 15 be allocated to a bond guarantee account. A corporation shall not
 16 use trust fund accounts to secure a corporate indebtedness. State
 17 funds deposited in the trust fund accounts, with the exception of
 18 guarantees established pursuant to this title, shall not be subject
 19 to liens or encumbrances of the corporation or its creditors.

20 63089.59. (a) The financial institution that is to act as trustee
 21 of the trust fund shall be designated after review by the program
 22 manager. The corporation shall not receive money on deposit to
 23 support guarantees issued under this title without the approval of
 24 the program manager.

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

30
 31 ~~CHAPTER 6. GUARANTEE PROGRAM~~

32
 33 ~~63089.61.—~~

34
 35 *Article 6. Guarantee Program*

36
 37 63089.61. (a) The Small Business Loan Guarantee Program,
 38 which is hereby continued in existence, shall provide guarantees
 39 to loans offered by financial institutions to small businesses.

1 (b) The Legislature finds and declares that the Small Business
2 Loan Guarantee Program has enabled participating small businesses
3 that do not qualify for conventional business loans or Small
4 Business Administration loans to secure funds to expand their
5 businesses. These small businesses would not have been able to
6 expand their businesses in the absence of the program. The program
7 has also provided valuable technical assistance to small businesses
8 to ensure growth and stability. The study commissioned by former
9 Section 14069.6 of the Corporations Code, as added by Chapter
10 919 of the Statutes of 1997, documented the return on investment
11 of the program and the need for its services. The value of the
12 program has also been recognized by the Governor through
13 proposals contained in the May Revision to the Budget Act of
14 2000 for the 2000–01 fiscal year.

15 63089.62. The program manager, following notification to the
16 bank director, may do all of the following:

- 17 (a) Contract for services entered into pursuant to this title.
- 18 (b) Hold public hearings.
- 19 (c) Act as liaison between corporations, other state and federal
20 agencies, lenders, and the Legislature.
- 21 (d) Process and tabulate on a monthly basis all corporate reports.
- 22 (e) Attend board meetings.
- 23 (f) Attend and participate at corporation meetings. The program
24 manager, or his or her designee, shall be an ex officio, nonvoting
25 representative on the board of directors and loan committees of
26 each corporation. The program manager shall meet with the board
27 of directors of each corporation at least once each fiscal year.
- 28 (g) Assist corporations in applying for public and private funding
29 opportunities, and in obtaining program support from the business
30 community.

31 63089.63. (a) The program manager shall recommend whether
32 the expansion fund and trust fund accounts are to be leveraged,
33 and if so, by how much. Upon the request of the corporation, the
34 program manager's decision may be repealed or modified by a
35 bank board resolution.

36 (b) The amount of guarantee liability outstanding at any one
37 time shall not exceed five times the amount of funds on deposit in
38 the expansion fund plus any receivables due from funds loaned
39 from the expansion fund to another fund in state government as
40 directed by the Department of Finance pursuant to a statute enacted

1 by the Legislature, including each of the trust fund accounts within
2 the trust fund.

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

6 63089.63. (a) The program manager shall recommend whether
7 the expansion fund and trust fund accounts are to be leveraged,
8 and if so, by how much. Upon the request of the corporation, the
9 program manager's decision may be repealed or modified by an
10 office resolution.

11 (b) The amount of guarantee liability outstanding at any one
12 time shall not exceed four times the amount of funds on deposit
13 in the expansion fund plus any receivables due from funds loaned
14 from the expansion fund to another fund in state government as
15 directed by the Department of Finance pursuant to a statute enacted
16 by the Legislature, including each of the trust fund accounts within
17 the trust fund, unless the program manager has permitted a higher
18 leverage ratio for an individual corporation pursuant to subdivision
19 (b) of Section 63089.53.

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

21 63089.64. (a) The corporate guarantee shall be backed by
22 funds on deposit in the corporation's trust fund account, or by
23 receivables due from funds loaned from the corporation's trust
24 fund account to another fund in state government, as directed by
25 the Department of Finance pursuant to a statute enacted by the
26 Legislature.

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

29 (c) The expansion fund and trust fund accounts shall be used
30 exclusively to guarantee obligations and pay the administrative
31 costs of the corporations.

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

35 63089.64. (a) The corporate guarantee shall be backed by
36 funds on deposit in the corporation's trust fund account, or by
37 receivables due from funds loaned from the corporation's trust
38 fund account to another fund in state government, as directed by
39 the Department of Finance pursuant to a statute enacted by the
40 Legislature.

1 (b) Loan guarantees shall be secured by a reserve of at least 25
2 percent to be determined by the executive director, unless the
3 executive director authorizes a higher leverage ratio for an
4 individual corporation pursuant to subdivision (b) of Section
5 63089.53.

6 (c) The expansion fund and trust fund accounts shall be used
7 exclusively to guarantee obligations and pay the administrative
8 costs of the corporations.

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

10 63089.65. A corporation may charge the borrower or financial
11 institution a loan fee on all loans made or guaranteed by the
12 corporation to defray the operating expenses of the corporation.
13 The amount of the fee shall be determined by the program manager.

14 63089.66. (a) It is the intent of the Legislature that the
15 corporations make maximal use of their statutory authority to
16 guarantee loans and surety bonds, including the authority to secure
17 loans with a minimum loan loss reserve of only 20 percent, so that
18 the financing needs of small business may be met as fully as
19 possible within the limits of corporations' loan loss reserves. The
20 office shall report annually to the Legislature on the financial status
21 of the corporations and their portfolio of loans and surety bonds
22 guaranteed pursuant to Section 9795.

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

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

1 63089.66. (a) It is the intent of the Legislature that the
2 corporations make maximal use of their statutory authority to
3 guarantee loans and surety bonds, including the authority to secure
4 loans with a minimum loan loss reserve of only 25 percent, unless
5 the office authorizes a higher leverage ratio for an individual
6 corporation pursuant to subdivision (b) of Section 63089.53, so
7 that the financing needs of small business may be met as fully as
8 possible within the limits of corporations' loan loss reserves. The
9 bank shall report annually to the Legislature on the financial status
10 of the corporations and their portfolio of loans and surety bonds
11 guaranteed pursuant to Section 9795.

12 (b) Any corporation that serves an area declared to be in a state
13 of emergency by the Governor or a disaster area by the President
14 of the United States, the Administrator of the United States Small
15 Business Administration, or the United States Secretary of
16 Agriculture shall increase the portfolio of loan guarantees where
17 the dollar amount of the loan is less than one hundred thousand
18 dollars (\$100,000), so that at least 15 percent of the dollar value
19 of loans guaranteed by the corporation is for those loans. The
20 corporation shall comply with this requirement within one year of
21 the date the emergency or disaster is declared. Upon application
22 of a corporation, the program manager may waive or modify the
23 rule for the corporation if the corporation demonstrates that it made
24 a good faith effort to comply and failed to locate lending
25 institutions in the region that the corporation serves that are willing
26 to make guaranteed loans in that amount.

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

28 63089.67. (a) A corporation shall establish one or more loan
29 committees, each of which shall be composed of five or more
30 persons, a majority of whom shall be experienced in banking and
31 lending operations.

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

34 (1) Determine the feasibility of the proposed transaction. The
35 loan committee shall recommend approval of the application only
36 upon a determination that there is a reasonable chance that the loan
37 will be repaid.

38 (2) On the basis of that determination, recommend to the board
39 of directors any action that the loan committee deems appropriate
40 under the circumstances, or, in the event that approval authority

1 has been delegated to the loan committee by the board of directors,
2 approve or disapprove the loan application.

3 (c) A loan committee shall expeditiously act to accept or reject
4 loan applications.

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

8 63089.68. Unless delegated to its loan committee, the
9 corporation's board of directors, upon a recommendation from its
10 loan committee, shall do all of the following:

11 (a) Emphasize consideration to applications that will increase
12 employment of disadvantaged, disabled, or unemployed persons,
13 or increase employment of youth residing in areas of high youth
14 unemployment and high youth delinquency.

15 (b) Give consideration to applications from traditional and
16 safety-net providers of Medi-Cal services that will promote access
17 to quality medical care for individuals enrolled in Medi-Cal
18 managed health care networks that are contracting with or owned
19 or operated by a county board of supervisors, a county health
20 commission, or a county health authority organized pursuant to
21 Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or
22 14087.9605 of the Welfare and Institutions Code.

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

25 63089.69. (a) Among other priorities, corporations shall give
26 high priority to the issuance of loan guarantees to small business
27 incubators and to businesses that lease space in incubators.

28 (b) For the purposes of this section, "incubator" means a facility
29 that allows new small businesses to increase their probability of
30 success by sharing needed capital equipment, services, and
31 facilities, which may include, but are not limited to, the following:

32 (1) Reception and meeting area.

33 (2) Secretarial services, such as collating, telephone answering,
34 or mailhandling.

35 (3) Accounting and bookkeeping services.

36 (4) Research libraries.

37 (5) Onsite financial and management counseling.

38 (6) Parking.

39 (7) Flexible lease arrangements for flexible space.

40 (8) Computer or word processing facilities.

- 1 (9) Day care facilities.
- 2 (10) Office furniture rentals.
- 3 (11) A graduation policy sometimes requiring firms to leave
- 4 after three to five years in a subsidized, nurturing environment.
- 5 (12) Employee training and placement services.
- 6 (c) Among other priorities, corporations shall give high priority
- 7 to marketing their services to Phase 1 or Phase 2 Small Business
- 8 Innovation Research (SBIR) recipients and providing loan
- 9 guarantees, whenever possible.

10
11 ~~CHAPTER 7. DIRECT LENDING~~

12
13 ~~63089.80.—~~

14
15 *Article 7. Direct Lending*

16
17 ~~63089.80.~~ (a) A corporation may utilize funds for direct
18 lending as long as at least 80 percent of the corporate funds,
19 calculated by dollar amount, and all expansion funds are guaranteed
20 by another public or private financial institution.

21 (b) The amount of funds available for direct lending shall be
22 determined by the program manager. In its capacity as a direct
23 lender, the corporation may sell in the secondary market the
24 guaranteed portion of each loan so as to raise additional funds for
25 direct lending. The office shall issue regulations governing these
26 direct loans, including the maximum amount of these loans.

27 (c) To execute the direct loan programs established in this
28 chapter, the program manager may loan trust funds to a corporation
29 located in a rural area for the express purpose of lending those
30 funds to an identified borrower. The loan authorized by the
31 program manager to the corporation shall be on terms similar to
32 the loan between the corporation and the borrower.

33 (d) The amount of the loan may be in excess of the amount of
34 a loan to any individual borrower, but actual disbursements
35 pursuant to the office loan agreement shall be required to be
36 supported by a loan agreement between the borrower and the
37 corporation in an amount at least equal to the requested
38 disbursement. The loan between the bank and the corporation shall
39 be evidenced by a credit agreement. In the event that any loan
40 between the corporation and borrower is not guaranteed by a

1 governmental agency, the portion of the credit agreement
2 attributable to that loan shall be secured by assignment of any note,
3 executed in favor of the corporation by the borrower to the bank.
4 The terms and conditions of the credit agreement shall be similar
5 to the loan agreement between the corporation and the borrower,
6 which shall be collateralized by the note between the corporation
7 and the borrower.

8 (e) In the absence of fraud on the part of the corporation, the
9 liability of the corporation to repay the loan to the bank is limited
10 to the repayment received by the corporation from the borrower,
11 except in a case where the United States Department of Agriculture
12 requires exposure by the corporation in rule or regulation. The
13 corporation may use trust funds for loan repayment to the office
14 if the corporation has exhausted a loan loss reserve created for this
15 purpose. Interest and principal received by the office from the
16 corporation shall be deposited into the same account from which
17 the funds were originally borrowed.

18 (f) Upon the approval of the program manager, a corporation
19 shall be authorized to borrow trust funds from the bank for the
20 purpose of relending those funds to small businesses. A corporation
21 shall demonstrate to the program manager that it has the capacity
22 to administer a direct loan program, and has procedures in place
23 to limit the default rate for loans to startup businesses. Not more
24 than 25 percent of any trust fund account shall be used for the
25 direct lending established pursuant to this subdivision. A loan to
26 a corporation shall not exceed the amount of funds likely to be
27 lent to small businesses within three months following the loan to
28 the corporation.

29 (g) The maximum loan amount to a small business shall be set
30 by the program manager, but in no case shall it be more than three
31 hundred thousand dollars (\$300,000). In the absence of fraud on
32 the part of the corporation, the repayment obligation pursuant to
33 the loan to the corporation shall be limited to the amount of funds
34 received by the corporation for the loan to the small business and
35 any other funds received from the office that are not disbursed.
36 The corporation shall be authorized to charge a fee to the small
37 business borrower, in an amount determined by the executive
38 director pursuant to regulation. The program provided for in this
39 subdivision shall be available in all geographic areas of the state.

~~CHAPTER 8. DISASTER LOAN GUARANTEES~~

~~63089.90.—~~

Article 8. Disaster Loan Guarantees

63089.90. (a) A corporation may, in an area affected by a state of emergency within the state and declared a disaster by the President of the United States, the Administrator of the United States Small Business Administration, or the United States Secretary of Agriculture, or declared to be in a state of emergency by the Governor of California, provide loan guarantees from funds allocated in Section 63089.55 to small businesses, small farms, nurseries, and agriculture-related enterprises that have suffered actual physical damage or significant economic injury as a result of the disaster.

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

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

~~CHAPTER 9. ENERGY EFFICIENCY LOANS~~

~~63089.93.—~~

Article 9. Energy Efficiency Loans

63089.93. (a) Corporations may grant energy efficiency improvement loans.

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

~~CHAPTER 10. SURETY BONDS~~

~~63089.95.—~~

Article 10. Surety Bonds

63089.95. In furtherance of the purposes set forth in Section 63088.1 of this code and Section 14002 of the Corporations Code, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the bank and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan, unless and until it determines:

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

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

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

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

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

1 63089.96. (a) In addition to the authority granted by Section
2 63089.95, upon approval of the executive director, a corporation
3 may act as guarantor on a surety bond for any small business
4 contractor, including, but not limited to, women, minority, and
5 disabled veteran contractors.

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

11
12 ~~CHAPTER 11. REPORTING~~

13
14 ~~63089.97.—~~

15
16 *Article 11. Reporting*

17
18 63089.97. (a) Except as otherwise provided in this title, the
19 trust fund account shall be used solely to make loans, guarantee
20 bonds, and guarantee loans, approved by the corporation, that meet
21 the loan criteria under this chapter. The state shall not be liable or
22 obligated in any way as a result of the allocation of state moneys
23 to a trust fund account beyond the state moneys that is allocated
24 and deposited in the fund pursuant to this title, and that is not
25 otherwise withdrawn by the state pursuant to this chapter.

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

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

32 63089.98. (a) Annually, not later than January 1 of each year
33 commencing January 1, 2014, the program manager shall prepare
34 a report regarding the loss experience for the expansion fund for
35 loan guarantees, loss reserves, and surety bond guarantees for the
36 preceding fiscal year. At a minimum, the report shall also include
37 data regarding numbers of surety bond and loan guarantees awarded
38 through the expansion fund, including ethnicity and gender data
39 of participating contractors and other entities, and experience of
40 surety insurer participants in the bond guarantee program. The

1 report shall include the information described in Section 63089.66.
 2 The program manager shall post the information on the bank'
 3 Internet Web site and submit notice report to the Governor and
 4 the Legislature when that information ~~is~~ is available on its Internet
 5 Web site.

6 (b) A corporation shall also report to the program manager, or
 7 his or her designated representative, all statistical and other reports
 8 required by this title, responses to audit reports, budget
 9 requirements, invoices submitted for payment by the state, and
 10 information concerning loans made or guaranteed.

11 63089.99. Pursuant to subdivision (f) of Section 8684.2, within
 12 60 days of the conclusion of the period for guaranteeing loans
 13 under any small business disaster loan guarantee program
 14 conducted for a disaster as authorized by Section 8684.2 or 200030,
 15 the bank shall provide a report to the Legislature on loan guarantees
 16 approved and rejected by gender, ethnic group, type of business
 17 and location, and each participating loan institution pursuant to
 18 Section 9795. The bank need only submit one report to comply
 19 with this section and subdivision (f) of Section 8684.2.

20 SEC. 4. No reimbursement is required by this act pursuant to
 21 Section 6 of Article XIII B of the California Constitution because
 22 the only costs that may be incurred by a local agency or school
 23 district will be incurred because this act creates a new crime or
 24 infraction, eliminates a crime or infraction, or changes the penalty
 25 for a crime or infraction, within the meaning of Section 17556 of
 26 the Government Code, or changes the definition of a crime within
 27 the meaning of Section 6 of Article XIII B of the California
 28 Constitution.

29 SEC. 5. *This act is an urgency statute necessary for the*
 30 *immediate preservation of the public peace, health, or safety within*
 31 *the meaning of Article IV of the Constitution and shall go into*
 32 *immediate effect. The facts constituting the necessity are:*

33 *It is necessary that this bill take effect immediately in order to*
 34 *provide, as is necessary to timely implement the Governor's*
 35 *reorganization plan, for a better managed and more efficient*
 36 *transition of small business assistance programs from the soon to*
 37 *be defunct Business, Transportation and Housing Agency to the*
 38 *California Infrastructure and Economic Development Bank within*
 39 *the Governor's Office of Business and Economic Development.*

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