

AMENDED IN SENATE JUNE 18, 2013

AMENDED IN SENATE JUNE 5, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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 amend Section 8684.2 of*, 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, 63089.60, 63089.61, and 63089.62 of, the Government Code, relating to business, 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 (*I-Bank*) and a program manager designated by the executive director of the ~~Infrastructure and Economic Development Bank~~ *I-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 members of the I-Bank’s board of directors, the program manager,~~ the 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:  $\frac{2}{3}$ . 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:

1 CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL  
2 DEVELOPMENT CORPORATIONS

3  
4 Article 1. Introduction  
5

6 14000. This chapter shall be known and may be cited as the  
7 California Small Business Financial Development Corporation  
8 Law.

9 14001. (a) It is the intent of the Legislature in enacting this  
10 chapter to promote the economic development of small businesses  
11 *through the California Small Business Finance Center* by making  
12 available capital, general management assistance, and other  
13 resources, including ~~loan and equity investment~~ *financial* services,  
14 personnel, and business education to small business entrepreneurs,  
15 including women, *veteran*, and minority owned businesses, for  
16 the purpose of promoting the health, safety, and social welfare of  
17 the citizens of California, to eliminate unemployment of the  
18 economically disadvantaged of the state, and to stimulate economic  
19 development, employment, minority group, women, and disabled  
20 persons entrepreneurship.

21 (b) It is the further intent of the Legislature to provide a flexible  
22 means to mobilize and commit all available and potential resources  
23 in the various regions of the state to fulfill these objectives,  
24 including federal, state, and local public resources, and private  
25 debt and equity investment.

26 (c) It is the further intent of the Legislature that corporations  
27 operating pursuant to this law, shall to the maximum extent  
28 feasible, coordinate with other job and business development  
29 efforts within their region directed toward implementing the  
30 purpose of this chapter.

31 (d) It is the further intent of the Legislature to provide expanded  
32 resources allowing participation by small and emerging contractors  
33 in state public works contracts. Increased access to surety bonding  
34 resources will assist in supporting participation by those firms in  
35 public works contracts, and by stimulating increased participation  
36 by small firms, the state will benefit from increased competition  
37 and lower bid costs.

38 14002. If any provision of this chapter or the application thereof  
39 to any person or circumstances is held invalid, this invalidity shall  
40 not affect other provisions or applications of the chapter which

1 can be given effect without the invalid provision or application,  
2 and to this end the provisions of this chapter are severable.

3

4

Article 2. Definitions

5

6 14003. Unless the context otherwise requires, the definitions  
7 in this section shall govern the construction of this chapter.

8 (a) *“Bank” means the California Infrastructure and Economic*  
9 *Development Bank.*

10 ~~(a)~~

11 (b) *“Bank board” means the board of directors of the California*  
12 *Infrastructure and Economic Development Bank.*

13 ~~(b) *“Board” means the California Small Business Board.*~~

14 (c) *“Board of directors” means the board of directors of the*  
15 *corporation.*

16 (d) *“California Small Business Finance Center” means the*  
17 *governmental unit with the administrative responsibility for*  
18 *programs authorized pursuant to Section 63088.5 of the*  
19 *Government Code and this chapter.*

20 ~~(d)~~

21 (e) *“Corporation” means any nonprofit California small business*  
22 *financial development corporation created pursuant to this chapter,*  
23 *or pursuant to Chapter 1 (commencing with Section 32000) of*  
24 *Division 15.5 of the Financial Code.*

25 (f) *“Directives and requirements” means a document adopted*  
26 *by the bank board setting forth policy direction as well as key rules*  
27 *governing a particular subject area.*

28 ~~(e)~~

29 (g) *“Executive director” means the executive director of the*  
30 *Infrastructure and Economic Development Bank.*

31 ~~(f)~~

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

34 ~~(g)~~

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

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

7     (k) “Financial product” means the type of financial assistance  
 8 described in Section 63088.5 of the Government Code.

9     ~~(i)~~  
 10    (l) “Loan committee” means a committee appointed by the board  
 11 of directors of a corporation to determine the course of action on  
 12 a loan application pursuant to Chapter 6 (commencing with Section  
 13 63088) of Division 1 of Title 6.7 of the Government Code.

14    ~~(j)~~  
 15    (m) “Program Manager” means the manager of ~~a specific~~  
 16 ~~program~~ *the California Small Business Finance Center* as  
 17 designated to this title by the executive director of the ~~Infrastructure~~  
 18 ~~and Economic Development Bank~~ *bank*.

19    ~~(k)~~  
 20    (n) “Trust fund” means the money from the expansion fund that  
 21 is held in trust by a financial institution or financial company. A  
 22 trust fund is not a deposit of state funds and is not subject to the  
 23 requirements of Section 16506 of the Government Code.

24    ~~(l)~~  
 25    (o) “Trust fund account” means an account within the trust fund  
 26 that is *either* allocated to a particular ~~small-business financial~~  
 27 ~~development~~ *corporation or shared by multiple corporations* for  
 28 the purpose of paying loan defaults and claims on bond guarantees  
 29 ~~for a specific small-business financial development corporation or~~  
 30 *other financial products and program uses provided in this chapter.*

31  
 32                   Article 3. Program Manager

33  
 34    14004. (a) The program manager shall do all of the following:  
 35    (1) Administer this chapter.  
 36    (2) Make recommendations to the *executive director and the*  
 37 *bank* board on the approval or disapproval of the articles of  
 38 incorporation. This determination shall be based upon the  
 39 following:

1 (A) Review of the articles of incorporation and bylaws of the  
2 corporation to determine whether they contain the provisions  
3 required by this chapter and conform with the ~~regulations~~ *directives*  
4 *and requirements* adopted by the bank board pursuant to this  
5 chapter.

6 (B) A determination as to whether the legislative intent  
7 expressed in Section 14001 shall be served by the proposed  
8 corporation.

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

17 (D) *A determination by the program manager that there is*  
18 *significant need for a new corporation.*

19 (3) Have the accounts of each corporation formed under this  
20 chapter audited as of the close of business on June 30 of each year.  
21 *Material audit exceptions that are not corrected by the corporation*  
22 *within a reasonable period of time may result in the suspension*  
23 *or termination of the corporation pursuant to Section 63089.3 of*  
24 *the Government Code.*

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

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

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

36 (b) The program manager may attend and participate at  
37 corporation meetings. The program manager, or his or her designee,  
38 shall be an ex officio, nonvoting representative on the board of  
39 directors and loan committees of each corporation. The program  
40 manager shall meet *through telecommunication or in person* with

1 the board of directors of each corporation at least once each fiscal  
2 year, commencing January 1, 2014.

3 14004.1. (a) The California Small Business Board is hereby  
4 continued and created as an advisory board to the California  
5 Infrastructure and Economic Development Bank Board, the  
6 executive director, and the program manager. The *California Small*  
7 *Business Board may also advise the Governor and the Small*  
8 *Business Advocate regarding issues and programs affecting*  
9 *California's small business community, including, but not limited*  
10 *to, business innovation and expansion, export finance, state*  
11 *procurement, management and technical assistance, venture*  
12 *capital, and financial assistance.*

13 (b) The California Small Business Board consists of the  
14 following membership:

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

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

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

19 (4) ~~Two~~—A representative from two different corporations  
20 selected by the corporations.

21 (5) Two members appointed by the Governor, one of whom  
22 will serve as chair of the ~~board~~ *California Small Business Board*,  
23 who are actively involved in the California small business  
24 community.

25 (6) Two persons actively involved in the business or agricultural  
26 communities, one appointed by the Speaker of the Assembly and  
27 one appointed by the Senate Committee on Rules.

28 (7) Two Members of the Legislature, or their designees, one  
29 appointed by the Speaker of the Assembly and one appointed by  
30 the Senate Committee on Rules, so long as it does not conflict with  
31 the duties of their duties as legislators.

32 ~~(b)~~

33 (c) The California Small Business Board shall ~~do each of the~~  
34 ~~following~~; *advise the program manager on matters regarding this*  
35 *chapter and Chapter 6 (commencing with Section 63088) of*  
36 *Division 1 of Title 6.7 of the Government Code.*

37 ~~(1) Advise the program manager on matters regarding this part~~  
38 ~~and Chapter 6 (commencing with Section 63088) of Division 1 of~~  
39 ~~Title 6.7 of the Government Code.~~

1     ~~(2) Approve new corporations recommended by the program~~  
2 ~~manager, based on an examination of each of the following:~~  
3     ~~(A) Review of the articles of incorporation and bylaws of the~~  
4 ~~corporation to determine whether they contain the provisions~~  
5 ~~required by this chapter and conform with the regulations adopted~~  
6 ~~pursuant to this part.~~  
7     ~~(B) Determination as to whether the legislative intent expressed~~  
8 ~~in Section 14002 will be served by the proposed corporation.~~  
9     ~~(C) Determination as to whether the responsibility, character,~~  
10 ~~and general fitness of the individuals who will manage the~~  
11 ~~corporation are able to command the confidence of the state and~~  
12 ~~to warrant the belief that the business of the proposed corporation~~  
13 ~~will be honestly and efficiently conducted in accordance with the~~  
14 ~~intent and purpose of this chapter and that they include~~  
15 ~~representatives of the financial and business community, as well~~  
16 ~~as the economically disadvantaged.~~  
17     ~~(e)~~  
18     ~~(d) The public members of the board California Small Business~~  
19 ~~Board, at the discretion of the bank board, may be reimbursed per~~  
20 ~~diem and travel expenses pursuant to state law.~~  
21     ~~14004.2. The bank board shall approve new corporations~~  
22 ~~recommended by the program manager, based on an examination~~  
23 ~~of each of the following:~~  
24     ~~(a) Review of the articles of incorporation and bylaws of the~~  
25 ~~corporation to determine whether they contain the provisions~~  
26 ~~required by this chapter and conform with the directives and~~  
27 ~~requirements adopted by the bank board pursuant to this chapter.~~  
28     ~~(b) Determination as to whether the legislative intent expressed~~  
29 ~~in Section 14001 will be served by the proposed corporation.~~  
30     ~~(c) Determination as to whether the responsibility, character,~~  
31 ~~and general fitness of the individuals who will manage the~~  
32 ~~corporation are able to command the confidence of the state and~~  
33 ~~to warrant the belief that the business of the proposed corporation~~  
34 ~~will be honestly and efficiently conducted in accordance with the~~  
35 ~~intent and purpose of this chapter and that they include~~  
36 ~~representatives of the financial and business community, as well~~  
37 ~~as the economically disadvantaged.~~  
38     ~~(d) Determination of the program manager that there is~~  
39 ~~significant need for a new corporation.~~



Article 4. New Corporations

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

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

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

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

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

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

~~14006. If the board determines that the facts disclosed by the investigation provided by Section 14004 are true and finds that the proposed incorporation meets all the requirements of this chapter, the program manager shall~~ *bank board concurs with the findings of the program manager pursuant to Section 14004, the bank board shall direct the program manager to approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the program manager shall review all amendments to the articles of incorporation to ensure consistency with the purposes of the article this chapter.*

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

(b) ~~If a corporation is suspended, the corporation may~~ *terminated from participation in all programs, in order to continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section*

1 5110) of Division 2 of Title 1 of the Corporations Code), ~~but the~~  
2 *corporation shall amend its articles of incorporation in accordance*  
3 *with Chapter 8 (commencing with Section 5180) of Part 2 of*  
4 *Division 2 of Title 1 to remove the provisions required by Section*  
5 *14005, including an amendment to remove the words “small*  
6 *business financial development corporation,” “small business*  
7 *development corporation,” or “rural or urban development*  
8 *corporation,” as applicable, from the corporate name, and shall*  
9 *no longer be registered with the Secretary of State as a small*  
10 *business financial development corporation. A corporation shall*  
11 *not enjoy any of the benefits of a small business financial*  
12 *development corporation following suspension.*

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

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

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

27 (b) *The bylaws of the corporation shall authorize the removal*  
28 *of officers only by a two-thirds vote of the directors of the*  
29 *corporation.*

30 ~~14010. The program manager may authorize the establishment~~  
31 ~~of a new corporation using a request for proposal process.~~

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

36 14012. For six months following the establishment of a  
37 corporation, commencing upon filing of the articles of  
38 incorporation with the Secretary of State, a corporation shall be  
39 on probation. While on probation, a corporation may be suspended  
40 if suspension is recommended by the program manager *and*

1 *affirmed by the executive director.* This suspension is  
2 nonappealable and not subject to the procedures for suspension  
3 applicable to a corporation not on probation.

4  
5 Article 5. Corporation Board  
6

7 14013. The corporate powers of a corporation shall be exercised  
8 by the board of directors.

9 ~~14014. A request for proposal for selection of a corporation~~  
10 ~~The bank shall enter into a contract with each corporation that~~  
11 ~~shall require the winning bidder to adopt or amend its bylaws to~~  
12 ~~state that:~~

13 (a) A person may not serve on a board of directors who is not  
14 a resident of, or person conducting business in, the *primary* service  
15 area described in the articles of incorporation.

16 (b) ~~Each~~A board of directors shall include representatives from  
17 all of the following:

- 18 (1) The financial community.
- 19 (2) The business community.
- 20 (3) The economically disadvantaged.

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

23 (d) A person who has a financial interest related to a matter over  
24 which the board of *directors* has authority may not make,  
25 participate in making, or in any way attempt to influence that  
26 matter.

27 14015. If any director ceases to meet the qualifications  
28 established in Section 14014, he or she shall immediately vacate  
29 his or her position as a director and ~~such~~ *the* position shall be  
30 deemed vacant.

31 14016. If any vacancy occurs in the elective membership of  
32 the board of directors through death, resignation, or otherwise, the  
33 remaining directors shall elect a person representing the appropriate  
34 category to fill the vacancy for the unexpired term.

35 ~~14017. (a) The California Infrastructure and Economic~~  
36 ~~Development Bank~~The bank board shall *direct the program*  
37 *manager to* establish new small business financial development  
38 corporations pursuant to the ~~procedures otherwise established by~~  
39 ~~this chapter.~~ In approving the request for proposal, the bank shall  
40 *ensure directives and requirements. The directives and*

1 *requirements shall include steps to achieve a goal of ensuring that*  
 2 *small businesses in all areas of the state would have reasonable*  
 3 *access to the financial programs in products authorized by Chapter*  
 4 *6 (commencing with Section 63088) of Division 1 of Title 6.7 of*  
 5 *the Government Code for which they are eligible. Establishment*  
 6 *of a new corporation is dependent upon sufficient funding being*  
 7 *available.*

8 ~~(b) Additional corporations have been proposed in the following~~  
 9 ~~areas:~~

10 ~~(1) San Jose.~~

11 ~~(2) Santa Ana.~~

12 ~~(3) San Fernando Valley.~~

13 ~~(4) Ontario.~~

14 ~~(e) Upon an appropriation in the annual Budget Act for this~~  
 15 ~~purpose, the California Infrastructure and Economic Development~~  
 16 ~~Bank shall approve the issuance of a request for a proposal to~~  
 17 ~~establish a small business financial development corporation in~~  
 18 ~~southeast Los Angeles.~~

19 ~~(d) In furtherance of the purposes of this chapter, up to one-half~~  
 20 ~~of the trust funds may be used to guarantee loans utilized to~~  
 21 ~~establish a Business and Industrial Development Corporation~~  
 22 ~~(BIDCO) under Division 15 (commencing with Section 31000)~~  
 23 ~~of the Financial Code.~~

24  
 25 Article 6. Corporations, Miscellaneous  
 26

27 14018. Every corporation shall provide for, and maintain a  
 28 central staff to perform, all administrative requirements of the  
 29 corporation, including all those functions required of a corporation  
 30 by the ~~director~~ *contract and this chapter.*

31 14019. Reasonable costs incurred by a corporation in the  
 32 creation and maintenance of a central staff shall be paid to the  
 33 corporation from state funds, including a portion of the interest  
 34 earned on the expansion fund and the corporation's trust fund  
 35 account, if the corporation has a trust fund account, otherwise, on  
 36 the expansion fund.

37 14020. A corporation shall report to the program manager, or  
 38 his or her designated representative, all statistical and other reports  
 39 required by this ~~chapter~~, *chapter and Chapter 6 (commencing with*  
 40 *Section 63088) of Division 1 of Title 6.7 of the Government Code,*

1 *including* responses to audit reports, budget requirements, and  
2 other information relating to the establishment, monitoring, and  
3 suspension *or termination* of a corporation.

4 14021. A corporation shall make a report to the program  
5 manager, ~~as of the close of business on June 30 of each year,~~  
6 ~~describing the corporation's activities and any additional~~  
7 ~~information requested by the program manager, on or before~~  
8 ~~August 1 of each year required by Chapter 6 (commencing with~~  
9 ~~Section 63088) of Division 1 of Title 6.7 of the Government Code.~~

10

11 Article 7. Conflict of Interest

12

13 14022. It shall be unlawful for *a member of the bank board or*  
14 *for* the executive director, program manager, or any person who  
15 is an officer, director, *contractor*, or employee of a corporation,  
16 or who is a member of a loan committee, or who is an employee  
17 of the California Infrastructure and Economic Development Bank  
18 to do any of the following:

19 (a) Ask for, consent, or agree to receive, any commission,  
20 emolument, gratuity, money, property, or thing of value for his or  
21 her own use, benefit, or personal advantage, for procuring or  
22 endeavoring to procure for any person, partnership, joint venture,  
23 association, or corporation, any loan, guarantee, financial, or other  
24 assistance from any corporation.

25 (b) Borrow money, property, or to benefit knowingly, directly  
26 or indirectly, from the use of the money, credit, or property of any  
27 corporation.

28 (c) Make, maintain, or attempt to make or maintain, a deposit  
29 of the funds of a corporation with any other corporation or  
30 association on condition, or with the understanding, expressed or  
31 implied, that the corporation or association receiving the deposit  
32 shall pay any money or make a loan or advance, directly or  
33 indirectly, to any person, partnership, joint venture, association,  
34 or corporation, other than to a corporation formed under this  
35 chapter.

36 14023. It shall be unlawful for *a member of the bank board or*  
37 *for* the executive director, program manager, or any person who  
38 is an officer or director of a corporation, or who is an employee  
39 of the California Infrastructure and Economic Development Bank  
40 to purchase or receive, or to be otherwise interested in the purchase

1 or receipt, directly or indirectly, of any asset of a corporation,  
2 without paying to the corporation the fair market value of the asset  
3 at the time of the transaction.

4 14024. Violation of any provision of this article shall constitute  
5 a felony.

6 *SEC. 3. Section 8684.2 of the Government Code is amended*  
7 *to read:*

8 8684.2. (a) It is the intent of the Legislature:

9 (1) To provide the Governor with appropriate emergency powers  
10 in order to enable utilization of available emergency funding to  
11 provide guarantees for interim loans to be made by lending  
12 institutions, in connection with relief provided for those persons  
13 affected by disasters or a state of emergency in affected areas  
14 during periods of disaster relief assistance, for the purpose of  
15 supplying interim financing to enable small businesses to continue  
16 operations pending receipt of federal disaster assistance.

17 (2) That the Governor should utilize this authority to prevent  
18 business insolvencies and loss of employment in areas affected by  
19 these disasters.

20 (b) In addition to the allocations authorized by Section 8683  
21 and the loan guarantee provisions of Section ~~14030.1~~ of the  
22 ~~Corporations Code 63089.90~~, the Governor may allocate funds  
23 made available for the purposes of this chapter, in connection with  
24 relief provided, in affected areas during the period of federal  
25 disaster relief, to the Small Business Expansion Fund for use by  
26 the ~~Office of Small Business California Infrastructure and~~  
27 ~~Economic Development Bank~~, pursuant to Chapter 1 (commencing  
28 with Section 14000) of Part 5 of Division 3 of Title 1 of the  
29 Corporations Code *and Chapter 6 (commencing with Section*  
30 *63088) of Division 1 of Title 6.7 of this code*, to provide guarantees  
31 for low-interest interim loans to be made by lending institutions  
32 for the purpose of providing interim financing to enable small  
33 businesses that have suffered actual physical damage or significant  
34 economic losses, as a result of the disaster or state of emergency  
35 for which funding under this section is made available, to continue  
36 or resume operations pending receipt of loans made or guaranteed  
37 by the federal Small Business Administration. The maximum  
38 amount of any loan guarantee funded under this paragraph shall  
39 *be limited by the directives and requirements and shall* not exceed  
40 two hundred thousand dollars (\$200,000). Each loan guarantee

1 shall not exceed 95 percent of the loan amount, except that a loan  
2 guarantee may be for 100 percent of the loan amount if the  
3 applicant can demonstrate that access to business records pertinent  
4 to the loan application has been precluded by official action  
5 prohibiting necessary reentry into the affected business premises  
6 or that those business records pertinent to the loan application have  
7 been destroyed. The term of the loan shall be determined by the  
8 lending institution providing the loan or shall be made payable on  
9 the date the proceeds of a loan made or guaranteed by the federal  
10 Small Business Administration with respect to the same damage  
11 or loss are made available to the borrower, whichever event first  
12 occurs.

13 (c) Loan guarantees for which the initial 12-month term has  
14 expired and for which an application for disaster assistance funding  
15 from the federal Small Business Administration is still pending  
16 may be extended until the Small Business Administration has  
17 reached a final decision on the application. Applications for interim  
18 loans shall be processed in an expeditious manner. Wherever  
19 possible, lending institutions shall fund nonconstruction loans  
20 within 60 calendar days of application. Loan guarantees for loans  
21 that have been denied funding by the federal Small Business  
22 Administration, may be extended by the financial institution  
23 provided that the loan is for no longer than a maximum of seven  
24 years, if the business demonstrates the ability to repay the loan  
25 with an extended loan term, and a new credit analysis is provided.  
26 All loans extended under this provision shall be repaid in  
27 installments of principal and interest, and be fully amortized over  
28 the term of the loan. Nothing in this section shall preclude the  
29 lender from charging reasonable administrative fees in connection  
30 with the loan.

31 (d) Allocations pursuant to this section shall, for purposes of  
32 all provisions of law, be deemed to be for extraordinary emergency  
33 or disaster response operation costs, as provided in Section 8690.6,  
34 incurred by state employees assigned to work on the financial  
35 development corporation program.

36 (e) ~~The Business, Transportation and Housing Agency~~  
37 *California Infrastructure and Economic Development Bank* may  
38 adopt ~~regulations~~ *directives and requirements* to implement the  
39 loan guarantee program authorized by this section. ~~The agency~~  
40 ~~may adopt these regulations as emergency regulations in~~

1 accordance with Chapter 3.5 (commencing with Section 11340)  
 2 of Part 1 of Division 3, and for purposes of that chapter, including  
 3 Section 11349.6, the adoption of the regulations shall be considered  
 4 by the Office of Administrative Law to be necessary for the  
 5 immediate preservation of the public peace, health and safety, and  
 6 general welfare. Notwithstanding subdivision (e) of Section  
 7 11346.1, the regulations shall be repealed within 180 days after  
 8 their effective date unless the agency complies with Chapter 3.5  
 9 (commencing with Section 11340) of Part 1 of Division 3, as  
 10 provided in subdivision (e) of Section 11346.1.

11 (f) ~~Within 60 days of the conclusion of the period for~~  
 12 ~~guaranteeing loans under any small business disaster loan guarantee~~  
 13 ~~program conducted for a disaster~~ *As long as there are any*  
 14 *outstanding small business disaster loan guarantees*, as authorized  
 15 by Section 8684.2, or Section 14075 of the Corporations Code or  
 16 63089.90, the agency bank shall provide a report to the Legislature  
 17 on loan guarantees approved and rejected by gender, ethnic group,  
 18 type of business and location, and each participating loan  
 19 institution. *The report may be combined with the report required*  
 20 *in Section 63089.98.*

21 ~~SEC. 3.~~

22 *SEC. 4.* Chapter 6 (commencing with Section 63088) is added  
 23 to Division 1 of Title 6.7 of the Government Code, to read:

24  
 25 CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF  
 26 2013

27  
 28 Article 1. Introduction

29  
 30 63088. (a) This chapter shall be known, and may be cited, as  
 31 the Small Business Financial Assistance Act of 2013.

32 (b) *Notwithstanding any other provision of this division, this*  
 33 *chapter shall not apply to any other activities, powers, and duties*  
 34 *of the bank under any of the other chapters of this division.*

35 63088.1. The Legislature finds all of the following:

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



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

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

10  
 11 Article 2. Definitions  
 12

13 63088.3. Unless the context otherwise requires, the definitions  
 14 in this section shall govern the construction of this chapter. *The*  
 15 *definitions provided in this section shall only apply to this chapter*  
 16 *and not to any other chapter of this division.*

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

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

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

22 (c) “Board of directors” means the board of directors of a  
 23 corporation.

24 (d) “California Small Business Finance Center” means the  
 25 governmental unit with the administrative responsibility for  
 26 programs authorized pursuant to Section 63088.5 and this chapter.

27 ~~(e)~~

28 (e) “Corporation” means any nonprofit California small business  
 29 financial development corporation created pursuant to Chapter 1  
 30 (commencing with Section 14000) of Part 5 of Division 3 of Title  
 31 1 of the Corporations Code, or pursuant to Chapter 1 (commencing  
 32 with Section 32000) of Division 15.5 of the Financial Code.

33 (f) “Directives and requirements” means a document adopted  
 34 by the bank board setting forth policy direction as well as key rules  
 35 governing a particular subject area.

36 ~~(g)~~

37 (g) “Employment incentive loan” means a loan to a qualified  
 38 business or to a business located within an enterprise zone, as  
 39 defined in subdivision (d) of Section 7072.

40 ~~(h)~~

- 1 (h) “Executive director” means the executive director of the
- 2 California Infrastructure and Economic Development Bank.
- 3 ~~(g)~~
- 4 (i) “Expansion fund” means the California Small Business
- 5 Expansion Fund.
- 6 ~~(h)~~
- 7 (j) “Financial company” means banking organizations, including
- 8 national banks and trust companies, savings and loan associations,
- 9 certified community development financial institutions,
- 10 ~~microlenders, microbusiness lenders,~~ state insurance companies,
- 11 mutual insurance companies, and other public and private banking,
- 12 lending, retirement, and insurance organizations.
- 13 ~~(i)~~
- 14 (k) “Financial institution” means regulated banking
- 15 organizations, including national banks and trust companies
- 16 authorized to conduct business in California and state-chartered
- 17 commercial banks, trust companies, credit unions, and savings and
- 18 loan associations.
- 19 (l) “Financial product” means the type of financial assistance
- 20 described in Section 63088.5.
- 21 ~~(j)~~
- 22 (m) “Loan committee” means a committee appointed by the
- 23 board of directors of a corporation to determine the course of action
- 24 on a loan application pursuant to this ~~title~~ chapter.
- 25 ~~(k)~~
- 26 (n) “Program manager” means the ~~person~~ manager of the
- 27 California Small Business Finance Center as designated to this
- 28 title by the executive director of the California Infrastructure and
- 29 Economic Development Bank.
- 30 ~~(l) Unless otherwise defined by the executive director by~~
- 31 ~~regulation, “small~~
- 32 (o) “Small business loan” means a loan to a business defined
- 33 as an eligible small business as set forth in Section 121.3-10 of
- 34 Part 121 of Chapter 1 of Title 13 of the Code of Federal
- 35 Regulations, including those businesses organized for agricultural
- 36 purposes that create or retain employment as a result of the loan
- 37 unless otherwise defined by the executive director by regulation.
- 38 ~~From time to time, the executive director Directives and~~
- 39 ~~requirements~~ shall provide guidelines as to the preferred ratio of

1 jobs created or retained to total funds borrowed for guidance to  
2 the corporations.

3 ~~(m)~~

4 (p) “Trust fund” means the moneys from the expansion fund  
5 that is held in trust by a financial institution or financial company.  
6 A trust fund is not a deposit of state funds and is not subject to the  
7 requirements of Section 16506.

8 ~~(n)~~

9 (q) “Trustee” means the lending institution or financial company  
10 selected by the ~~office bank board~~ to hold and invest the trust funds,  
11 *or selected by a predecessor agency to the bank, if applicable.* An  
12 agreement made pursuant to this ~~title chapter~~ and the trustee shall  
13 not be construed to be a deposit of state funds.

14 ~~(o)~~

15 (r) “Trust fund account” means an account within the trust fund  
16 that is *either* allocated to a particular ~~small business financial~~  
17 ~~development~~ corporation *or shared by multiple corporations* for  
18 the purpose of paying loan defaults and claims on bond guarantees  
19 ~~for a specific small business financial development corporation or~~  
20 *other financial products and program uses provided in this chapter.*

21

22 Article 3. ~~Program Purpose~~

23

24 63088.5. (a) There is within the Governor’s Office of Business  
25 and Economic Development the California Infrastructure and  
26 Economic Development Bank, which shall, among other things,  
27 *administer the California Small Business Financial Center that*  
28 *administers programs to assist businesses seeking new capital*  
29 *resources.*

30 (b) Pursuant to this ~~title chapter and Chapter 1 (commencing~~  
31 *with Section 14000) of Part 5 of Title 1 of the Corporations Code,*  
32 *the bank board may continue programs funded by the Small*  
33 *Business Expansion Fund or establish one or more programs*  
34 *administered—regionally under contract with small business*  
35 *financial development corporations. Programs established pursuant*  
36 *to this ~~title chapter or Chapter 1 (commencing with Section 14000)~~*  
37 *of Part 5 of Title 1 of the Corporations Code may include the*  
38 *following types of financial products:*

39 (1) Loan guarantees *and other credit enhancements.*

40 (2) Direct loans *and other debit instruments.*

1 (3) ~~Disaster assistance loans.~~ *loan guarantees.*

2 (4) Surety bond guarantees.

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

6 (d) In carrying out this chapter the *program manager, the*  
7 *executive director, and the bank board* may call on the California  
8 Small Business Board for advice and recommendations. All actions  
9 by the California Small Business Board are advisory ~~except where~~  
10 ~~specifically assigned a duty and authority.~~

11 (e) The *California* Small Business Board may also advise the  
12 ~~Governor, the director,~~ *Governor* and the Small Business Advocate  
13 regarding issues and programs affecting California’s small business  
14 community, including, but not limited to, business innovation and  
15 expansion, export finance, state procurement, management and  
16 technical assistance, venture capital, and financial assistance.

17 63088.6. To implement its responsibilities, a corporation shall  
18 undertake a program *activities* that shall include, but not be limited  
19 to, the following:

20 (a) Outreach to low-resource small businesses and  
21 microbusinesses. The corporations located in rural areas shall give  
22 priority to low-resource farmers and rural and agriculturally related  
23 businesses.

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

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

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

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

37 (f) A program for collecting and liquidating defaulted loans so  
38 that the corporations can qualify to become full-service lenders  
39 under the Small Business Administration. Corporations located in  
40 rural areas shall, in addition, try to qualify for lender status under

1 the United States Department of Agriculture’s Rural Development  
 2 and Farm Services Agency.  
 3 (g) Become an agent for other financial institutions and financial  
 4 companies.

5  
 6 Article 4. Administrative Structure  
 7

8 ~~63089. If regulations have not already been adopted under The~~  
 9 ~~bank board shall adopt directives and requirements concerning~~  
 10 ~~the implementation of this chapter and pursuant to Chapter 1~~  
 11 ~~(commencing with Section 14000) of Part 5 of Division 3 of Title~~  
 12 ~~1 of the Corporations Code. Any regulations adopted pursuant to~~  
 13 ~~Chapter 1 (commencing with Section 14000) of Part 5 of Division~~  
 14 ~~3 of Title 1 of the Corporations Code, as that chapter read on~~  
 15 ~~January 1, 2013, then the bank shall adopt regulations concerning~~  
 16 ~~the implementation of this title, Chapter 1 (commencing with~~  
 17 ~~Section 14000) of Part 5 of Division 3 of Title 1 of the~~  
 18 ~~Corporations Code, and direct lending as emergency regulations~~  
 19 ~~in accordance with Chapter 3.5 (commencing with Section 11340)~~  
 20 ~~of Part 1 of Division 3 of Title 2. The adoption of these regulations~~  
 21 ~~is an emergency and necessary for the immediate preservation of~~  
 22 ~~the public peace, health and safety, or general welfare within the~~  
 23 ~~meaning of subdivision (b) of Section 11346.1. Notwithstanding~~  
 24 ~~subdivision (c) of Section 11346.1, the regulations shall not remain~~  
 25 ~~in effect for more than 180 days unless the office complies with~~  
 26 ~~all provisions of Chapter 3.5 (commencing with Section 11340)~~  
 27 ~~of Part 1 of Division 3 of Title 2, as required by subdivision (c) of~~  
 28 ~~Section 11346.1. This section also applies to any direct loan~~  
 29 ~~program administered by the bank shall remain in effect until the~~  
 30 ~~bank board adopts directives and requirements relating to the~~  
 31 ~~specific policy or activity, but in no case beyond June 1, 2015.~~

32 63089.1. The program manager *acting under the guidance of*  
 33 *the executive director* shall do all of the following:

- 34 (a) Administer this chapter.
- 35 (b) ~~Contract for services~~ *Enter into a contract between the bank*  
 36 *and each corporation for services to be provided by the*  
 37 *corporations for one or more programs* under this chapter and  
 38 Chapter 1 (commencing with Section 14000) of Part 5 of Division  
 39 3 of Title 1 of the Corporations Code.

- 1 (c) In accordance with available resources, ~~use~~ *allow the use of*  
 2 branch offices for the purposes of making these programs under  
 3 this chapter accessible to all areas of the state.
- 4 (d) Require each corporation to submit an annual written plan  
 5 of operation.
- 6 (e) Authorize the distribution, transfer, and withholding of  
 7 moneys in the expansion fund and trust funds.
- 8 (f) Authorize the investment of expansion and trust fund moneys.
- 9 (g) Oversee the operations of one or more programs authorized  
 10 pursuant to this ~~title~~ *chapter*.
- 11 ~~(h) Approve, suspend, or terminate a corporation's ability to~~  
 12 ~~participate in a program under this title.~~
- 13 (h) *Act as liaison between corporations, other state and federal*  
 14 *agencies, lenders, and the Legislature.*
- 15 (i) *Act as secretary to the California Small Business Board, and*  
 16 *attend meetings of the California Small Business Board and the*  
 17 *bank board.*
- 18 (j) *Attend and participate at corporation meetings. The program*  
 19 *manager or his or her designee shall be an ex officio, nonvoting*  
 20 *representative on the board of directors and loan committees of*  
 21 *each corporation. The program manager shall confer with the*  
 22 *board of directors of each corporation as appropriate and*  
 23 *necessary to carry out his or her duties, but in no case shall the*  
 24 *program manager confer less than once each fiscal year.*
- 25 (k) *Assist corporations in applying for public and private*  
 26 *funding opportunities, and in obtaining program support from the*  
 27 *business community.*
- 28 63089.2. The use of state funds paid out to the trust fund and  
 29 the return on those funds from investment pursuant to Section  
 30 63089.56 is conditional pursuant to Sections 63089.3 and 63089.57.  
 31 Each corporation shall enter into a written signed agreement with  
 32 ~~the state at the beginning of each fiscal year~~ *bank to provide*  
 33 *program management services for one or more programs*  
 34 *authorized under this chapter and Chapter 1 (commencing with*  
 35 *Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations*  
 36 *Code. Agreements with the corporations entered into pursuant to*  
 37 *this chapter are exempt from the requirements of Sections 10295,*  
 38 *and 10335 to 10381, inclusive, of the Public Contracts Code. The*  
 39 *agreement shall, at a minimum, govern the activities in which the*  
 40 ~~corporations engage~~ *corporation engages, the investment of state*

1 funds and its return, and the budgeted administrative expenses the  
2 corporations may incur. In the event the ~~state program manager~~  
3 and corporation do not reach an agreement, or the ~~state program~~  
4 ~~manager~~ finds the corporation has violated the terms of an active  
5 agreement, the ~~state program manager~~ may take any action under  
6 Section 63089.3 or 63089.57, or any other action as appropriate.  
7 In the event the ~~state program manager~~ and corporation do not  
8 reach agreement or the ~~state program manager~~ finds the  
9 corporation has violated the terms of an active agreement, the  
10 corporation shall have no authority to withdraw or encumber the  
11 ~~moneys in the~~ trust fund or the return of those funds by the  
12 issuance of guarantees, ~~commitments for other financial products,~~  
13 ~~or~~ by incurring expenses against the fund and its return in any  
14 manner whatsoever, and the ~~state program manager~~ may take any  
15 action under Section 63089.3 or 63089.57, or any other action as  
16 appropriate. Any guarantee or other encumbrance made by the  
17 corporation in violation of this section shall be null and void, and  
18 ~~neither the state nor, the bank, the expansion fund, or the trust fund~~  
19 will *not* be liable therefor.

20 ~~63089.3. (a) Upon a finding by the program manager that~~  
21 ~~irreparable harm may occur if guarantee or direct loan authority~~  
22 ~~is not temporarily withdrawn from a corporation, the program~~  
23 ~~manager may temporarily withdraw guarantee or direct loan, or~~  
24 ~~both, authority from a corporation. The notice of temporary~~  
25 ~~withdrawal sent to the corporation shall specify the reasons for the~~  
26 ~~action.~~

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

32 ~~(2) The program manager shall make one of the determinations~~  
33 ~~specified in subdivision (c) within 30 days of the effective date of~~  
34 ~~the temporary withdrawal, unless the corporation and the executive~~  
35 ~~director mutually agree to an extension. The corporation shall have~~  
36 ~~the opportunity to submit written material to the program manager~~  
37 ~~addressing the items stated in the temporary withdrawal notice. If~~  
38 ~~the program manager does not make any determinations within~~  
39 ~~30 days, the temporary withdrawal shall be negated. The~~  
40 ~~corporation’s yearly contract shall remain in effect during the~~

1 period of temporary withdrawal, and the corporation shall continue  
2 to receive reimbursement of necessary operating expenses.

3 ~~(b) Failure of a corporation to substantially comply with the~~  
4 ~~following may result in the suspension of a corporation:~~

5 ~~(1) Regulations implementing the California Small Business~~  
6 ~~Development Corporation Law (Chapter 1 (commencing with~~  
7 ~~Section 14000) of Part 5 of Division 3 of Title 1 of the~~  
8 ~~Corporations Code):~~

9 ~~(2) Fiscal and portfolio requirements, as contained in the fiscal~~  
10 ~~and portfolio audits specified in Section 14004 of the Corporations~~  
11 ~~Code.~~

12 ~~(3) Milestones and scope of work as contained in the annual~~  
13 ~~contract between the corporation and the office.~~

14 ~~(e) Pursuant to subdivision (a) or (b), the program manager may~~  
15 ~~do the following:~~

16 ~~(1) Terminate the temporary withdrawal.~~

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

19 ~~(3) Temporarily withdraw, or continue to withdraw, guarantee~~  
20 ~~authority until a specified time. This determination by the program~~  
21 ~~manager shall require a finding that the corporation has failed to~~  
22 ~~comply with the California Small Business Development~~  
23 ~~Corporation Law (Chapter 1 (commencing with Section 14000)~~  
24 ~~of Part 5 of Division 3 of Title 1 of the Corporations Code).~~

25 ~~(4) Suspend the corporation.~~

26 ~~(5) Suspend the corporation, with suspension stayed until the~~  
27 ~~corporation provides a remedial action plan to the executive~~  
28 ~~director, and the executive director decides whether to repeal or~~  
29 ~~implement the stayed suspension.~~

30 ~~(d) The determinations contained in paragraphs (4) and (5) of~~  
31 ~~subdivision (e) require a finding that irreparable harm will occur~~  
32 ~~unless the corporation is suspended.~~

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

37 ~~(f) Upon suspension of a corporation, the program manager~~  
38 ~~shall transfer all funds, whether encumbered or not, in the trust~~  
39 ~~fund account of the suspended corporation into either the expansion~~  
40 ~~fund or temporarily transfer the funds to another corporation.~~



1 ~~(g) If the program manager decides to take any action against~~  
2 ~~the corporation pursuant to paragraphs (2) to (5), inclusive, of~~  
3 ~~subdivision (e), the corporation shall be notified of the action 10~~  
4 ~~days before the effective date of the action. The corporation shall~~  
5 ~~have the right to appeal the program manager's decision to the~~  
6 ~~director of the California Small Business Board within that 10-day~~  
7 ~~period by sending notice to the executive director. Once the~~  
8 ~~executive director receives notice that the action is being appealed,~~  
9 ~~the program manager's action shall be stayed except for temporary~~  
10 ~~withdrawal of guarantee authority. Upon receipt of the notice from~~  
11 ~~the corporation, the executive director shall notify the small~~  
12 ~~business board within three working days. The California Small~~  
13 ~~Business Board shall consider and make a final determination on~~  
14 ~~the appeal within 30 days of receiving notice. The small business~~  
15 ~~board may elect to take any of the actions listed in subdivision (h).~~  
16 ~~The temporary withdrawal of corporation guarantee authority shall~~  
17 ~~remain in effect until the executive director small business board~~  
18 ~~issues a decision.~~

19 ~~(h) Pursuant to subdivision (g), the small business board may~~  
20 ~~do any of the following:~~

- 21 ~~(1) Terminate the action taken by the program manager.~~
- 22 ~~(2) Modify the action taken by the program manager subject to~~  
23 ~~the adoption by the corporation of a specified remedial action plan.~~
- 24 ~~(3) Affirm the action taken by the program manager.~~

25 ~~(i) Following suspension, the corporation may continue its~~  
26 ~~existence as a nonprofit corporation pursuant to the Nonprofit~~  
27 ~~Public Benefit Corporation Law (Part 2 (commencing with Section~~  
28 ~~5110) of Division 2 of Title 1 of the Corporations Code), but shall~~  
29 ~~no longer be registered with the Secretary of State as a small~~  
30 ~~business financial development corporation. A corporation shall~~  
31 ~~not enjoy any of the benefits of a small business financial~~  
32 ~~development corporation following suspension.~~

33 ~~(j) The funds in the trust fund account of a corporation under~~  
34 ~~temporary withdrawal shall be transferred to the expansion fund.~~  
35 ~~Upon termination of the temporary withdrawal, unless the~~  
36 ~~termination is caused by suspension, the funds of the corporation~~  
37 ~~that were transferred to the expansion fund from the trust fund~~  
38 ~~account shall be returned to the corporation's trust fund account,~~  
39 ~~notwithstanding Section 63089.53. While the funds of a~~  
40 ~~corporation's trust fund account reside in the expansion fund, use~~

1 of the principal on the funds shall be governed by the implementing  
2 regulations specifying use of funds in the expansion fund. Interest  
3 on the funds moved from a corporation's trust fund account upon  
4 temporary withdrawal shall be limited to payment of the  
5 corporation's administrative expenses, as contained in the contract  
6 between the corporation and the state pursuant to this title.

7 63089.3. (a) *The program manager may temporarily suspend*  
8 *the guarantee authority or other financial product authority of a*  
9 *corporation if in the determination of the program manager a*  
10 *corporation has substantially failed to comply with any of the*  
11 *requirements in subdivision (b) causing irreparable harm to the*  
12 *program, the corporation's guarantee or any other financial*  
13 *products authority. The notice of temporary suspension sent to the*  
14 *corporation shall specify the reasons for the action.*

15 (1) *As used in this section, "guarantee or any other financial*  
16 *products authority" means the authority to make or guarantee or*  
17 *administer any other financial products that encumber funds in a*  
18 *trust fund account, any account or subaccount under the direct*  
19 *control of the bank or other state entity, or the expansion fund.*

20 (2) *The program manager shall make one of the determinations*  
21 *specified in subdivision (b) within 30 days of the effective date of*  
22 *the temporary suspension, unless the corporation and the program*  
23 *manager mutually agree to an extension. The corporation shall*  
24 *have the opportunity to submit written material to the program*  
25 *manager addressing the items stated in the temporary suspension*  
26 *notice. If the program manager does not make any determinations*  
27 *within 30 days, the temporary suspension shall be reversed. The*  
28 *corporation's yearly contract shall remain in effect during the*  
29 *period of temporary suspension, and the corporation shall continue*  
30 *to receive reimbursement of necessary operating expenses.*

31 (b) *Failure of a corporation to substantially comply with the*  
32 *following may result in the suspension or termination of a*  
33 *corporation:*

34 (1) *Directives and requirements adopted by the bank board, for*  
35 *implementing the California Small Business Development*  
36 *Corporation Law (Chapter 1 (commencing with Section 14000)*  
37 *of Part 5 of Division 3 of Title 1 of the Corporations Code) and*  
38 *this chapter.*

39 (2) *Failure to meet any fiscal, audit, or portfolio requirement,*  
40 *as contained in the directives and requirements.*

1     (3) *Failure to significantly meet any milestones or scope of work*  
2 *as contained in the performance contract between the corporation*  
3 *and the bank.*

4     (4) *Any other action in the opinion of the program manager*  
5 *that causes irreparable harm to the corporation, the expansion*  
6 *fund, or the trust fund.*

7     (c) *Pursuant to subdivisions (a) and (b), the program manager*  
8 *may take any of the following actions:*

9     (1) *Terminate the temporary suspension.*

10    (2) *Terminate the temporary suspension subject to the*  
11 *corporation's adoption of a specified remedial action plan*  
12 *approved by the program manager.*

13    (3) *Continue the temporary suspension of guarantee and other*  
14 *financial product authority until a specified time.*

15    (4) *Terminate the corporation's authority to administer specified*  
16 *loan guarantees or other financial products.*

17    (5) *Terminate the corporation's authority to remain a*  
18 *corporation authorized pursuant to the California Small Business*  
19 *Development Corporation Law (Chapter 1 (commencing with*  
20 *section 14000) of Part 5 of Division 3 of Title 1 of the Corporations*  
21 *Code) and this chapter.*

22    (d) *The program manager shall make one of the determinations*  
23 *specified in subdivision (c) within 30 days of the effective date of*  
24 *the temporary suspension notice, unless the corporation and the*  
25 *program manager mutually agree to an extension. If the program*  
26 *manager does not make any determinations within 30 days, the*  
27 *temporary suspension shall be negated. The corporation's yearly*  
28 *contract shall remain in effect during the period of temporary*  
29 *suspension, and the corporation shall continue to receive*  
30 *reimbursement of necessary operating expenses.*

31    (e) *The actions contained in paragraphs (3) to (5), inclusive,*  
32 *of subdivision (c) require a finding that irreparable harm will*  
33 *occur unless the action is taken, and a finding that the corporation*  
34 *has failed to comply with the California Small Business*  
35 *Development Corporation Law (Chapter 1 (commencing with*  
36 *Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations*  
37 *Code) and this chapter.*

38    (f) *In considering any action specified in subdivision (c), the*  
39 *program manager shall consider, along with other criteria as*

1 specified in subdivision (b), the corporation's history and past  
2 performance.

3 (g) If the program manager decides to take any action pursuant  
4 to paragraphs (3) to (5), inclusive, of subdivision (c), the program  
5 manager shall transfer all funds subject to the action, whether  
6 encumbered or not, in the trust fund account of the suspended or  
7 terminated corporation into either the expansion fund, or either  
8 permanently or temporarily transfer the funds to the trust fund  
9 account of another corporation, unless an appeal is received from  
10 the corporation pursuant to subdivision (h).

11 (h) If the program manager intends to transfer funds as specified  
12 in paragraph (g), the corporation shall be notified of the funds  
13 transfer 10 days before the effective date of the transfer. The  
14 corporation shall have the right to appeal the program manager's  
15 decision to the executive director within that 10-day period by  
16 sending written notice to the executive director. Once the executive  
17 director receives notice that the action is being appealed, the  
18 program manager's funds transfer shall be stayed.

19 (i) The corporation shall have the opportunity to submit written  
20 material to the executive director addressing the actions and  
21 findings stated in the program manager's determination. The  
22 executive director shall consider and make a final determination  
23 on the appeal within 30 days of receiving the appeal notice from  
24 the corporation, or such longer time as agreed to by the executive  
25 director and the corporation. The executive director may elect to  
26 take any of the actions listed in subdivision (j). The action of the  
27 program manager shall remain in effect until the executive director  
28 issues a decision. The corporation's performance contract shall  
29 remain in effect during the appeal period, and the corporation  
30 shall continue to receive reimbursement of necessary operating  
31 expenses.

32 (j) Pursuant to subdivision (i), the executive director may  
33 independently take action or seek the advice and recommendation  
34 of the small business board prior to taking any of the following  
35 actions:

36 (1) Rescind the action taken by the program manager.

37 (2) Modify the action taken by the program manager subject to  
38 the adoption by the corporation of a specified remedial action plan  
39 approved by the executive director.

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

1     (k) Following the executive director's concurrence any action  
2 pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the  
3 program manager shall transfer all funds subject to the action,  
4 whether encumbered or not, in the trust fund account of the  
5 suspended or terminated corporation into either the expansion  
6 fund, or either permanently or temporarily transfer the funds to  
7 the trust fund account of another corporation. The corporation  
8 shall be notified of the funds transfer 10 days before the effective  
9 date of the transfer. The corporation shall have the right to appeal  
10 the executive director's decision to the bank board within that  
11 10-day period by sending written notice to the chair of the bank  
12 board. Once the chair of the bank board receives notice that the  
13 executive director's determination is being appealed, the program  
14 manager's funds transfer shall be stayed.

15     (l) The corporation shall have the opportunity to submit written  
16 material to the bank board addressing the actions and findings  
17 stated in the executive director's determination. The bank board  
18 shall consider and make a final determination on the appeal within  
19 30 days of receiving the appeal notice from the corporation, or  
20 such longer time as agreed to by the chair of the bank board and  
21 the corporation. The action of the executive director shall remain  
22 in effect until the bank board issues a decision. The corporation's  
23 performance contract shall remain in effect during the appeal  
24 period, and the corporation shall continue to receive  
25 reimbursement of necessary operating expenses.

26     (m) Pursuant to subdivision (l), the bank board may  
27 independently take action or seek the advice and recommendation  
28 of the California Small Business Board prior to taking any of the  
29 following actions:

30     (1) Rescind the action taken by the executive director.

31     (2) Modify the action taken by the executive director subject to  
32 the adoption by the corporation of a specified remedial action plan  
33 acceptable to the executive director.

34     (3) Affirm the action taken by the executive director. The  
35 decision of the bank board is final.

36     (n) Following the bank board's concurrence with the executive  
37 director's determination consistent with any action pursuant to  
38 paragraphs (3) to (5), inclusive, of subdivision (c), transfer all  
39 funds subject to the action, whether encumbered or not, in the trust  
40 fund account of the suspended or terminated corporation into

1 *either the expansion fund, or either permanently or temporarily*  
2 *transfer the funds to the trust fund account of another corporation.*  
3 *The corporation shall be notified of the funds transfer 10 days*  
4 *before the effective date of the transfer.*

5 *(o) Notwithstanding Section 63089.53, in the event a final*  
6 *determination was made by the program manager, the executive*  
7 *director or the bank board, whichever is applicable, to temporarily*  
8 *transfer the funds of the corporation to the expansion fund or to*  
9 *the trust fund account of another corporation, upon compliance*  
10 *with all requirements of that final determination as determined by*  
11 *the executive director, the transferred funds shall be returned to*  
12 *the corporations trust fund account. 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 *directives and requirements specifying use of funds in the*  
16 *expansion fund. Interest on the funds moved from a corporation's*  
17 *trust fund account upon temporary withdrawal shall be limited to*  
18 *payment of the corporation's administrative expenses, as contained*  
19 *in the contract between the corporation and the bank pursuant to*  
20 *this chapter.*

21 *(p) Following a final determination of termination of all*  
22 *activities of an active corporation, in order to continue its existence*  
23 *as a nonprofit corporation pursuant to the Nonprofit Public Benefit*  
24 *Corporation Law (Part 2 (commencing with Section 5110) of*  
25 *Division 2 of Title 1 of the Corporations Code), the corporation*  
26 *must amend its articles of incorporation in accordance with*  
27 *Chapter 8 of Part 2 of Division 2 of the Corporations Code to*  
28 *remove the provisions required by Section 14005 of the*  
29 *Corporations Code, including an amendment to remove the words*  
30 *"small business financial development corporation," "small*  
31 *business development corporation," or "rural or urban*  
32 *development corporation," as applicable, from the corporate name*  
33 *and shall no longer be registered with the Secretary of State as a*  
34 *small business financial development corporation. A corporation*  
35 *shall not enjoy any of the benefits of a small business financial*  
36 *development corporation following suspension.*

37 *63089.4. The bank is authorized to:*

38 *(a) Approve new corporations recommended by the program*  
39 *manager.*

1 (b) Enter into contracts with corporations for program  
2 management services.

3 (c) Select a financial institution or financial company to act as  
4 trustee of the trust fund as specified in this chapter.

5 (d) Invest expansion fund and trust fund moneys as specified in  
6 this chapter.

7 (e) Affirm, modify, or rescind the determinations of the program  
8 manager and the executive director as specified in this chapter.

9 (f) Adopt directives and requirements as specified in this  
10 chapter.

11 (g) Authorize new financial product programs pursuant to the  
12 provisions of this chapter.

13

14 Article 5. Expansion Fund *and Trust Fund*

15

16 63089.5. (a) There is hereby continued in existence in the State  
17 Treasury the California Small Business Expansion Fund. All or a  
18 portion of the funds in the expansion fund may be paid out, with  
19 the approval of the Department of Finance, to a ~~lending~~ *financial*  
20 institution or financial company that will *establish a trust fund*  
21 *and act as trustee of the funds.*

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

27 (b) *The expansion fund and the trust fund shall be used for the*  
28 *following purposes:*

29 (1) *To pay defaulted loan guarantee or surety bond losses, or*  
30 *other financial product defaults or losses.*

31 (2) *To fund direct loans and other debt instruments.*

32 (3) *To pay administrative costs of corporations.*

33 (4) *To pay state support and administrative costs.*

34 (5) *To pay those costs necessary to protect a real property*  
35 *interest in a financial product default.*

36 (c) The expansion fund and trust fund are created solely for the  
37 purpose of receiving state, federal, or local government moneys,  
38 and other public or private ~~money~~ *moneys* to make loans,  
39 guarantees, and ~~restricted investments~~ *other financial products*  
40 pursuant to this ~~title~~ *chapter.*

1 (d) One or more accounts *in the expansion fund and the trust*  
2 *fund* may be created by the program manager for corporations  
3 participating in one or more programs authorized under this ~~title~~  
4 *chapter*. Each account is a legally separate account, and shall not  
5 be used to satisfy loan or surety bond guarantees or other *financial*  
6 *product* obligations of another corporation *except when the*  
7 *expansion fund or trust fund is shared by multiple corporations*.

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

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

18 63089.5. (a) *There is hereby continued in existence in the State*  
19 *Treasury the California Small Business Expansion Fund. All or a*  
20 *portion of the funds in the expansion fund may be paid out, with*  
21 *the approval of the Department of Finance, to a financial*  
22 *institution or financial company that will establish a trust fund*  
23 *and act as trustee of the funds.*

24 (b) *The expansion fund and the trust fund shall be used for the*  
25 *following purposes:*

26 (1) *To pay defaulted loan guarantee or surety bond losses, or*  
27 *other financial product defaults or losses.*

28 (2) *To fund direct loans and other debt instruments.*

29 (3) *To pay administrative costs of corporations.*

30 (4) *To pay state support and administrative costs.*

31 (5) *To pay those costs necessary to protect a real property*  
32 *interest in a financial product default.*

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 moneys to make loans, guarantees,*  
36 *and other financial products pursuant to this chapter.*

37 (d) *One or more accounts in the expansion fund and the trust*  
38 *fund may be created by the program manager for corporations*  
39 *participating in one or more programs authorized under this*  
40 *chapter. Each account is a legally separate account, and shall not*



1 *be used to satisfy loan guarantees or other financial product*  
2 *obligations of another corporation except when the expansion fund*  
3 *or trust fund is shared by multiple corporations.*

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

11 (f) *This section shall become operative on January 1, 2018.*

12 63089.51. (a) All money deposited in the expansion fund is  
13 hereby continuously appropriated, without regard to fiscal years,  
14 for the purposes of this ~~title~~ *chapter*.

15 (b) Except as specified in subdivision ~~(a) of Section 63089.53,~~  
16 *(b) of Section 63089.54,* the state *or the bank* shall not be liable  
17 or obligated in any way beyond the state money that is allocated  
18 in the expansion fund from moneys from the General Fund ~~moneys~~  
19 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~~ *executive director,*  
22 may request the trustee to invest those ~~funds~~ *moneys* in the trust  
23 fund in any of the securities described in Section 16430. Returns  
24 from these investments shall be deposited in the expansion fund  
25 and shall be used to support the programs of this ~~title~~ *chapter*.

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~~ *approved by the bank board.*

30 63089.53. (a) The state *Except as specified in subdivision (b)*  
31 *of Section 63089.54, the state or the bank* shall not be liable or  
32 obligated in any way beyond the money that is allocated and  
33 deposited in the ~~corporation's trust fund account~~ *accounts.*

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

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

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

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

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

23 (b) Any lending institution that issues a ~~low-interest~~ loan that  
24 is guaranteed by resources in this account shall be fully reimbursed  
25 for the guaranteed portion of principal and interest that result from  
26 a loan or loans that are in default. If there are insufficient funds in  
27 this account to fully satisfy all claimants, the full faith of the  
28 resources in the General Fund are pledged to satisfy the obligations  
29 of this account. This account may only guarantee as much loan  
30 dollar value as is specifically authorized by the Director of Finance  
31 with the concurrence of the Governor. This account shall receive  
32 all moneys transferred pursuant to Section 63089.55, and any  
33 unencumbered balances transferred to the California Small  
34 Business Expansion Fund pursuant to Chapters 11 and 12 of the  
35 First Extraordinary Session of the Statutes of 1989, and Chapter  
36 1525 of the Statutes of 1990, as of July 1, 1992.

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

1 States Small Business Administration, or by the United States  
2 Secretary of Agriculture, or declared to be in a state of emergency  
3 by the Governor of California.

4 63089.55. The Director of Finance, with the approval of the  
5 Governor, may transfer moneys in the Special Fund for Economic  
6 Uncertainties to the California Small Business Expansion Fund  
7 for use as authorized by the bank board, in an amount necessary  
8 to make loan guarantees pursuant to ~~this title~~ *Section 8684.2 and*  
9 *this chapter.*

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

24 (b) *The program manager may reallocate funds held within a*  
25 *corporation's trust fund account.*

26 (1) *The program manager shall reallocate funds based on which*  
27 *corporation is most effectively using its guarantee funds. If funds*  
28 *are withdrawn from a less effective corporation as part of a*  
29 *reallocation, the program manager shall make that withdrawal*  
30 *only after giving consideration to that corporation's fiscal*  
31 *solvency, its ability to honor loan guarantee defaults, and its ability*  
32 *to maintain a viable presence within the region it serves.*  
33 *Reallocation of funds shall occur no more frequently than once*  
34 *per fiscal year. Any decision made by the program manager*  
35 *pursuant to this subdivision may be appealed to the executive*  
36 *director unless otherwise specified. The executive director has the*  
37 *authority to repeal or modify any decision to reallocate funds.*

38 (2) *The program manager may authorize a corporation to*  
39 *exceed the leverage ratio specified in Section 63089.5 or*  
40 *subdivision (a) of Section 63089.62, pending the annual*

1 *reallocation of funds pursuant to this section. However, no*  
2 *corporation shall be permitted to exceed an outstanding guarantee*  
3 *liability of more than specified in subdivision (a) of Section*  
4 *63089.62 after a reallocation is made.*

5 ~~(b)~~

6 *(c) Except as specified in subdivision—(d), (e), the program*  
7 *manager shall allocate and transfer money to trust fund accounts*  
8 *based on performance-based criteria. The criteria shall include,*  
9 *but not be limited to, the following:*

10 (1) The default record of the corporation.

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

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

15 (4) The number and amount of surety bonds guaranteed by a  
16 corporation.

17 (5) *The number and amount of other financial product activity.*

18 (6) *The number of jobs created or retained due to the financial*  
19 *product activity.*

20 ~~(e) Any decision made by the executive director pursuant to~~  
21 ~~subdivision (b) may be appealed to the director within 15 days of~~  
22 ~~notice of the proposed action. The director may repeal or modify~~  
23 ~~any reallocation and transfer decisions made by the executive~~  
24 ~~director.~~

25 (d) The criteria specified in subdivision ~~(b)~~ (c) shall not apply  
26 to a corporation that has been in existence for five years or less.  
27 If not already adopted, the ~~office bank board~~ shall develop  
28 ~~regulations directives and requirements~~ specifying the basis for  
29 transferring account funds to those corporations that have been in  
30 existence for five years or less.

31 (e) *Any decision made by the program manager pursuant to*  
32 *this section may be appealed to the executive director within 15*  
33 *days of notice of the proposed action. The executive director may*  
34 *repeal or modify any reallocation and transfer decisions made by*  
35 *the program manager. The appealing corporation shall submit,*  
36 *in writing, the specific area or areas of appeal and set forth any*  
37 *recommendation to the executive director for consideration. The*  
38 *executive director shall render a final decision within five business*  
39 *days of receiving the written appeal.*

1 (f) Any decision made by the executive director shall be  
2 appealable in writing to the bank board within 15 days of the  
3 executive director's decision, or such longer period as agreed to  
4 between the executive director and the corporation. The bank  
5 board shall make a final reallocation or transfer decision within  
6 30 days of receiving the appeal, or such longer period agreed to  
7 between the executive director and the corporation.

8 (g) In the event of an appeal under this section, all allocations  
9 or transfers of money to trust fund accounts shall be on hold  
10 pending resolution by the executive director or bank board, as  
11 applicable.

12 ~~63089.57. Pursuant to this section and any regulations chapter~~  
13 ~~and any directives and requirements adopted pursuant to this title~~  
14 ~~chapter, the state has residual interest in the funds deposited by~~  
15 ~~the state to a trust fund account and to the return on these funds~~  
16 ~~from investments. On dissolution or suspension dissolution,~~  
17 ~~suspension, or termination of the corporation, these funds shall be~~  
18 ~~withdrawn by the executive director program manager from the~~  
19 ~~trust fund account and returned to the expansion fund or~~  
20 ~~temporarily transferred to another trust fund account. This~~  
21 ~~provision shall be contained in the trust instructions to the trustee.~~

22 63089.58. Each trust fund account shall consist of a loan  
23 guarantee account, and, upon recommendation by the program  
24 manager, a bond guarantee account *or other financial product*  
25 *account*, each of which is a legally separate account, and the assets  
26 of one account shall not be used to satisfy loan guarantees or other  
27 *financial product* obligations of another corporation. ~~Not more~~  
28 ~~than one-third of a trust fund account shall be allocated to a bond~~  
29 ~~guarantee account, except when a trust fund account is designated~~  
30 ~~by the program manager to be shared by multiple corporations.~~  
31 *The amount of funds allocated to a bond guarantee account shall*  
32 *be pursuant to the directives and requirements.* A corporation shall  
33 not use trust fund accounts to secure a corporate indebtedness.  
34 State funds deposited in the trust fund accounts, with the exception  
35 of guarantees established pursuant to this ~~title~~ *chapter*, shall not  
36 be subject to liens or encumbrances of the corporation or its  
37 creditors.

38 63089.59. (a) The financial institution *or financial company*  
39 that is to act as trustee of the trust fund shall be designated ~~after~~  
40 ~~review by the program manager by the bank.~~ The corporation shall

1 not receive money on deposit to support guarantees *or other*  
 2 *financial products* issued under this ~~title~~ *chapter* without the  
 3 approval of the program manager.

4 (b) State funds may not be used to finance an expense incurred  
 5 by a corporation in a location not approved pursuant to a ~~statewide~~  
 6 ~~plan~~ *the contract between the bank and the corporation*. The  
 7 prohibition against use of state funds also applies to the location  
 8 of satellite offices, and the area served from a corporation office.

9 (c) *Except as otherwise provided in this chapter, the trust fund*  
 10 *account shall be used solely to make loans, guarantee bonds and*  
 11 *loans, and provide other financial products approved by the*  
 12 *corporation that meet the financial product criteria of the directives*  
 13 *and requirements. Except as provided in subdivision (b) of Section*  
 14 *63089.54, the state or the bank shall not be liable or obligated in*  
 15 *any way as a result of the allocation of state moneys to a trust fund*  
 16 *account beyond the state moneys that are allocated and deposited*  
 17 *in the fund pursuant to this chapter, and that are not otherwise*  
 18 *withdrawn by the state pursuant to this chapter.*

19 63089.60. (a) *The program manager 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 *program manager's decision may be repealed or modified by the*  
 23 *executive director or the bank board.*

24 (b) *The amount of guarantee liability outstanding at any one*  
 25 *time shall not exceed five times the amount of funds on deposit in*  
 26 *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*  
 29 *enacted by the Legislature, including each of the trust fund*  
 30 *accounts within the trust fund.*

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

34 63089.60. (a) *The program manager shall recommend whether*  
 35 *the expansion fund and trust fund accounts are to be leveraged,*  
 36 *and if so, by how much. Upon the request of the corporation, the*  
 37 *program manager's decision may be repealed or modified by the*  
 38 *executive director or the bank board.*

39 (b) *The amount of guarantee liability outstanding at any one*  
 40 *time shall not exceed four times the amount of funds on deposit in*

1 *the expansion fund plus any receivables due from funds loaned*  
2 *from the expansion fund to another fund in state government as*  
3 *directed by the Department of Finance pursuant to a statute*  
4 *enacted by the Legislature, including each of the trust fund*  
5 *accounts within the trust fund, unless the program manager has*  
6 *permitted a higher leverage ratio for an individual corporation*  
7 *pursuant to subdivision (b) of Section 63089.56.*

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

9 *63089.61. (a) The corporate guarantee shall be backed by*  
10 *funds on deposit in the corporation's trust fund account, or by*  
11 *receivables due from funds loaned from the corporation's trust*  
12 *fund account to another fund in state government, as directed by*  
13 *the Department of Finance pursuant to a statute enacted by the*  
14 *Legislature.*

15 *(b) Loan guarantees shall be secured by a reserve of at least*  
16 *20 percent to be determined by the program manager unless a*  
17 *higher leverage ratio for an individual corporation has been*  
18 *approved pursuant to subdivision (b) of Section 63089.56.*

19 *(c) The expansion fund and trust fund accounts shall be used*  
20 *to guarantee obligations and other financial product obligations,*  
21 *to pay the administrative costs of the corporations, and for other*  
22 *uses pursuant to this chapter.*

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

26 *63089.61. (a) The corporate guarantee shall be backed by*  
27 *funds on deposit in the corporation's trust fund account, or by*  
28 *receivables due from funds loaned from the corporation's trust*  
29 *fund account to another fund in state government, as directed by*  
30 *the Department of Finance pursuant to a statute enacted by the*  
31 *Legislature.*

32 *(b) Loan guarantees shall be secured by a reserve of at least*  
33 *25 percent to be determined by the program manager, unless a*  
34 *higher leverage ratio has been approved for an individual*  
35 *corporation pursuant to subdivision (b) of Section 63089.56.*

36 *(c) The expansion fund and trust fund accounts shall be used*  
37 *to guarantee obligations and other financial product obligations,*  
38 *to pay the administrative costs of the corporations, and for other*  
39 *uses pursuant to this chapter.*

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

1 63089.62. (a) *It is the intent of the Legislature that the*  
2 *corporations make maximum use of their statutory authority to*  
3 *guarantee loans and surety bonds, and administer other financial*  
4 *products, including the authority to secure loans with a minimum*  
5 *loan loss reserve of only 20 percent, unless the program manager*  
6 *authorizes a higher leverage ratio for an individual corporation*  
7 *pursuant to subdivision (b) of Section 63089.56, so that the*  
8 *financing needs of small business may be met as fully as possible*  
9 *within the limits of corporations' trust fund account balance.*

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

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

28 63089.62. (a) *It is the intent of the Legislature that the*  
29 *corporations make maximum use of their statutory authority to*  
30 *guarantee loans and surety bonds, and administer other financial*  
31 *products, including the authority to secure loans with a minimum*  
32 *loan loss reserve of only 25 percent, unless the program manager*  
33 *authorizes a higher leverage ratio for an individual corporation*  
34 *pursuant to subdivision (b) of Section 63089.56, so that the*  
35 *financing needs of small business may be met as fully as possible*  
36 *within the limits of corporations' trust fund account balance.*

37 (b) *Any corporation that serves an area declared to be in a state*  
38 *of emergency by the Governor or a disaster area by the President*  
39 *of the United States, the Administrator of the United States Small*  
40 *Business Administration, or the United States Secretary of*



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

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

13

14 Article 6. ~~Guarantee Program Corporations, Miscellaneous~~

15

16 ~~63089.61. (a) The Small Business Loan Guarantee Program,~~  
 17 ~~which is hereby continued in existence, shall provide guarantees~~  
 18 ~~to loans offered by financial institutions to small businesses.~~

19 ~~(b) The Legislature finds and declares that the Small Business~~  
 20 ~~Loan Guarantee Program has enabled participating small businesses~~  
 21 ~~that do not qualify for conventional business loans or Small~~  
 22 ~~Business Administration loans to secure funds to expand their~~  
 23 ~~businesses. These small businesses would not have been able to~~  
 24 ~~expand their businesses in the absence of the program. The program~~  
 25 ~~has also provided valuable technical assistance to small businesses~~  
 26 ~~to ensure growth and stability. The study commissioned by former~~  
 27 ~~Section 14069.6 of the Corporations Code, as added by Chapter~~  
 28 ~~919 of the Statutes of 1997, documented the return on investment~~  
 29 ~~of the program and the need for its services. The value of the~~  
 30 ~~program has also been recognized by the Governor through~~  
 31 ~~proposals contained in the May Revision to the Budget Act of~~  
 32 ~~2000 for the 2000–01 fiscal year.~~

33 ~~63089.62. The program manager, following notification to the~~  
 34 ~~bank director, may do all of the following:~~

- 35 ~~(a) Contract for services entered into pursuant to this title.~~
- 36 ~~(b) Hold public hearings.~~
- 37 ~~(c) Act as liaison between corporations, other state and federal~~  
 38 ~~agencies, lenders, and the Legislature.~~
- 39 ~~(d) Process and tabulate on a monthly basis all corporate reports.~~
- 40 ~~(e) Attend board meetings.~~

1 (f) Attend and participate at corporation meetings. The program  
 2 manager, or his or her designee, shall be an ex officio, nonvoting  
 3 representative on the board of directors and loan committees of  
 4 each corporation. The program manager shall meet with the board  
 5 of directors of each corporation at least once each fiscal year.

6 (g) Assist corporations in applying for public and private funding  
 7 opportunities, and in obtaining program support from the business  
 8 community.

9 63089.63.—(a) The program manager shall recommend whether  
 10 the expansion fund and trust fund accounts are to be leveraged,  
 11 and if so, by how much. Upon the request of the corporation, the  
 12 program manager’s decision may be repealed or modified by a  
 13 bank board resolution.

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

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

24 63089.63.—(a) The program manager shall recommend whether  
 25 the expansion fund and trust fund accounts are to be leveraged,  
 26 and if so, by how much. Upon the request of the corporation, the  
 27 program manager’s decision may be repealed or modified by an  
 28 office resolution.

29 (b) The amount of guarantee liability outstanding at any one  
 30 time shall not exceed four times the amount of funds on deposit  
 31 in the expansion fund plus any receivables due from funds loaned  
 32 from the expansion fund to another fund in state government as  
 33 directed by the Department of Finance pursuant to a statute enacted  
 34 by the Legislature, including each of the trust fund accounts within  
 35 the trust fund, unless the program manager has permitted a higher  
 36 leverage ratio for an individual corporation pursuant to subdivision  
 37 (b) of Section 63089.53.

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

39 63089.64.—(a) The corporate guarantee shall be backed by  
 40 funds on deposit in the corporation’s trust fund account, or by

1 ~~receivables due from funds loaned from the corporation's trust~~  
2 ~~fund account to another fund in state government, as directed by~~  
3 ~~the Department of Finance pursuant to a statute enacted by the~~  
4 ~~Legislature.~~

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

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

10 ~~(d) 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 ~~63089.64. (a) The corporate guarantee shall be backed by~~  
14 ~~funds on deposit in the corporation's trust fund account, or by~~  
15 ~~receivables due from funds loaned from the corporation's trust~~  
16 ~~fund account to another fund in state government, as directed by~~  
17 ~~the Department of Finance pursuant to a statute enacted by the~~  
18 ~~Legislature.~~

19 ~~(b) Loan guarantees shall be secured by a reserve of at least 25~~  
20 ~~percent to be determined by the executive director, unless the~~  
21 ~~executive director authorizes a higher leverage ratio for an~~  
22 ~~individual corporation pursuant to subdivision (b) of Section~~  
23 ~~63089.53.~~

24 ~~(c) The expansion fund and trust fund accounts shall be used~~  
25 ~~exclusively to guarantee obligations and pay the administrative~~  
26 ~~costs of the corporations.~~

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

28 ~~63089.65. A corporation may charge the borrower or financial~~  
29 ~~institution a loan fee on all loans made or guaranteed by the~~  
30 ~~corporation to defray the operating expenses of the corporation.~~  
31 ~~The amount of the fee shall be determined by the program manager.~~

32 ~~63089.66. (a) It is the intent of the Legislature that the~~  
33 ~~corporations make maximal use of their statutory authority to~~  
34 ~~guarantee loans and surety bonds, including the authority to secure~~  
35 ~~loans with a minimum loan loss reserve of only 20 percent, so that~~  
36 ~~the financing needs of small business may be met as fully as~~  
37 ~~possible within the limits of corporations' loan loss reserves. The~~  
38 ~~office shall report annually to the Legislature on the financial status~~  
39 ~~of the corporations and their portfolio of loans and surety bonds~~  
40 ~~guaranteed pursuant to Section 9795.~~

1     ~~(b) Any corporation that serves an area declared to be in a state~~  
2 ~~of emergency by the Governor or a disaster area by the President~~  
3 ~~of the United States, the Administrator of the United States Small~~  
4 ~~Business Administration, or the United States Secretary of~~  
5 ~~Agriculture shall increase the portfolio of loan guarantees where~~  
6 ~~the dollar amount of the loan is less than one hundred thousand~~  
7 ~~dollars (\$100,000), so that at least 15 percent of the dollar value~~  
8 ~~of loans guaranteed by the corporation is for those loans. The~~  
9 ~~corporation shall comply with this requirement within one year of~~  
10 ~~the date the emergency or disaster is declared. Upon application~~  
11 ~~of a corporation, the executive director may waive or modify the~~  
12 ~~rule for the corporation if the corporation demonstrates that it made~~  
13 ~~a good faith effort to comply and failed to locate lending~~  
14 ~~institutions in the region that the corporation serves that are willing~~  
15 ~~to make guaranteed loans in that amount.~~

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     ~~63089.66. (a) It is the intent of the Legislature that the~~  
20 ~~corporations make maximal use of their statutory authority to~~  
21 ~~guarantee loans and surety bonds, including the authority to secure~~  
22 ~~loans with a minimum loan loss reserve of only 25 percent, unless~~  
23 ~~the office authorizes a higher leverage ratio for an individual~~  
24 ~~corporation pursuant to subdivision (b) of Section 63089.53, so~~  
25 ~~that the financing needs of small business may be met as fully as~~  
26 ~~possible within the limits of corporations' loan loss reserves. The~~  
27 ~~bank shall report annually to the Legislature on the financial status~~  
28 ~~of the corporations and their portfolio of loans and surety bonds~~  
29 ~~guaranteed pursuant to Section 9795.~~

30     ~~(b) Any corporation that serves an area declared to be in a state~~  
31 ~~of emergency by the Governor or a disaster area by the President~~  
32 ~~of the United States, the Administrator of the United States Small~~  
33 ~~Business Administration, or the United States Secretary of~~  
34 ~~Agriculture shall increase the portfolio of loan guarantees where~~  
35 ~~the dollar amount of the loan is less than one hundred thousand~~  
36 ~~dollars (\$100,000), so that at least 15 percent of the dollar value~~  
37 ~~of loans guaranteed by the corporation is for those loans. The~~  
38 ~~corporation shall comply with this requirement within one year of~~  
39 ~~the date the emergency or disaster is declared. Upon application~~  
40 ~~of a corporation, the program manager may waive or modify the~~

1 rule for the corporation if the corporation demonstrates that it made  
2 a good faith effort to comply and failed to locate lending  
3 institutions in the region that the corporation serves that are willing  
4 to make guaranteed loans in that amount.

5 ~~(e) This section shall become operative on January 1, 2018.~~

6 ~~63089.67.~~

7 63089.65. (a) A corporation shall establish one or more loan  
8 committees, each of which shall be composed of five or more  
9 persons, a majority of whom shall be experienced in banking and  
10 lending operations.

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

13 (1) Determine the feasibility of the proposed transaction. The  
14 loan committee shall recommend approval of the application only  
15 upon a determination that there is a reasonable chance that the loan  
16 will be repaid.

17 (2) On the basis of that determination, recommend to the board  
18 of directors any action that the loan committee deems appropriate  
19 under the circumstances, or, in the event that approval authority  
20 has been delegated to the loan committee by the board of directors,  
21 approve or disapprove the loan application.

22 (c) A loan committee shall expeditiously act to accept or reject  
23 loan applications.

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

27 ~~63089.68.~~

28 63089.66. Unless delegated to its loan committee, the  
29 corporation's board of directors, upon a recommendation from its  
30 loan committee, shall do all of the following:

31 (a) Emphasize consideration to applications that will increase  
32 employment of disadvantaged, disabled, or unemployed persons,  
33 or increase employment of youth residing in areas of high youth  
34 unemployment and high youth delinquency.

35 (b) Give consideration to applications from traditional and  
36 safety-net providers of Medi-Cal services that will promote access  
37 to quality medical care for individuals enrolled in Medi-Cal  
38 managed health care networks that are contracting with or owned  
39 or operated by a county board of supervisors, a county health  
40 commission, or a county health authority organized pursuant to

1 Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or  
2 14087.9605 of the Welfare and Institutions Code.

3 ~~(e) Not grant a loan or guarantee, unless it determines that the~~  
4 ~~conditions of Section 200033 are satisfied.~~

5 ~~63089.69. (a) Among other priorities, corporations shall give~~  
6 ~~high priority to the issuance of loan guarantees to small business~~  
7 ~~incubators and to businesses that lease space in incubators.~~

8 ~~(b) For the purposes of this section, “incubator” means a facility~~  
9 ~~that allows new small businesses to increase their probability of~~  
10 ~~suecess by sharing needed capital equipment, services, and~~  
11 ~~facilities, which may include, but are not limited to, the following:~~

- 12 ~~(1) Reception and meeting area.~~
- 13 ~~(2) Secretarial services, such as collating, telephone answering,~~  
14 ~~or mailhandling.~~
- 15 ~~(3) Accounting and bookkeeping services.~~
- 16 ~~(4) Research libraries.~~
- 17 ~~(5) Onsite financial and management counseling.~~
- 18 ~~(6) Parking.~~
- 19 ~~(7) Flexible lease arrangements for flexible space.~~
- 20 ~~(8) Computer or word processing facilities.~~
- 21 ~~(9) Day care facilities.~~
- 22 ~~(10) Office furniture rentals.~~
- 23 ~~(11) A graduation policy sometimes requiring firms to leave~~  
24 ~~after three to five years in a subsidized, nurturing environment.~~
- 25 ~~(12) Employee training and placement services.~~

26 ~~(e) Among other priorities, corporations shall give high priority~~  
27 ~~to marketing their services to Phase 1 or Phase 2 Small Business~~  
28 ~~Innovation Research (SBIR) recipients and providing loan~~  
29 ~~guarantees, whenever possible.~~

30 ~~63089.67. A corporation may charge the borrower or financial~~  
31 ~~institution a loan fee or credit enhancement fee on all loans made~~  
32 ~~or guaranteed by the corporation to defray the operating expenses~~  
33 ~~of the corporation. The amount of the fee shall be determined by~~  
34 ~~the directives and requirements.~~

35

36

*Article 7. Loan Guarantees*

37

38 ~~63089.70. (a) The Small Business Expansion Fund, which is~~  
39 ~~hereby continued in existence, shall, among other things, provide~~

1 *guarantees to loans offered by financial institutions and financial*  
2 *companies to small businesses.*

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

17 *(c) A corporation shall not issue a loan or guarantee, unless it*  
18 *determines that the following conditions are satisfied:*

19 *(1) There is no probability that the loan would be granted by a*  
20 *financial company or financial institution under reasonable terms*  
21 *and conditions and the borrower has demonstrated a reasonable*  
22 *prospect of repayment.*

23 *(2) The loan proceeds will be used exclusively in this state.*

24 *(3) The loan qualifies as a small business loan or an employment*  
25 *incentive loan.*

26 *(4) The borrower has a minimum equity interest in the business*  
27 *as determined by the directives and requirements.*

28 *(5) As a result of the loan, the jobs generated or retained*  
29 *demonstrate reasonable conformance to any directives and*  
30 *requirements specifying employment criteria.*

31 *63089.71. (a) Among other priorities, corporations shall give*  
32 *high priority to the issuance of loan guarantees to small business*  
33 *incubators and to businesses that lease space in incubators.*

34 *(b) For the purposes of this section, “incubator” means a facility*  
35 *that allows new small businesses to increase their probability of*  
36 *success by sharing needed capital equipment, services, and*  
37 *facilities, which may include, but are not limited to, the following:*

38 *(1) Reception and meeting area.*

39 *(2) Secretarial services, such as collating, telephone answering,*  
40 *or mailhandling.*

- 1 (3) *Accounting and bookkeeping services.*
- 2 (4) *Research libraries.*
- 3 (5) *Onsite financial and management counseling.*
- 4 (6) *Parking.*
- 5 (7) *Flexible lease arrangements for flexible space.*
- 6 (8) *Computer or word processing facilities.*
- 7 (9) *Day care facilities.*
- 8 (10) *Office furniture rentals.*
- 9 (11) *A graduation policy sometimes requiring firms to leave*
- 10 *after three to five years in a subsidized, nurturing environment.*
- 11 (12) *Employee training and placement services.*
- 12 (c) *Among other priorities, corporations shall give high priority*
- 13 *to marketing their services to Phase 1 or Phase 2 Small Business*
- 14 *Innovation Research (SBIR) recipients and providing loan*
- 15 *guarantees, whenever possible.*

16  
17 Article 7.8. *Direct Lending and Other Debt Instruments*

18  
19 63089.80. (a) A corporation may utilize funds for direct  
20 ~~lending as long as at least 80 percent of the corporate funds,~~  
21 ~~calculated by dollar amount, and all expansion funds are guaranteed~~  
22 ~~by another public or private financial institution or other debt~~  
23 ~~instruments pursuant to the directives and requirements.~~

24 (b) The amount of funds available for direct lending *and other*  
25 *debt instruments* shall be determined by the ~~program manager~~  
26 ~~directives and requirements.~~ In its capacity as a direct lender, the  
27 corporation may sell in the secondary market the guaranteed  
28 portion of each loan, *if guaranteed*, so as to raise additional funds  
29 for direct lending. ~~The office shall issue regulations governing~~  
30 ~~these direct loans, including the maximum amount of these loans.~~

31 (c) To execute the direct loan *and other debt instrument*  
32 programs established in this chapter, the ~~program manager bank~~  
33 may loan trust funds to a corporation ~~located in a rural area~~ for the  
34 express purpose of lending those funds to an identified borrower.  
35 The loan authorized by the ~~program manager bank~~ to the  
36 corporation shall be on terms similar to the loan between the  
37 corporation and the borrower.

38 (d) The amount of the loan may be in excess of the amount of  
39 a loan to any individual borrower, but actual disbursements  
40 pursuant to the ~~office bank~~ loan agreement shall be required to be



1 supported by a loan agreement between the borrower and the  
2 corporation in an amount at least equal to the requested  
3 disbursement. The loan between the bank and the corporation shall  
4 be evidenced by a credit agreement. In the event that any loan  
5 between the corporation and borrower is not guaranteed by a  
6 governmental agency, the portion of the credit agreement  
7 attributable to that loan shall be secured by assignment of any note,  
8 executed in favor of the corporation by the borrower to the bank.  
9 The terms and conditions of the credit agreement shall be similar  
10 to the loan agreement between the corporation and the borrower,  
11 which shall be collateralized by the note between the corporation  
12 and the borrower.

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

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

35 (g) *A corporation shall not issue a direct loan or other financial*  
36 *product, unless and until it determines that all of the following*  
37 *conditions are satisfied:*

38 (1) *The direct loan or other financial product assistance would*  
39 *not be granted by a financial company or financial institution*

1 under reasonable terms and conditions and the borrower has  
2 demonstrated a reasonable prospect of repayment.

3 (2) The loan or financial product proceeds will be used  
4 exclusively in this state.

5 (3) The direct loan or financial product qualifies as a small  
6 business loan or employment incentive loan.

7 (4) The borrower has a minimum equity interest in the business  
8 as determined by the directives and requirements.

9 (5) As a result of the direct loan or other debt instrument, the  
10 jobs generated or retained demonstrate reasonable conformance  
11 to any directives and requirements specifying employment criteria.

12 ~~(g)~~  
13 (h) The maximum loan or other debt instrument amount to a  
14 small business shall be set by the program manager, but in no case  
15 shall it be more than three hundred thousand dollars (\$300,000)  
16 directives and requirements. In the absence of fraud on the part  
17 of the corporation, the repayment obligation pursuant to the loan  
18 or other debt instrument to the corporation shall be limited to the  
19 amount of funds received by the corporation for the loan or other  
20 debt instrument to the small business and any other funds received  
21 from the office bank that are not disbursed. The corporation shall  
22 be authorized to charge a fee to the small business borrower, in an  
23 amount determined by the executive director pursuant to regulation  
24 pursuant to the directives and requirements. The program  
25 programs provided for in this subdivision shall be available in all  
26 geographic areas of the state.

27  
28 Article 8.9. Disaster Loan Guarantees

29  
30 63089.90. (a) ~~A~~Pursuant to Section 8684.2 and the contract  
31 between a corporation and the bank, a corporation may, in an area  
32 affected by a state of emergency within the state and declared a  
33 disaster by the President of the United States, the Administrator  
34 of the United States Small Business Administration, or the United  
35 States Secretary of Agriculture, or declared to be in a state of  
36 emergency by the Governor of California, provide loan guarantees  
37 from funds allocated in Section 63089.55 to small businesses,  
38 small farms, nurseries, and agriculture-related enterprises that have  
39 suffered actual physical damage or significant economic injury as  
40 a result of the disaster.

1 (b) ~~If regulations have not otherwise been adopted, the~~ *The bank*  
 2 ~~board may adopt or readopt regulations~~ *directives and requirements*  
 3 ~~to implement the~~ *disaster* loan guarantee program authorized by  
 4 this section. ~~The bank board may adopt these regulations as~~  
 5 ~~emergency regulations in accordance with Chapter 3.5~~  
 6 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~  
 7 ~~2, and for purposes of that chapter, including Section 11349.6, the~~  
 8 ~~adoption of the regulations shall be considered by the Office of~~  
 9 ~~Administrative Law to be necessary for the immediate preservation~~  
 10 ~~of the public peace, health and safety, and general welfare.~~  
 11 ~~Notwithstanding subdivision (e) of Section 11346.1, the regulations~~  
 12 ~~shall be repealed within 180 days after their effective date unless~~  
 13 ~~the office complies with Chapter 3.5 (commencing with Section~~  
 14 ~~11340) of Part 1 of Division 3 of Title 2, as provided in subdivision~~  
 15 ~~(e) of Section 11346.1. Any regulations adopted under Chapter 1~~  
 16 ~~(commencing with Section 14000) of Part 5 of Division 3 of Title~~  
 17 ~~1 of the Corporations Code shall remain in effect until the bank~~  
 18 ~~adopts directives and requirements.~~

19 (c) *A corporation shall not issue a disaster loan guarantee*  
 20 *unless and until it determines that the following conditions are*  
 21 *satisfied:*

22 (1) *The borrower cannot reasonably obtain a loan without some*  
 23 *form of credit enhancement.*

24 (2) *The borrower has demonstrated a reasonable prospect of*  
 25 *repayment.*

26 (3) *The guaranteed loan will be used exclusively in this state.*

27 (4) *The disaster loan qualifies as a small business loan or*  
 28 *employment incentive loan.*

29 (e)

30 (d) *Allocations pursuant to subdivision (a) shall be deemed to*  
 31 *be for extraordinary emergency or disaster response operations*  
 32 *costs incurred by the office issuance of disaster loan guarantees.*

33

34 ~~Article 9. Energy Efficiency Loans~~

35

36 ~~63089.93. (a) Corporations may grant energy efficiency~~  
 37 ~~improvement loans.~~

38 ~~(b) The bank shall enter into an agreement with the California~~  
 39 ~~Energy Extension Service of the Office of Planning and Research~~  
 40 ~~to assist small business owners in reducing their energy costs~~

1 through low-interest loans and by providing assistance and  
2 information.

3

4 Article 10. Surety ~~Bonds~~ *Bond Guarantees*

5

6 63089.95. In furtherance of the purposes set forth in Section  
7 63088.1 of this code and Section ~~14002~~ *14001* of the Corporations  
8 Code, a corporation may do any one or more of the following  
9 activities, but only to the extent that the activities are authorized  
10 pursuant to the contract between the bank and corporation:  
11 guarantee, endorse, or act as surety on the bonds, notes, contracts,  
12 or other obligations of, or assist financially, any person, firm,  
13 corporation, or association, and may establish and regulate the  
14 terms and conditions with respect to any such loans or financial  
15 assistance and the charges for interest and service connected  
16 therewith, except that the corporation shall not make or guarantee  
17 any loan, unless and until it determines:

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

22 (b) The loan proceeds ~~shall~~ *will* be used exclusively in this state.

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

25 (d) ~~That the~~ *The* borrower has a minimum equity interest in the  
26 business as determined by the ~~director~~ *directives and requirements*.

27 (e) As a result of the loan, the jobs generated or retained  
28 demonstrate reasonable conformance to the ~~regulations~~ *directives*  
29 *and requirements* specifying employment criteria.

30 63089.96. (a) In addition to the authority granted by Section  
31 63089.95, ~~upon approval of the executive director,~~ *pursuant to the*  
32 *directives and requirements* a corporation may act as guarantor  
33 on a surety bond for any small business contractor, including, but  
34 not limited to, women, minority, and disabled veteran contractors.

35 (b) The provisions of subdivision (a) allowing a corporation to  
36 act as a guarantor on surety bonds may be funded through  
37 appropriate *state or* federal funding sources. Federal funds shall  
38 be deposited in the Federal Trust Fund in the State Treasury in  
39 accordance with Section 16360, for transfer to the expansion fund.

Article 11. Reporting

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~~63089.97. (a) Except as otherwise provided in this title, the trust fund account shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the loan criteria under this chapter. The state shall not be liable or obligated in any way as a result of the allocation of state moneys to a trust fund account beyond the state moneys that is allocated and deposited in the fund pursuant to this title, and that is not otherwise withdrawn by the state pursuant to this chapter. Each corporation shall provide to the program manager, in a format prescribed by him or her, the following data and reports:~~

~~(b)~~

~~(a) A summary of all loans and bonds outstanding loans, bonds, and other credit enhancements to which a state corporation guarantee, as authorized by this chapter, is attached shall be submitted to the program manager upon execution of the loan agreement and periodically thereafter, on a schedule determined by the program manager.~~

~~(e)~~

~~(b) A summary of all loans outstanding loans and other debt instruments made by a corporation shall be submitted to the program manager upon execution of the loan agreement and periodically thereafter, as authorized by this chapter, on a schedule determined by the program manager.~~

~~(c) A summary of all outstanding other financial project obligations made by a corporation, as authorized by this chapter, on a schedule of determined by the program manager.~~

~~(d) Statement of economic interests from each designated person pursuant to Section 87302.~~

~~(e) No later than July 31 of each fiscal year, commencing January 1, 2014, each of the following documents:~~

~~(1) A copy of the corporation board approved budget for the current fiscal year.~~

~~(2) Projected fiscal year summary of authorized program activities including loans, loan guarantees, bond guarantees, and other financial product activity supported by the expansion fund.~~

~~(3) A copy of the written plan of operation or strategic plan for the current fiscal year as approved by the corporations board of directors.~~

1 (4) A copy of the current and valid articles of incorporation  
2 and bylaws of the corporation with noted amendments from the  
3 prior fiscal year.

4 (f) No later than October 31 of each year commencing January  
5 1, 2014, a copy of the corporation’s prior fiscal year audit, auditor  
6 findings, if any, and finding responses.

7 (g) Any other statistical and other data, reports, or other  
8 information required by the directives and requirements or the  
9 program manager.

10 63089.98. (a) Annually, not later than January 1 of each year  
11 commencing January 1, 2014, the program manager shall prepare  
12 a report regarding the loss experience for the expansion fund for  
13 loan guarantees, loss reserves, and surety bond guarantees for the  
14 preceding fiscal year. At a minimum, the report shall also include  
15 data regarding numbers of surety bond and loan guarantees awarded  
16 through the expansion fund, including ethnicity and submit to the  
17 Governor and the Legislature, pursuant to Section 9795, a report  
18 for the preceding fiscal year ending June 30, containing the  
19 expansion fund and trust fund financial product activity of each  
20 corporation, including all of the following:

21 (1) Loans, guarantees, and other financial products awarded  
22 and outstanding balances.

23 (2) Default and loss statistics.

24 (3) Employment data.

25 (4) Ethnicity and gender data of participating contractors and  
26 other entities, and experience of surety insurer participants in the  
27 bond guarantee program. The report shall include the information  
28 described in Section 63089.66. The

29 (5) Significant events.

30 (b) The program manager shall post the information report on  
31 the bank’s Internet Web site and submit notice report to the  
32 Governor and the Legislature when that information is available  
33 on its Internet Web site .

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

39 63089.99. Pursuant to subdivision (f) of Section 8684.2, within  
40 60 days of the conclusion of the period for guaranteeing loans

1 under any small business disaster loan guarantee program  
2 conducted for a disaster as authorized by Section 8684.2 or 200030,  
3 the bank shall provide a report to the Legislature on loan guarantees  
4 approved and rejected by gender, ethnic group, type of business  
5 and location, and each participating loan institution pursuant to  
6 Section 9795. The bank need only submit one report to comply  
7 with this section and subdivision (f) of Section 8684.2.

8 ~~SEC. 4.~~

9 *SEC. 5.* No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.

18 ~~SEC. 5.~~

19 *SEC. 6.* This act is an urgency statute necessary for the  
20 immediate preservation of the public peace, health, or safety within  
21 the meaning of Article IV of the Constitution and shall go into  
22 immediate effect. The facts constituting the necessity are:

23 It is necessary that this bill take effect immediately in order to  
24 provide, as is necessary to timely implement the Governor's  
25 reorganization plan, for a better managed and more efficient  
26 transition of small business assistance programs from the soon to  
27 be defunct Business, Transportation and Housing Agency to the  
28 California Infrastructure and Economic Development Bank within  
29 the Governor's Office of Business and Economic Development.