

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 8, 2013

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, 63089.60, 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 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 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:

CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL  
DEVELOPMENT CORPORATIONS

Article 1. Introduction

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

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

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

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

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

14002. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, this invalidity shall 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 (b) "Bank board" means the board of directors of the California  
11 Infrastructure and Economic Development Bank.

12 (c) "Board of directors" means the board of directors of the  
13 corporation.

14 (d) "*California Small Business Board*" means the advisory  
15 board established pursuant to Section 14004.1 for the purpose of  
16 advising on issues and programs affecting small business.

17 ~~(e)~~

18 (e) "California Small Business Finance Center" means the  
19 governmental unit with the administrative responsibility for  
20 programs authorized pursuant to Section 63088.5 of the  
21 Government Code and this chapter.

22 ~~(e)~~

23 (f) "Corporation" means any nonprofit California small business  
24 financial development corporation created pursuant to this chapter,  
25 or pursuant to Chapter 1 (commencing with Section 32000) of  
26 Division 15.5 of the Financial Code.

27 ~~(f)~~

28 (g) "Directives and requirements" means a document adopted  
29 by the bank board setting forth policy direction as well as key rules  
30 governing a particular subject area.

31 ~~(g)~~

32 (h) "Executive director" means the executive director of the  
33 Infrastructure and Economic Development Bank.

34 ~~(h)~~

35 (i) "Expansion fund" means the California Small Business  
36 Expansion Fund.

37 ~~(i)~~

38 (j) "Financial company" means banking organizations, including  
39 national banks and trust companies, savings and loan associations,  
40 certified community development financial institutions,

1 microbusiness lenders, state insurance companies, mutual insurance  
2 companies, and other public and private banking, lending,  
3 retirement, and insurance organizations.

4 ~~(j)~~

5 (k) “Financial institution” means regulated banking  
6 organizations, including national banks and trust companies  
7 authorized to conduct business in the state and state-chartered  
8 commercial banks, trust companies, credit unions, and savings and  
9 loan associations.

10 ~~(k)~~

11 (l) “Financial product” means the type of financial assistance  
12 described in Section 63088.5 of the Government Code.

13 ~~(l)~~

14 (m) “Loan committee” means a committee appointed by the  
15 board of directors of a corporation to determine the course of action  
16 on a loan application pursuant to Chapter 6 (commencing with  
17 Section 63088) of Division 1 of Title 6.7 of the Government Code.

18 ~~(m)~~

19 (n) “Microbusiness lender” means a microbusiness lender as  
20 defined in Section 13997.2 of the Government Code.

21 ~~(n)~~

22 (o) “Program Manager” means the manager of the California  
23 Small Business Finance Center as designated to this title by the  
24 executive director of the bank.

25 ~~(o)~~

26 (p) “Trust fund” means the money from the expansion fund that  
27 is held in trust by a financial institution or financial company. A  
28 trust fund is not a deposit of state funds and is not subject to the  
29 requirements of Section 16506 of the Government Code.

30 ~~(p)~~

31 (q) “Trust fund account” means an account within the trust fund  
32 that is either allocated to a particular corporation or shared by  
33 multiple corporations for the purpose of paying loan defaults and  
34 claims on bond guarantees or other financial products and program  
35 uses provided in this chapter.

36

37 Article 3. Program Manager

38

39 14004. (a) The program manager shall do all of the following:

40 (1) Administer this chapter.

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

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

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

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

20 (D) A determination by the program manager that there is  
21 significant need for a new corporation.

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

28 (4) Have the portfolio of each corporation audited a minimum  
29 of once a year. Material audit exceptions that are not corrected by  
30 the corporation within a reasonable period of time may result in  
31 the suspension or termination of the corporation pursuant to Section  
32 63089.3 of the Government Code.

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

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

39 (b) The program manager may attend and participate at  
40 corporation meetings. The program manager, or his or her designee,

1 shall be an ex officio, nonvoting representative on the board of  
2 directors and loan committees of each corporation. The program  
3 manager shall meet through telecommunication or in person with  
4 the board of directors of each corporation at least once each fiscal  
5 year, commencing January 1, 2014.

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

16 (b) The California Small Business Board consists of the  
17 following membership:

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

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

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

22 (4) A representative from two different corporations selected  
23 by the corporations.

24 (5) ~~Two~~ Four members appointed by the Governor, one of  
25 whom will serve as chair of the California Small Business Board,  
26 who are actively involved in the California small business  
27 community.

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

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

35 (c) The California Small Business Board shall advise the  
36 program manager on matters regarding this chapter and Chapter  
37 6 (commencing with Section 63088) of Division 1 of Title 6.7 of  
38 the Government Code.

1 (d) The public members of the California Small Business Board,  
2 at the discretion of the bank board, may be reimbursed per diem  
3 and travel expenses pursuant to state law.

4 14004.2. The bank board shall approve new corporations  
5 recommended by the program manager, based on an examination  
6 of each of the following:

7 (a) Review of the articles of incorporation and bylaws of the  
8 corporation to determine whether they contain the provisions  
9 required by this chapter and conform with the directives and  
10 requirements adopted by the bank board pursuant to this chapter.

11 (b) Determination as to whether the legislative intent expressed  
12 in Section 14001 will be served by the proposed corporation.

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

21 (d) Determination of the program manager that there is  
22 significant need for a new corporation.

23

24 Article 4. New Corporations

25

26 14005. Upon approval by the bank board to become a  
27 corporation, an entity shall adopt or amend its articles of  
28 incorporation to comply with the following:

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

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

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

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

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

6 14006. If the bank board concurs with the findings of the  
7 program manager pursuant to Section 14004, the bank board shall  
8 direct the program manager to approve the articles of incorporation  
9 and endorse the approval thereon and forward the same to the  
10 Secretary of State for his or her approval and filing. Likewise, the  
11 program manager shall review all amendments to the articles of  
12 incorporation to ensure consistency with the purposes of this  
13 chapter.

14 14007. (a) The corporation's existence as a small business  
15 development corporation begins upon the filing of the articles with  
16 the Secretary of State and continues perpetually, unless otherwise  
17 expressly provided for by law.

18 (b) If a corporation is terminated from participation in all  
19 programs, in order to continue its existence as a nonprofit  
20 corporation pursuant to the Nonprofit Public Benefit Corporation  
21 Law (Part 2 (commencing with Section 5110) of Division 2 of  
22 Title 1 of the Corporations Code), the corporation shall amend its  
23 articles of incorporation in accordance with Chapter 8  
24 (commencing with Section 5180) of Part 2 of Division 2 of Title  
25 1 to remove the provisions required by Section 14005, including  
26 an amendment to remove the words "small business financial  
27 development corporation," "small business development  
28 corporation," or "rural or urban development corporation," as  
29 applicable, from the corporate name, and shall no longer be  
30 registered with the Secretary of State as a small business financial  
31 development corporation. A corporation shall not enjoy any of the  
32 benefits of a small business financial development corporation  
33 following suspension.

34 14009. (a) Each corporation shall have provisions establishing  
35 a grievance procedure for employees, clients, or potential clients,  
36 to appeal a decision or obtain redress of an action done by the staff  
37 or loan committee of the corporation. The procedures shall be  
38 established in writing during the probationary period of a new  
39 corporation.

1 (b) The bylaws of the corporation shall authorize the removal  
2 of officers only by a two-thirds vote of the directors of the  
3 corporation.

4 14011. The Nonprofit Public Benefit Corporation Law (Part  
5 2 (commencing with Section 5110) of Division 2 of this title)  
6 applies to corporations formed under this chapter, except as to  
7 matters otherwise provided for in this chapter.

8 14012. For six months following the establishment of a  
9 corporation, commencing upon filing of the articles of  
10 incorporation with the Secretary of State, a corporation shall be  
11 on probation. While on probation, a corporation may be suspended  
12 if suspension is recommended by the program manager and  
13 affirmed by the executive director. This suspension is  
14 nonappealable and not subject to the procedures for suspension  
15 applicable to a corporation not on probation.

16

#### 17 Article 5. Corporation Board

18

19 14013. The corporate powers of a corporation shall be exercised  
20 by the board of directors.

21 14014. The bank shall enter into a contract with each  
22 corporation that shall require that:

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

26 (b) A board of directors shall include representatives from all  
27 of the following:

28 (1) The financial community.

29 (2) The business community.

30 (3) The economically disadvantaged.

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

33 (d) A person who has a financial interest related to a matter over  
34 which the board of directors has authority may not make,  
35 participate in making, or in any way attempt to influence that  
36 matter.

37 14015. If any director ceases to meet the qualifications  
38 established in Section 14014, he or she shall immediately vacate  
39 his or her position as a director and the position shall be deemed  
40 vacant.

1 14016. If any vacancy occurs in the elective membership of  
2 the board of directors through death, resignation, or otherwise, the  
3 remaining directors shall elect a person representing the appropriate  
4 category to fill the vacancy for the unexpired term.

5 14017. The bank board shall direct the program manager to  
6 establish new small business financial development corporations  
7 pursuant to the directives and requirements. The directives and  
8 requirements shall include steps to achieve a goal of ensuring that  
9 small businesses in all areas of the state would have reasonable  
10 access to the financial products authorized by Chapter 6  
11 (commencing with Section 63088) of Division 1 of Title 6.7 of  
12 the Government Code for which they are eligible.

13  
14 Article 6. Corporations, Miscellaneous  
15

16 14018. Every corporation shall provide for, and maintain a  
17 central staff to perform, all administrative requirements of the  
18 corporation, including all those functions required of a corporation  
19 by the contract and this chapter.

20 14019. Reasonable costs incurred by a corporation in the  
21 creation and maintenance of a central staff shall be paid to the  
22 corporation from state funds, including a portion of the interest  
23 earned on the expansion fund and the corporation's trust fund  
24 account, if the corporation has a trust fund account, otherwise, on  
25 the expansion fund.

26 14020. A corporation shall report to the program manager, or  
27 his or her designated representative, all statistical and other reports  
28 required by this chapter and Chapter 6 (commencing with Section  
29 63088) of Division 1 of Title 6.7 of the Government Code,  
30 including responses to audit reports, budget requirements, and  
31 other information relating to the establishment, monitoring, and  
32 suspension or termination of a corporation.

33 14021. A corporation shall make a report to the program  
34 manager, as required by Chapter 6 (commencing with Section  
35 63088) of Division 1 of Title 6.7 of the Government Code.

36  
37 Article 7. Conflict of Interest  
38

39 14022. It shall be unlawful for a member of the bank board or  
40 for the executive director, program manager, or any person who

1 is an officer, director, contractor, or employee of a corporation, or  
2 who is a member of a loan committee, or who is an employee of  
3 the California Infrastructure and Economic Development Bank to  
4 do any of the following:

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

11 (b) Borrow money, property, or to benefit knowingly, directly  
12 or indirectly, from the use of the money, credit, or property of any  
13 corporation.

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

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

30 14024. Violation of any provision of this article shall constitute  
31 a felony.

32 SEC. 3. Section 8684.2 of the Government Code is amended  
33 to read:

34 8684.2. (a) It is the intent of the Legislature:

35 (1) To provide the Governor with appropriate emergency powers  
36 in order to enable utilization of available emergency funding to  
37 provide guarantees for interim loans to be made by lending  
38 institutions, in connection with relief provided for those persons  
39 affected by disasters or a state of emergency in affected areas  
40 during periods of disaster relief assistance, for the purpose of

1 supplying interim financing to enable small businesses to continue  
2 operations pending receipt of federal disaster assistance.

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

6 (b) In addition to the allocations authorized by Section 8683  
7 and the loan guarantee provisions of Section 63089.90, the  
8 Governor may allocate funds made available for the purposes of  
9 this chapter, in connection with relief provided, in affected areas  
10 during the period of federal disaster relief, to the Small Business  
11 Expansion Fund for use by the California Infrastructure and  
12 Economic Development Bank, pursuant to Chapter 1 (commencing  
13 with Section 14000) of Part 5 of Division 3 of Title 1 of the  
14 Corporations Code and Chapter 6 (commencing with Section  
15 63088) of Division 1 of Title 6.7 of this code, to provide guarantees  
16 for low-interest interim loans to be made by lending institutions  
17 for the purpose of providing interim financing to enable small  
18 businesses that have suffered actual physical damage or significant  
19 economic losses, as a result of the disaster or state of emergency  
20 for which funding under this section is made available, to continue  
21 or resume operations pending receipt of loans made or guaranteed  
22 by the federal Small Business Administration. The maximum  
23 amount of any loan guarantee funded under this paragraph shall  
24 be limited by the directives and requirements ~~and shall not exceed~~  
25 ~~two hundred thousand dollars (\$200,000)~~. Each loan guarantee  
26 shall not exceed 95 percent of the loan amount, except that a loan  
27 guarantee may be for 100 percent of the loan amount if the  
28 applicant can demonstrate that access to business records pertinent  
29 to the loan application has been precluded by official action  
30 prohibiting necessary reentry into the affected business premises  
31 or that those business records pertinent to the loan application have  
32 been destroyed. The term of the loan shall be determined by the  
33 lending institution providing the loan or shall be made payable on  
34 the date the proceeds of a loan made or guaranteed by the federal  
35 Small Business Administration with respect to the same damage  
36 or loss are made available to the borrower, whichever event first  
37 occurs.

38 (c) Loan guarantees for which the initial 12-month term has  
39 expired and for which an application for disaster assistance funding  
40 from the federal Small Business Administration is still pending

1 may be extended until the *federal* Small Business Administration  
 2 has reached a final decision on the application. Applications for  
 3 interim loans shall be processed in an expeditious manner.  
 4 Wherever possible, lending institutions shall fund nonconstruction  
 5 loans within 60 calendar days of application. Loan guarantees for  
 6 loans that have been denied funding by the federal Small Business  
 7 Administration, may be extended by the financial institution  
 8 provided that the loan is for no longer than a maximum of seven  
 9 years, if the business demonstrates the ability to repay the loan  
 10 with an extended loan term, and a new credit analysis is provided.  
 11 All loans extended under this provision shall be repaid in  
 12 installments of principal and interest, and be fully amortized over  
 13 the term of the loan. Nothing in this section shall preclude the  
 14 lender from charging reasonable administrative fees in connection  
 15 with the loan.

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

21 (e) The California Infrastructure and Economic Development  
 22 Bank may adopt directives and requirements to implement the loan  
 23 guarantee program authorized by this section.

24 (f) As long as there are any outstanding small business disaster  
 25 loan guarantees, as authorized by Section 8684.2 or 63089.90, the  
 26 bank shall provide a report to the Legislature on loan guarantees  
 27 approved and rejected by gender, ethnic group, type of business  
 28 and location, and each participating loan institution. The report  
 29 may be combined with the report required in Section 63089.98.

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

32  
 33 CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF  
 34 2013

35  
 36 Article 1. Introduction

37  
 38 63088. (a) This chapter shall be known, and may be cited, as  
 39 the Small Business Financial Assistance Act of 2013.

1 (b) Notwithstanding any other provision of this division, this  
2 chapter shall not apply to any other activities, powers, and duties  
3 of the bank under any of the other chapters of this division.

4 63088.1. The Legislature finds all of the following:

5 (a) Small businesses form the core of the California economy  
6 and that it is in the interest of the state to increase opportunities  
7 for entrepreneurs, the self-employed, and microbusiness and small  
8 business owners to have better access to capital and other technical  
9 resources.

10 (b) Unemployment in California is a matter of statewide concern  
11 requiring concerted public and private action to develop  
12 employment opportunities for the disadvantaged, unemployed  
13 persons, veterans, and youth.

14 (c) It is necessary to direct additional capital, general  
15 management assistance, business education, and other resources  
16 to encourage the development of small business opportunities,  
17 particularly for minorities, women, and disabled persons, to  
18 alleviate unemployment.

19  
20 Article 2. Definitions  
21

22 63088.3. Unless the context otherwise requires, the definitions  
23 in this section shall govern the construction of this chapter. The  
24 definitions provided in this section shall only apply to this chapter  
25 and not to any other chapter of this division.

26 (a) “Bank” means the California Infrastructure and Economic  
27 Development Bank.

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

30 (c) “Board of directors” means the board of directors of a  
31 corporation.

32 (d) *“California Small Business Board” means the advisory*  
33 *board established pursuant to Section 14004.1 of the Corporations*  
34 *Code for the purpose of advising on issues and programs affecting*  
35 *small business.*

36 (e)

37 (e) “California Small Business Finance Center” means the  
38 governmental unit with the administrative responsibility for  
39 programs authorized pursuant to ~~Section 63088.5 Chapter 1~~

1 (commencing with Section 14000) of Part 5 of Division 3 of Title  
2 1 of the Corporations Code and this chapter.

3 (e)

4 (f) “Corporation” means any nonprofit California small business  
5 financial development corporation created pursuant to Chapter 1  
6 (commencing with Section 14000) of Part 5 of Division 3 of Title  
7 1 of the Corporations Code, or pursuant to Chapter 1 (commencing  
8 with Section 32000) of Division 15.5 of the Financial Code.

9 (f)

10 (g) “Directives and requirements” means a document adopted  
11 by the bank board setting forth policy direction as well as key rules  
12 governing a particular subject area.

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

16 (h) “Executive director” means the executive director of the  
17 California Infrastructure and Economic Development Bank.

18 (i) “Expansion fund” means the California Small Business  
19 Expansion Fund.

20 (j) “Financial company” means banking organizations, including  
21 national banks and trust companies, savings and loan associations,  
22 certified community development financial institutions,  
23 microbusiness lenders, state insurance companies, mutual insurance  
24 companies, and other public and private banking, lending,  
25 retirement, and insurance organizations.

26 (k) “Financial institution” means regulated banking  
27 organizations, including national banks and trust companies  
28 authorized to conduct business in California and state-chartered  
29 commercial banks, trust companies, credit unions, and savings and  
30 loan associations.

31 (l) “Financial product” means the type of financial assistance  
32 described in Section 63088.5.

33 (m) “Loan committee” means a committee appointed by the  
34 board of directors of a corporation to determine the course of action  
35 on a loan application pursuant to this chapter.

36 (n) “Microbusiness lender” means a microbusiness lender as  
37 defined in Section 13997.2 ~~of the Government Code.~~

38 (o) “Program manager” means the manager of the California  
39 Small Business Finance Center as designated to this title by the

1 executive director of the California Infrastructure and Economic  
2 Development Bank.

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

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

16 (r) “Trustee” means the lending institution or financial company  
17 selected by the bank board to hold and invest the trust funds, or  
18 selected by a predecessor agency to the bank, if applicable. An  
19 agreement made pursuant to this chapter and the trustee shall not  
20 be construed to be a deposit of state funds.

21 (s) “Trust fund account” means an account within the trust fund  
22 that is either allocated to a particular corporation or shared by  
23 multiple corporations for the purpose of paying loan defaults and  
24 claims on bond guarantees or other financial products and program  
25 uses provided in this chapter.

26  
27  
28

### Article 3. Purpose

29 63088.5. (a) There is within the Governor’s Office of Business  
30 and Economic Development the California Infrastructure and  
31 Economic Development Bank, which shall, among other things,  
32 administer the California Small Business Financial Center that  
33 administers programs to assist businesses seeking new capital  
34 resources.

35 (b) Pursuant to this chapter and Chapter 1 (commencing with  
36 Section 14000) of Part 5 of *Division 3 of* Title 1 of the Corporations  
37 Code, the bank board may continue programs funded by the Small  
38 Business Expansion Fund or establish one or more programs  
39 administered under contract with small business financial  
40 development corporations. Programs established pursuant to this

1 chapter or Chapter 1 (commencing with Section 14000) of Part 5  
2 of *Division 3 of* Title 1 of the Corporations Code may include the  
3 following types of financial products:

4 (1) Loan guarantees and other credit enhancements.

5 (2) Direct loans and other ~~debit~~ *debt* instruments.

6 (3) Disaster loan guarantees.

7 (4) Surety bond guarantees.

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

11 (d) In carrying out this chapter the program manager, the  
12 executive director, and the bank board may call on the California  
13 Small Business Board for advice and recommendations. All actions  
14 by the California Small Business Board are advisory.

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

21 63088.6. To implement its responsibilities, a corporation shall  
22 undertake program activities that shall include, but not be limited  
23 to, the following:

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

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

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

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

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

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

7 (g) Become an agent for other financial institutions and financial  
8 companies.

9  
10 Article 4. Administrative Structure

11  
12 63089. The bank board shall adopt directives and requirements  
13 concerning the implementation of this chapter and pursuant to  
14 Chapter 1 (commencing with Section 14000) of Part 5 of Division  
15 3 of Title 1 of the Corporations Code. Any regulations adopted  
16 pursuant to Chapter 1 (commencing with Section 14000) of Part  
17 5 of Division 3 of Title 1 of the Corporations Code, as that chapter  
18 read on January 1, 2013, shall remain in effect until the bank board  
19 adopts directives and requirements relating to the specific policy  
20 or activity, but in no case beyond June 1, 2015.

21 63089.1. The program manager acting under the guidance of  
22 the executive director shall do all of the following:

23 (a) Administer this chapter.

24 (b) Enter into a contract between the bank and each corporation  
25 for services to be provided by the corporations for one or more  
26 programs under this chapter and Chapter 1 (commencing with  
27 Section 14000) of Part 5 of Division 3 of Title 1 of the  
28 Corporations Code.

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

32 (d) Require each corporation to submit an annual written plan  
33 of operation.

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

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

37 (g) Oversee the operations of one or more programs authorized  
38 pursuant to this chapter.

39 (h) Act as liaison between corporations, other state and federal  
40 agencies, lenders, and the Legislature.

1 (i) Act as secretary to the California Small Business Board, and  
 2 attend meetings of the California Small Business Board and the  
 3 bank board.

4 (j) Attend and participate at corporation meetings. The program  
 5 manager or his or her designee shall be an ex officio, nonvoting  
 6 representative on the board of directors and loan committees of  
 7 each corporation. The program manager shall confer with the board  
 8 of directors of each corporation as appropriate and necessary to  
 9 carry out his or her duties, but in no case shall the program manager  
 10 confer less than once each fiscal year.

11 (k) Assist corporations in applying for public and private funding  
 12 opportunities, and in obtaining program support from the business  
 13 community.

14 63089.2. (a) The use of state funds paid out to the trust fund  
 15 and the return on those funds from investment pursuant to Section  
 16 63089.56 is conditional pursuant to Sections 63089.3 and 63089.57.  
 17 Each corporation shall enter into a written signed agreement with  
 18 the bank to provide program management services for one or more  
 19 programs authorized under this chapter and Chapter 1 (commencing  
 20 with Section 14000) of Part 5 of Division 3 of Title 1 of the  
 21 Corporations Code. ~~Agreements~~

22 (b) *Agreements* with the corporations entered into pursuant to  
 23 this chapter are exempt from the requirements of Sections 10295,  
 24 and *Sections* 10335 to 10381, inclusive, of the ~~Public Contracts~~  
 25 *Contract Code*. The agreement shall, at a minimum, govern the  
 26 activities in which the corporation engages, the investment of state  
 27 funds and its return, and the budgeted administrative expenses the  
 28 corporations may incur. ~~In~~

29 (c) *In the event the program manager and corporation do not*  
 30 *reach an agreement, or the the corporation may appeal one or*  
 31 *more conditions of the contract to the executive director or the*  
 32 *bank board by providing written notice to the executive director*  
 33 *within 10 days of the final written contract proposal from the*  
 34 *program manager. The executive director or the bank board shall*  
 35 *make a determination within 30 days of receiving written notice.*

36 (d) *In the event that the program manager finds the corporation*  
 37 *has violated the terms of an active agreement, the program manager*  
 38 *may take any action under Section 63089.3 or 63089.57, or any*  
 39 *other action as appropriate. In the event the program manager and*  
 40 *corporation do not reach agreement or the program manager finds*

1 the corporation has *substantively* violated the terms of an active  
2 agreement, the corporation shall have no authority to withdraw or  
3 encumber the moneys in the trust fund or the return of those funds  
4 by the issuance of guarantees, commitments for other financial  
5 products, or by incurring expenses against the fund and its return  
6 in any manner whatsoever, and the program manager may take  
7 any action under Section 63089.3 or 63089.57, or any other action  
8 as appropriate. Any guarantee or other encumbrance made by the  
9 corporation in violation of this section shall be null and void, and  
10 the state, the bank, the expansion fund, or the trust fund will not  
11 be liable therefor.

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

20 (1) As used in this section, "guarantee or any other financial  
21 products authority" means the authority to make or guarantee or  
22 administer any other financial products that encumber funds in a  
23 trust fund account, any account or subaccount under the direct  
24 control of the bank or other state entity, or the expansion fund.

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

36 (b) Failure of a corporation to substantially comply with the  
37 following may result in the suspension or termination of a  
38 corporation:

39 (1) Directives and requirements adopted by the bank board, for  
40 implementing the California Small Business Development

1 Corporation Law (Chapter 1 (commencing with Section 14000)  
2 of Part 5 of Division 3 of Title 1 of the Corporations Code) and  
3 this chapter.

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

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

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

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

14 (1) Terminate the temporary suspension.

15 (2) Terminate the temporary suspension subject to the  
16 corporation's adoption of a specified remedial action plan approved  
17 by the program manager.

18 (3) Continue the temporary suspension of guarantee and other  
19 financial product authority until a specified time.

20 (4) Terminate the corporation's authority to administer specified  
21 loan guarantees or other financial products.

22 (5) Terminate the corporation's authority to remain a corporation  
23 authorized pursuant to the California Small Business Development  
24 Corporation Law (Chapter 1 (commencing with Section 14000)  
25 of Part 5 of Division 3 of Title 1 of the Corporations Code) and  
26 this chapter.

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

36 (e) The actions contained in paragraphs (3) to (5), inclusive, of  
37 subdivision (c) require a finding that irreparable harm will occur  
38 unless the action is taken, and a finding that the corporation has  
39 failed to comply with the California Small Business Development  
40 Corporation Law (Chapter 1 (commencing with Section 14000)

1 of Part 5 of Division 3 of Title 1 of the Corporations Code) and  
2 this chapter.

3 (f) In considering any action specified in subdivision (c), the  
4 program manager shall consider, along with other criteria as  
5 specified in subdivision (b), the corporation's history and past  
6 performance.

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

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

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

35 (j) Pursuant to subdivision (i), the executive director may  
36 independently take action or seek the advice and recommendation  
37 of the ~~small business board~~ *California Small Business Board* prior  
38 to taking any of the following actions:

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

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

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

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

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

30 (m) Pursuant to subdivision (l), the bank board may  
31 independently take action or seek the advice and recommendation  
32 of the California Small Business Board prior to taking any of the  
33 following actions:

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

35 (2) Modify the action taken by the executive director subject to  
36 the adoption by the corporation of a specified remedial action plan  
37 acceptable to the executive director.

38 (3) Affirm the action taken by the executive director. ~~The~~  
39 ~~decision of the bank board is final.~~

1 (n) Following the bank board’s concurrence with the executive  
2 director’s determination consistent with any action pursuant to  
3 paragraphs (3) to (5), inclusive, of subdivision (c), *the program*  
4 *manager shall* transfer all funds subject to the action, whether  
5 encumbered or not, in the trust fund account of the suspended or  
6 terminated corporation into either the expansion fund, or either  
7 permanently or temporarily transfer the funds to the trust fund  
8 account of another corporation. The corporation shall be notified  
9 of the funds transfer 10 days before the effective date of the  
10 transfer.

11 (o) Notwithstanding Section ~~63089.53~~, 63089.56, in the event  
12 a final determination was made by the program manager, the  
13 executive director or the bank board, whichever is applicable, to  
14 temporarily transfer the funds of the corporation to the expansion  
15 fund or to the trust fund account of another corporation, upon  
16 compliance with all requirements of that final determination as  
17 determined by the executive director, the transferred funds shall  
18 be returned to the ~~corporation’s~~ corporation’s trust fund account.  
19 While the funds of a corporation’s trust fund account reside in the  
20 expansion fund, use of the principal on the funds shall be governed  
21 by the implementing directives and requirements specifying use  
22 of funds in the expansion fund. Interest on the funds moved from  
23 a corporation’s trust fund account upon temporary withdrawal  
24 shall be limited to payment of the corporation’s administrative  
25 expenses, as contained in the contract between the corporation and  
26 the bank pursuant to this chapter.

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

1 benefits of a small business financial development corporation  
2 following suspension.

3 63089.4. The bank is authorized to:

4 (a) Approve new corporations recommended by the program  
5 manager.

6 (b) Enter into contracts with corporations for program  
7 management services.

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

10 (d) Invest expansion fund and trust fund moneys as specified  
11 in this chapter.

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

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

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

17

18 Article 5. Expansion Fund and Trust Fund

19

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

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

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

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

31 (3) To pay administrative costs of corporations.

32 (4) To pay state support and administrative costs.

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

35 (c) The expansion fund and trust fund are created solely for the  
36 purpose of receiving state, federal, or local government moneys,  
37 and other public or private moneys to make loans, guarantees, and  
38 other financial products pursuant to this chapter. *The program  
39 manager shall provide written notice to the Joint Legislative  
40 Budget Committee and to the Chief Clerk of the Assembly and the*

1 *Secretary of the Senate who shall provide a copy of the notice to*  
2 *the relevant policy committees within 10 days of any nonstate funds*  
3 *being deposited in the expansion fund. The notice shall include*  
4 *the source, purpose, timeliness, and other relevant information as*  
5 *determined by the bank board.*

6 (d) One or more accounts in the expansion fund and the trust  
7 fund may be created by the program manager for corporations  
8 participating in one or more programs authorized under this  
9 chapter. Each account is a legally separate account, and shall not  
10 be used to satisfy loan guarantees or other financial product  
11 obligations of another corporation except when the expansion fund  
12 or trust fund is shared by multiple corporations.

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

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

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

29 (b) The expansion fund and the trust fund shall be used for the  
30 following purposes:

31 (1) To pay defaulted loan guarantee or surety bond losses, or  
32 other financial product defaults or losses.

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

34 (3) To pay administrative costs of corporations.

35 (4) To pay state support and administrative costs.

36 (5) To pay those costs necessary to protect a real property  
37 interest in a financial product default.

38 (c) The expansion fund and trust fund are created solely for the  
39 purpose of receiving state, federal, or local government moneys,

1 and other public or private moneys to make loans, guarantees, and  
2 other financial products pursuant to this chapter.

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

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

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

18 63089.51. (a) All money deposited in the expansion fund is  
19 hereby continuously appropriated, without regard to fiscal years,  
20 for the purposes of this chapter.

21 (b) Except as specified in subdivision (b) of Section 63089.54,  
22 the state or the bank shall not be liable or obligated in any way  
23 beyond the state money that is allocated in the expansion fund  
24 from moneys from the General Fund appropriated for those  
25 purposes.

26 63089.52. (a) The program manager, at his or her discretion,  
27 with the approval of the executive director, may request the trustee  
28 to invest those moneys in the trust fund in any of the securities  
29 described in Section 16430. Returns from these investments shall  
30 be deposited in the expansion fund and shall be used to support  
31 the programs of this chapter.

32 (b) Any investments made in securities described in Section  
33 16430 shall be governed by the investment policy approved by the  
34 bank board.

35 63089.53. ~~The state~~ Except as specified in subdivision (b) of  
36 Section 63089.54, the state or the bank shall not be liable or  
37 obligated in any way beyond the money that is allocated and  
38 deposited in the trust fund accounts.

39 63089.54. (a) There is hereby created in the State Treasury  
40 the Small Business Disaster Recovery Loan Loss Reserve Account,

1 as part of the expansion fund. This account shall be used to pay  
2 for losses resulting from loan guarantees issued pursuant to  
3 subdivision (a) of Section 63089.90 or subdivision (b) of this  
4 section, and disaster loan guarantees and other credit enhancement  
5 defaults issued prior to the effective date of this section that are in  
6 default.

7 (b) Any lending institution that issues a loan that is guaranteed  
8 by resources in this account shall be fully reimbursed for the  
9 guaranteed portion of principal and interest that result from a loan  
10 or loans that are in default. If there are insufficient funds in this  
11 account to fully satisfy all claimants, the full faith of the resources  
12 in the General Fund are pledged to satisfy the obligations of this  
13 account. This account may only guarantee as much loan dollar  
14 value as is specifically authorized by the Director of Finance with  
15 the concurrence of the Governor. This account shall receive all  
16 moneys transferred pursuant to Section 63089.55, and any  
17 unencumbered balances transferred to the California Small  
18 Business Expansion Fund pursuant to Chapters 11 and 12 of the  
19 First Extraordinary Session of the Statutes of 1989, and Chapter  
20 1525 of the Statutes of 1990, as of July 1, 1992.

21 (c) The Governor may utilize this authority to prevent business  
22 insolvencies and loss of employment in an area affected by a state  
23 of emergency within the state and declared a disaster by the  
24 President of the United States, by the Administrator of the United  
25 States Small Business Administration, or by the United States  
26 Secretary of Agriculture, or declared to be in a state of emergency  
27 by the Governor of California.

28 63089.55. The Director of Finance, with the approval of the  
29 Governor, may transfer moneys in the Special Fund for Economic  
30 Uncertainties to the California Small Business Expansion Fund  
31 for use as authorized by the bank board, in an amount necessary  
32 to make loan guarantees pursuant to Section 8684.2 and this  
33 chapter.

34 63089.56. (a) The funds in the expansion fund shall be paid  
35 out to trust fund accounts by the Treasurer on funds drawn by the  
36 Controller and requisitioned by the program manager, pursuant to  
37 the purposes of this chapter. The program manager may transfer  
38 funds allocated from the expansion fund to accounts, established  
39 solely to receive the funds, in financial institutions or financial  
40 companies designated by the bank to act as trustee. The financial

1 institutions or financial companies so designated shall be approved  
2 by the state for the receipt of state deposits. Interest earned on the  
3 trust fund accounts in financial institutions or financial companies  
4 may be utilized by the corporations or the bank pursuant to the  
5 purposes of this chapter.

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

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

20 (2) The program manager may authorize a corporation to exceed  
21 the leverage ratio specified in Section 63089.5 or subdivision (a)  
22 of Section 63089.62, pending the annual reallocation of funds  
23 pursuant to this section. However, no corporation shall be permitted  
24 to exceed an outstanding guarantee liability of more than specified  
25 in subdivision (a) of Section 63089.62 after a reallocation is made.

26 (c) Except as specified in subdivision (e), the program manager  
27 shall allocate and transfer money to trust fund accounts based on  
28 performance-based criteria. The criteria shall include, but not be  
29 limited to, the following:

30 (1) The default record of the corporation.

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

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

35 (4) The number and amount of surety bonds guaranteed by a  
36 corporation.

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

38 (6) The number of jobs created or retained due to the financial  
39 product activity.

1 (d) The criteria specified in subdivision (c) shall not apply to a  
2 corporation that has been in existence for five years or less. If not  
3 already adopted, the bank board shall develop directives and  
4 requirements specifying the basis for transferring account funds  
5 to those corporations that have been in existence for five years or  
6 less.

7 (e) Any decision made by the program manager pursuant to this  
8 section may be appealed to the executive director within 15 days  
9 of notice of the proposed action. The executive director may repeal  
10 or modify any reallocation and transfer decisions made by the  
11 program manager. The appealing corporation shall submit, in  
12 writing, the specific area or areas of appeal and set forth any  
13 recommendation to the executive director for consideration. The  
14 executive director shall render a final decision within five business  
15 days of receiving the written appeal.

16 (f) Any decision made by the executive director shall be  
17 appealable in writing to the bank board within 15 days of the  
18 executive director's decision, or such longer period as agreed to  
19 between the executive director and the corporation. The bank board  
20 shall make a final reallocation or transfer decision within 30 days  
21 of receiving the appeal, or such longer period agreed to between  
22 the executive director and the corporation.

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

27 63089.57. Pursuant to this chapter and any directives and  
28 requirements adopted pursuant to this chapter, the state has residual  
29 interest in the funds deposited by the state to a trust fund account  
30 and to the return on these funds from investments. On dissolution,  
31 suspension, or termination of the corporation, these funds shall be  
32 withdrawn by the program manager from the trust fund account  
33 and returned to the expansion fund or temporarily transferred to  
34 another trust fund account. This provision shall be contained in  
35 the trust instructions to the trustee.

36 63089.58. Each trust fund account shall consist of a loan  
37 guarantee account, and, upon recommendation by the program  
38 manager, a bond guarantee account or other financial product  
39 account, each of which is a legally separate account, and the assets  
40 of one account shall not be used to satisfy loan guarantees or other

1 financial product obligations of another corporation, except when  
2 a trust fund account is designated by the program manager to be  
3 shared by multiple corporations. The amount of funds allocated  
4 to a bond guarantee account shall be pursuant to the directives and  
5 requirements. A corporation shall not use trust fund accounts to  
6 secure a corporate indebtedness. State funds deposited in the trust  
7 fund accounts, with the exception of guarantees established  
8 pursuant to this chapter, shall not be subject to liens or  
9 encumbrances of the corporation or its creditors.

10 63089.59. (a) The financial institution or financial company  
11 that is to act as trustee of the trust fund shall be designated by the  
12 bank. The corporation shall not receive money on deposit to  
13 support guarantees or other financial products issued under this  
14 chapter without the approval of the program manager.

15 (b) State funds may not be used to finance an expense incurred  
16 by a corporation in a location not approved pursuant to the contract  
17 between the bank and the corporation. The prohibition against use  
18 of state funds also applies to the location of satellite offices, and  
19 the area served from a corporation office.

20 (c) Except as otherwise provided in this chapter, the trust fund  
21 account shall be used solely to make loans, guarantee bonds and  
22 loans, and provide other financial products approved by the  
23 corporation that meet the financial product criteria of the directives  
24 and requirements. Except as provided in subdivision (b) of Section  
25 63089.54, the state or the bank shall not be liable or obligated in  
26 any way as a result of the allocation of state moneys to a trust fund  
27 account beyond the state moneys that are allocated and deposited  
28 in the fund pursuant to this chapter, and that are not otherwise  
29 withdrawn by the state pursuant to this chapter.

30 63089.60. (a) The program manager shall recommend whether  
31 the expansion fund and trust fund accounts are to be leveraged,  
32 and if so, by how much. Upon the request of the corporation, the  
33 program manager's decision may be repealed or modified by the  
34 executive director or the bank board.

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

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

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

6 63089.60. (a) The program manager shall recommend whether  
7 the expansion fund and trust fund accounts are to be leveraged,  
8 and if so, by how much. Upon the request of the corporation, the  
9 program manager's decision may be repealed or modified by the  
10 executive director or the bank board.

11 (b) The amount of guarantee liability outstanding at any one  
12 time shall not exceed four times the amount of funds on deposit  
13 in the expansion fund plus any receivables due from funds loaned  
14 from the expansion fund to another fund in state government as  
15 directed by the Department of Finance pursuant to a statute enacted  
16 by the Legislature, including each of the trust fund accounts within  
17 the trust fund, unless the program manager has permitted a higher  
18 leverage ratio for an individual corporation pursuant to subdivision  
19 (b) of Section 63089.56.

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

21 63089.61. (a) The corporate guarantee shall be backed by  
22 funds on deposit in the corporation's trust fund account, or by  
23 receivables due from funds loaned from the corporation's trust  
24 fund account to another fund in state government, as directed by  
25 the Department of Finance pursuant to a statute enacted by the  
26 Legislature.

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

31 (c) The expansion fund and trust fund accounts shall be used to  
32 guarantee obligations and other financial product obligations, to  
33 pay the administrative costs of the corporations, and for other uses  
34 pursuant to this chapter.

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

38 63089.61. (a) The corporate guarantee shall be backed by  
39 funds on deposit in the corporation's trust fund account, or by  
40 receivables due from funds loaned from the corporation's trust

1 fund account to another fund in state government, as directed by  
2 the Department of Finance pursuant to a statute enacted by the  
3 Legislature.

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

8 (c) The expansion fund and trust fund accounts shall be used to  
9 guarantee obligations and other financial product obligations, to  
10 pay the administrative costs of the corporations, and for other uses  
11 pursuant to this chapter.

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

13 63089.62. (a) It is the intent of the Legislature that the  
14 corporations make maximum use of their statutory authority to  
15 guarantee loans and surety bonds, and administer other financial  
16 products, including the authority to secure loans with a minimum  
17 loan loss reserve of only 20 percent, unless the program manager  
18 authorizes a higher leverage ratio for an individual corporation  
19 pursuant to subdivision (b) of Section 63089.56, so that the  
20 financing needs of small business may be met as fully as possible  
21 within the limits of corporations' trust fund account balance.

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

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

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 25 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 of  
19 the date the emergency or disaster is declared. Upon application  
20 of a corporation, the program manager may waive or modify the  
21 rule for the corporation if the corporation demonstrates that it made  
22 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 become operative on January 1, 2018.

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#### Article 6. Corporations, Miscellaneous

29 63089.65. (a) A corporation shall establish one or more loan  
30 committees, each of which shall be composed of five or more  
31 persons, a majority of whom shall be experienced in banking and  
32 lending operations.

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

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

39 (2) On the basis of that determination, recommend to the board  
40 of directors any action that the loan committee deems appropriate

1 under the circumstances, or, in the event that approval authority  
2 has been delegated to the loan committee by the board of directors,  
3 approve or disapprove the loan application.

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

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

9 63089.66. Unless delegated to its loan committee, the  
10 corporation’s board of directors, upon a recommendation from its  
11 loan committee, shall do all of the following:

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

16 (b) Give consideration to applications from traditional and  
17 safety-net providers of Medi-Cal services that will promote access  
18 to quality medical care for individuals enrolled in Medi-Cal  
19 managed health care networks that are contracting with or owned  
20 or operated by a county board of supervisors, a county health  
21 commission, or a county health authority organized pursuant to  
22 Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, or  
23 14087.9605 of the Welfare and Institutions Code.

24 63089.67. A corporation may charge the borrower or financial  
25 institution a loan fee or credit enhancement fee on all loans made  
26 or guaranteed by the corporation to defray the operating expenses  
27 of the corporation. The amount of the fee shall be determined by  
28 the directives and requirements.

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Article 7. Loan Guarantees

32 63089.70. (a) The Small Business Expansion Fund, which is  
33 hereby continued in existence, shall, among other things, provide  
34 guarantees to loans offered by financial institutions and financial  
35 companies to small businesses.

36 (b) The Legislature finds and declares that the Small Business  
37 Loan Guarantee Program has enabled participating small businesses  
38 that do not qualify for conventional business loans or Small  
39 Business Administration loans to secure funds to expand their  
40 businesses. These small businesses would not have been able to

1 expand their businesses in the absence of the program. The program  
2 has also provided valuable technical assistance to small businesses  
3 to ensure growth and stability. The study commissioned by former  
4 Section 14069.6 of the Corporations Code, as added by Chapter  
5 919 of the Statutes of 1997, documented the return on investment  
6 of the program and the need for its services. The value of the  
7 program has also been recognized by the Governor through  
8 proposals contained in the May Revision to the Budget Act of  
9 2000 for the 2000–01 fiscal year.

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

12 (1) There is no probability that the loan would be granted by a  
13 financial company or financial institution under reasonable terms  
14 and conditions and the borrower has demonstrated a reasonable  
15 prospect of repayment.

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

17 (3) The loan qualifies as a small business loan or an employment  
18 incentive loan.

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

21 (5) As a result of the loan, the jobs generated or retained  
22 demonstrate reasonable conformance to any directives and  
23 requirements specifying employment criteria.

24 63089.71. (a) Among other priorities, corporations shall give  
25 high priority to the issuance of loan guarantees to small business  
26 incubators and to businesses that lease space in incubators.

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

31 (1) Reception and meeting area.

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

34 (3) Accounting and bookkeeping services.

35 (4) Research libraries.

36 (5) Onsite financial and management counseling.

37 (6) Parking.

38 (7) Flexible lease arrangements for flexible space.

39 (8) Computer or word processing facilities.

40 (9) Day care facilities.

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

9  
10 Article 8. Direct Lending and Other Debt Instruments

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12 63089.80. (a) A corporation may utilize funds for direct  
13 lending or other debt instruments pursuant to the directives and  
14 requirements.

15 (b) The amount of funds available for direct lending and other  
16 debt instruments shall be determined by the directives and  
17 requirements. In its capacity as a direct lender, the corporation  
18 may sell in the secondary market the guaranteed portion of each  
19 loan, if guaranteed, so as to raise additional funds for direct lending.

20 (c) To execute the direct loan and other debt instrument  
21 programs established in this chapter, the bank may loan trust funds  
22 to a corporation for the express purpose of lending those funds to  
23 an identified borrower. The loan authorized by the bank to the  
24 corporation shall be on terms similar to the loan between the  
25 corporation and the borrower.

26 (d) The amount of the loan may be in excess of the amount of  
27 a loan to any individual borrower, but actual disbursements  
28 pursuant to the bank loan agreement shall be required to be  
29 supported by a loan agreement between the borrower and the  
30 corporation in an amount at least equal to the requested  
31 disbursement. The loan between the bank and the corporation shall  
32 be evidenced by a credit agreement. In the event that any loan  
33 between the corporation and borrower is not guaranteed by a  
34 governmental agency, the portion of the credit agreement  
35 attributable to that loan shall be secured by assignment of any note,  
36 executed in favor of the corporation by the borrower to the bank.  
37 The terms and conditions of the credit agreement shall be similar  
38 to the loan agreement between the corporation and the borrower,  
39 which shall be collateralized by the note between the corporation  
40 and the borrower.

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

11 (f) Upon the approval of the program manager, a corporation  
12 shall be authorized to borrow trust funds from the bank for the  
13 purpose of relending those funds to small businesses. A corporation  
14 shall demonstrate to the program manager that it has the capacity  
15 to administer a direct loan program, and has procedures in place  
16 to limit the default rate for loans to startup businesses. The  
17 percentage of any trust fund account to be used for the direct  
18 lending pursuant to this subdivision shall be established in the  
19 directives and requirements.

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

23 (1) The direct loan or other financial product assistance would  
24 not be granted by a financial company or financial institution under  
25 reasonable terms and conditions and the borrower has demonstrated  
26 a reasonable prospect of repayment.

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

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

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

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

36 (h) The maximum loan or other debt instrument amount to a  
37 small business shall be set by the directives and requirements. In  
38 the absence of fraud on the part of the corporation, the repayment  
39 obligation pursuant to the loan or other debt instrument to the  
40 corporation shall be limited to the amount of funds received by

1 the corporation for the loan or other debt instrument to the small  
 2 business and any other funds received from the bank that are not  
 3 disbursed. The corporation shall be authorized to charge a fee to  
 4 the small business borrower, in an amount determined pursuant to  
 5 the directives and requirements. The programs provided for in this  
 6 subdivision shall be available in all geographic areas of the state.

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Article 9. Disaster Loan Guarantees

10 63089.90. (a) Pursuant to Section 8684.2 and the contract  
 11 between a corporation and the bank, a corporation may, in an area  
 12 affected by a state of emergency within the state and declared a  
 13 disaster by the President of the United States, the Administrator  
 14 of the United States Small Business Administration, or the United  
 15 States Secretary of Agriculture, or declared to be in a state of  
 16 emergency by the Governor of California, provide loan guarantees  
 17 from funds allocated in Section 63089.55 to small businesses,  
 18 small farms, nurseries, and agriculture-related enterprises that have  
 19 suffered actual physical damage or significant economic injury as  
 20 a result of the disaster.

21 (b) The bank board may adopt directives and requirements to  
 22 implement the disaster loan guarantee program authorized by this  
 23 section. Any regulations adopted under Chapter 1 (commencing  
 24 with Section 14000) of Part 5 of Division 3 of Title 1 of the  
 25 Corporations Code shall remain in effect until the bank adopts  
 26 directives and requirements.

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

29 (1) The borrower cannot reasonably obtain a loan without some  
 30 form of credit enhancement.

31 (2) The borrower has demonstrated a reasonable prospect of  
 32 repayment.

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

34 (4) The disaster loan qualifies as a small business loan or  
 35 employment incentive loan.

36 (d) Allocations pursuant to subdivision (a) shall be deemed to  
 37 be for extraordinary emergency or disaster response operations  
 38 costs incurred by the issuance of disaster loan guarantees.

1 Article 10. Surety Bond Guarantees

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3 63089.95. In furtherance of the purposes set forth in Section  
4 63088.1 of this code and Section 14001 of the Corporations Code,  
5 a corporation may do any one or more of the following activities,  
6 but only to the extent that the activities are authorized pursuant to  
7 the contract between the bank and corporation: guarantee, endorse,  
8 or act as surety on the bonds, notes, contracts, or other obligations  
9 of, or assist financially, any person, firm, corporation, or  
10 association, and may establish and regulate the terms and  
11 conditions with respect to any such loans or financial assistance  
12 and the charges for interest and service connected therewith, except  
13 that the corporation shall not make or guarantee any loan, unless  
14 and until it determines:

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

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

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

22 (d) The borrower has a minimum equity interest in the business  
23 as determined by the directives and requirements.

24 (e) As a result of the loan, the jobs generated or retained  
25 demonstrate reasonable conformance to the directives and  
26 requirements specifying employment criteria.

27 63089.96. (a) In addition to the authority granted by Section  
28 63089.95, pursuant to the directives and requirements a corporation  
29 may act as guarantor on a surety bond for any small business  
30 contractor, including, but not limited to, women, minority, and  
31 disabled veteran contractors.

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

Article 11. Reporting

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63089.97. Each corporation shall provide to the program manager, in a format prescribed by him or her, the following data and reports:

(a) A summary of all outstanding loans, bonds, and other credit enhancements to which a corporation guarantee, as authorized by this chapter, is attached, on a schedule determined by the program manager.

(b) A summary of all outstanding loans and other debt instruments made by a corporation, 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.

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

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

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

63089.98. (a) Annually, not later than January 1 of each year commencing January 1, 2014, the program manager shall prepare and submit to the Governor and the Legislature, pursuant to Section 9795, a report for the preceding fiscal year ending June 30,

1 containing the expansion fund and trust fund financial product  
2 activity of each corporation, including all of the following:

3 (1) Loans, guarantees, and other financial products awarded  
4 and outstanding balances.

5 (2) Default and loss statistics.

6 (3) Employment data.

7 (4) Ethnicity and gender data of participating contractors and  
8 other entities, and experience of surety insurer participants in the  
9 bond guarantee program.

10 (5) Significant events.

11 (b) The program manager shall post the report on the bank's  
12 Internet Web site.

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

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

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

O