

AMENDED IN SENATE SEPTEMBER 6, 2013

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

Introduced by Assembly Member Members Medina and Bocanegra
(Principal coauthor: Senator Hueso)

February 22, 2013

An act to repeal and add Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, and to amend Section 8684.2 of, and to add Chapter 6 (commencing with Section 63088) to Division 1 of Title 6.7 to, of, and 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, *the latter office abolished by existing law and the Governor's Reorganization Plan No. 2 of 2012, effective on July 3, 2012, and operative July 1, 2013*, 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), *located within the Governor's Office of Business and Economic Development*, 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. *The bill would also describe the transition of oversight of the Small Business Loan Guarantee Program from the Business, Transportation and Housing Agency to the I-Bank and compliance with federal and state program requirements.* 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:

5

6 CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL
7 DEVELOPMENT CORPORATIONS

8

9 Article 1. Introduction

10

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

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

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

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

35 (d) It is the further intent of the Legislature to provide expanded
36 resources allowing participation by small and emerging contractors
37 in state public works contracts. Increased access to surety bonding
38 resources will assist in supporting participation by those firms in

1 public works contracts, and by stimulating increased participation
 2 by small firms, the state will benefit from increased competition
 3 and lower bid costs.

4 14002. If any provision of this chapter or the application thereof
 5 to any person or circumstances is held invalid, this invalidity shall
 6 not affect other provisions or applications of the chapter which
 7 can be given effect without the invalid provision or application,
 8 and to this end the provisions of this chapter are severable.

9
 10 Article 2. Definitions

11
 12 14003. Unless the context otherwise requires, the definitions
 13 in this section shall govern the construction of this chapter.

14 (a) “Bank” means the California Infrastructure and Economic
 15 Development Bank.

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

18 (c) “Board of directors” means the board of directors of the
 19 corporation.

20 (d) “California Small Business Board” means the advisory board
 21 established pursuant to Section 14004.1 for the purpose of advising
 22 on issues and programs affecting small business.

23 (e) “California Small Business Finance Center” means the
 24 governmental unit *within the bank, which is located within the*
 25 *Governor’s Office of Business and Economic Development*, with
 26 the administrative responsibility for *the programs and activities*
 27 *authorized pursuant to Section ~~63088.5~~ 8684.2 of the Government*
 28 *Code, the Small Business Financial Assistance Act of 2013*
 29 *(Chapter 6 (commencing with Section 63088) of Division 1 of Title*
 30 *6.7 of the Government Code), and this chapter.*

31 (f) “Corporation” means any nonprofit California small business
 32 financial development corporation created pursuant to this chapter,
 33 or pursuant to Chapter 1 (commencing with Section 32000) of
 34 Division 15.5 of the Financial Code.

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

38 (h) “Executive director” means the executive director of the
 39 *California* Infrastructure and Economic Development Bank.

1 (i) “Expansion fund” means the California Small Business
2 Expansion Fund *authorized pursuant to Section 63089.5 of the*
3 *Government Code.*

4 (j) “Financial company” means banking organizations, including
5 national banks and trust companies, savings and loan associations,
6 certified community development financial institutions,
7 microbusiness lenders, state insurance companies, mutual insurance
8 companies, and other public and private banking, lending,
9 retirement, and insurance organizations.

10 (k) “Financial institution” means regulated banking
11 organizations, including national banks and trust companies
12 authorized to conduct business in the state and state-chartered
13 commercial banks, trust companies, credit unions, and savings and
14 loan associations.

15 (l) “Financial product” means the type of financial assistance
16 described in Section 63088.5 of the Government Code *or that the*
17 *California Small Business Finance Center or a small business*
18 *financial development corporation is otherwise authorized to*
19 *provide.*

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

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

26 (o) “~~Program Manager~~ *manager*” means the manager of the
27 California Small Business Finance Center as designated to this
28 title by the executive director of the bank.

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

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

Article 3. Program Manager

1
2
3 14004. (a) The program manager shall do all of the following:
4 (1) Administer this chapter.
5 (2) Make recommendations to the executive director and the
6 bank board on the approval or disapproval of the articles of
7 incorporation. This determination shall be based upon the
8 following:
9 (A) Review of the articles of incorporation and bylaws of the
10 corporation to determine whether they contain the provisions
11 required by this chapter and conform with the directives and
12 requirements adopted by the bank board pursuant to this chapter.
13 (B) A determination as to whether the legislative intent
14 expressed in Section 14001 shall be served by the proposed
15 corporation.
16 (C) A determination as to whether the responsibility, character,
17 and general fitness of the individuals who will manage the
18 corporation are such as to command the confidence of the state
19 and to warrant the belief that the business of the proposed
20 corporation will be honestly and efficiently conducted in
21 accordance with the intent and purpose of this chapter and that
22 they include representatives of the financial and business
23 community, as well as the economically disadvantaged.
24 (D) A determination by the program manager that there is
25 significant need for a new corporation.
26 (3) Have the accounts of each corporation formed under this
27 chapter *examined and* audited as of the close of business on June
28 30 of each year. Material-~~audit~~ *examination* exceptions that are
29 not corrected by the corporation within a reasonable period of time
30 may result in the suspension or termination of the corporation
31 pursuant to Section 63089.3 of the Government Code.
32 (4) Have the portfolio of each corporation-~~audited~~ *examined* a
33 minimum of once a year. Material-~~audit~~ *examination* exceptions
34 that are not corrected by the corporation within a reasonable period
35 of time may result in the suspension or termination of the
36 corporation pursuant to Section 63089.3 of the Government Code.
37 (5) Review reports from the Department of Business Oversight
38 and inform corporations as to what corrective action is required.
39 (6) Examine, or cause to be examined, at any reasonable time,
40 all books, records, and documents of every kind, and the physical

1 properties of a corporation. The inspection shall include the right
2 to make copies, extracts, and search records.

3 (b) The program manager may attend and participate at
4 corporation meetings. The program manager, or his or her designee,
5 shall be an ex officio, nonvoting representative on the board of
6 directors and loan committees of each corporation. The program
7 manager shall meet through telecommunication or in person with
8 the board of directors of each corporation at least once each fiscal
9 year, commencing January 1, 2014.

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

20 (b) The California Small Business Board consists of the
21 following membership:

- 22 (1) The Director of Finance or his or her designee.
- 23 (2) The Director of the Office of the Small Business Advocate
24 or his or her designee.
- 25 (3) The Treasurer or his or her designee.
- 26 (4) A representative from two different corporations selected
27 by the corporations.
- 28 (5) Four members appointed by the Governor, one of whom
29 will serve as chair of the California Small Business Board, who
30 are actively involved in the California small business community.
- 31 (6) Two persons actively involved in the business or agricultural
32 communities, one appointed by the Speaker of the Assembly and
33 one appointed by the Senate Committee on Rules.
- 34 (7) Two Members of the Legislature, or their designees, one
35 appointed by the Speaker of the Assembly and one appointed by
36 the Senate Committee on Rules, so long as it does not conflict with
37 ~~the duties of~~ their duties as legislators.

38 (c) The California Small Business Board shall advise the
39 program manager on matters regarding this chapter and Chapter

1 6 (commencing with Section 63088) of Division 1 of Title 6.7 of
2 the Government Code.

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

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

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

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

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

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

25

26 Article 4. New Corporations

27

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

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

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

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

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

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

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

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

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

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

1 established in writing during the probationary period of a new
2 corporation.

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

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

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

18

19

Article 5. Corporation Board

20

21 14013. The corporate powers of a corporation shall be exercised
22 by ~~the~~ *its* board of directors.

23 14014. The bank shall enter into a contract with each
24 corporation that shall require that:

25 (a) A person may not serve on a *corporation's* board of directors
26 who is not a resident of, or person conducting business in, the
27 primary service area described in the articles of incorporation.

28 (b) A *corporation's* board of directors shall include
29 representatives from all of the following:

30 (1) The financial community.

31 (2) The business community.

32 (3) The economically disadvantaged.

33 ~~(e) Not more than one employee of the corporation may serve
34 on the board of directors at any one time.~~

35 (c) *The chief executive officer of a corporation, or his or her
36 designee, is the only employee of the corporation who may serve
37 on its board of directors.*

38 (d) A person who has a financial interest related to a matter over
39 which the board of directors has authority may not make,

1 participate in making, or in any way attempt to influence that
2 matter.

3 14015. If any director ceases to meet the qualifications
4 established in Section 14014, he or she shall immediately vacate
5 his or her position as a director and the position shall be deemed
6 vacant.

7 14016. If any vacancy occurs in the elective membership of
8 the board of directors through death, resignation, or otherwise, the
9 remaining directors shall elect a person representing the appropriate
10 category to fill the vacancy for the unexpired term.

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

19

20

Article 6. Corporations, Miscellaneous

21

22 14018. Every corporation shall provide for, and maintain a
23 central staff to perform, all administrative requirements of the
24 corporation, including all those functions required of a corporation
25 by the contract and this chapter.

26 14019. Reasonable costs incurred by a corporation in the
27 creation and maintenance of a central staff shall be paid to the
28 corporation from state funds, including a portion of the interest
29 earned on the expansion fund and the corporation's trust fund
30 account, if the corporation has a trust fund account, otherwise, on
31 the expansion fund.

32 14020. A corporation shall report to the program manager, or
33 his or her designated representative, all statistical and other reports
34 required by this chapter and Chapter 6 (commencing with Section
35 63088) of Division 1 of Title 6.7 of the Government Code,
36 including responses to audit reports, budget requirements, and
37 other information relating to the establishment, monitoring, and
38 suspension or termination of a corporation.

1 14021. A corporation shall make a report to the program
2 manager, as required by Chapter 6 (commencing with Section
3 63088) of Division 1 of Title 6.7 of the Government Code.

4
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6

Article 7. Conflict of Interest

7 14022. It shall be unlawful for a member of the bank board or
8 for the executive director, program manager, or any person who
9 is an officer, director, contractor, or employee of a corporation, or
10 who is a member of a loan committee, or who is an employee of
11 the California Infrastructure and Economic Development Bank to
12 do any of the following:

13 (a) Ask for, consent, or agree to receive, any commission,
14 emolument, gratuity, money, property, or thing of value for his or
15 her own use, benefit, or personal advantage, for procuring or
16 endeavoring to procure for any person, partnership, joint venture,
17 association, or corporation, any loan, guarantee, financial, or other
18 assistance from any corporation.

19 (b) Borrow money, property, or to benefit knowingly, directly
20 or indirectly, from the use of the money, credit, or property of any
21 corporation.

22 (c) Make, maintain, or attempt to make or maintain, a deposit
23 of the funds of a corporation with any other corporation or
24 association on condition, or with the understanding, expressed or
25 implied, that the corporation or association receiving the deposit
26 shall pay any money or make a loan or advance, directly or
27 indirectly, to any person, partnership, joint venture, association,
28 or corporation, other than to a corporation formed under this
29 chapter.

30 14023. It shall be unlawful for a member of the bank board or
31 for the executive director, program manager, or any person who
32 is an officer or director of a corporation, or who is an employee
33 of the California Infrastructure and Economic Development Bank
34 to purchase or receive, or to be otherwise interested in the purchase
35 or receipt, directly or indirectly, of any asset of a corporation,
36 without paying to the corporation the fair market value of the asset
37 at the time of the transaction.

38 14024. Violation of any provision of this article shall constitute
39 a felony.

1 SEC. 3. Section 8684.2 of the Government Code is amended
2 to read:

3 8684.2. (a) It is the intent of the Legislature:

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

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

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

1 by the lending institution providing the loan or shall be made
2 payable on the date the proceeds of a loan made or guaranteed by
3 the federal Small Business Administration with respect to the same
4 damage or loss are made available to the borrower, whichever
5 event first occurs.

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

24 (d) Allocations pursuant to this section shall, for purposes of
25 all provisions of law, be deemed to be for extraordinary emergency
26 or disaster response operation costs, as provided in Section 8690.6,
27 incurred by state employees assigned to work on the ~~financial~~
28 ~~development corporation program~~ *guarantees authorized by this*
29 *section.*

30 (e) The California Infrastructure and Economic Development
31 Bank, *which is located within the Governor's Office of Business*
32 *and Economic Development*, may adopt directives and requirements
33 to implement the *disaster* loan guarantee program authorized by
34 this section.

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

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

3
4 CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF
5 2013
6

7 Article 1. Introduction
8

9 63088. (a) This chapter shall be known, and may be cited, as
10 the Small Business Financial Assistance Act of 2013.

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

14 63088.1. The Legislature finds all of the following:

15 (a) Small businesses form the core of the California economy
16 and that it is in the interest of the state to increase opportunities
17 for entrepreneurs, the self-employed, and microbusiness and small
18 business owners to have better access to capital and other technical
19 resources.

20 (b) Unemployment in California is a matter of statewide concern
21 requiring concerted public and private action to develop
22 employment opportunities for the disadvantaged, unemployed
23 persons, veterans, and youth.

24 (c) It is necessary to direct additional capital, general
25 management assistance, business education, and other resources
26 to encourage the development of small business opportunities,
27 particularly for minorities, women, and disabled persons, to
28 alleviate unemployment.
29

30 Article 2. Definitions
31

32 63088.3. Unless the context otherwise requires, the definitions
33 in this section shall govern the construction of this chapter. The
34 definitions provided in this section shall only apply to this chapter
35 and not to any other chapter of this division.

36 (a) "Bank" means the California Infrastructure and Economic
37 Development Bank.

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

- 1 (c) “Board of directors” means the board of directors of a
2 corporation.
- 3 (d) “California Small Business Board” means the advisory board
4 established pursuant to Section 14004.1 of the Corporations Code
5 for the purpose of advising on issues and programs affecting small
6 business.
- 7 (e) “California Small Business Finance Center” means the
8 governmental unit *within the bank, which is located within the*
9 *Governor’s Office of Business and Economic Development*, with
10 the administrative responsibility for programs and activities
11 authorized pursuant to *Section 8684.2 of this code*, Chapter 1
12 (commencing with Section 14000) of Part 5 of Division 3 of Title
13 1 of the Corporations Code, and this chapter.
- 14 (f) “Corporation” means any nonprofit California small business
15 financial development corporation created pursuant to Chapter 1
16 (commencing with Section 14000) of Part 5 of Division 3 of Title
17 1 of the Corporations Code, or pursuant to Chapter 1 (commencing
18 with Section 32000) of Division 15.5 of the Financial Code.
- 19 (g) “Directives and requirements” means a document adopted
20 by the bank board setting forth policy direction as well as key rules
21 governing a particular subject area.
- 22 (h) “Executive director” means the executive director of the
23 California Infrastructure and Economic Development Bank.
- 24 (i) “Expansion fund” means the California Small Business
25 Expansion Fund *authorized pursuant to Section 63089.5*.
- 26 (j) “Financial company” means banking organizations, including
27 national banks and trust companies, savings and loan associations,
28 certified community development financial institutions,
29 microbusiness lenders, state insurance companies, mutual insurance
30 companies, and other public and private banking, lending,
31 retirement, and insurance organizations.
- 32 (k) “Financial institution” means regulated banking
33 organizations, including national banks and trust companies
34 authorized to conduct business in California and state-chartered
35 commercial banks, trust companies, credit unions, and savings and
36 loan associations.
- 37 (l) “Financial product” means the type of financial assistance
38 described in ~~Section 63088.5~~: *63088.5, authorized by this chapter,*
39 *or that the California Small Business Finance Center or a small*

1 *business financial development corporation is otherwise authorized*
2 *to provide.*

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

6 (n) “Microbusiness lender” means a microbusiness lender as
7 defined in Section 13997.2.

8 (o) “Program manager” means the manager of the California
9 Small Business Finance Center as designated to this title by the
10 executive director of the California Infrastructure and Economic
11 Development Bank.

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

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

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

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

35

36

Article 3. Purpose

37

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

1 administer the California Small Business ~~Financial~~ *Finance* Center
2 that administers programs to assist businesses seeking new capital
3 ~~resources~~ *resources, including, but not limited to, the Small*
4 *Business Loan Guarantee Program.*

5 (b) Pursuant to this chapter and Chapter 1 (commencing with
6 Section 14000) of Part 5 of Division 3 of Title 1 of the
7 Corporations Code, the bank board may continue programs funded
8 by the Small Business Expansion Fund or establish one or more
9 programs administered *by the bank or* under contract with small
10 business financial development corporations. Programs established
11 pursuant to this chapter or Chapter 1 (commencing with Section
12 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code
13 may include the following types of financial products:

- 14 (1) Loan guarantees and other credit enhancements.
- 15 (2) Direct loans and other debt instruments.
- 16 (3) Disaster loan guarantees.
- 17 (4) Surety bond guarantees.

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

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

25 (e) The California Small Business Board may also advise the
26 Governor and the Small Business Advocate regarding issues and
27 programs affecting California’s small business community,
28 including, but not limited to, business innovation and expansion,
29 export finance, state procurement, management and technical
30 assistance, venture capital, and financial assistance.

31 63088.6. To implement its responsibilities, a corporation shall
32 undertake program activities that shall include, but not be limited
33 to, the following:

34 (a) Outreach to low-resource small businesses and
35 microbusinesses. The corporations located in rural areas shall give
36 priority to low-resource farmers and rural and agriculturally related
37 businesses.

38 (b) Collaboration with other organizations and lenders to identify
39 and assist those businesses that are creditworthy but face
40 impediments to accessing conventional sources because of reasons,

1 such as low equity, inadequate collateral, unacceptable legal
2 structure (such as a co-op or nonprofit organization), management
3 inadequacies, and language problems.

4 (c) To the extent possible, bringing all possible financial
5 resources ~~(low-interest lenders, BIDCOs, MESBICs, other~~
6 ~~grantors, etc.)~~ to bear on the borrower's problems, *including,*
7 *but not limited to, low-interest lenders, business and industrial*
8 *development corporations (BIDCOs), minority enterprise small*
9 *business investment companies (MESBICs), and other financial*
10 *institutions, financial companies, and grantors.*

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

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

15 (f) A program for collecting and liquidating defaulted loans so
16 that the corporations can qualify to become full-service lenders
17 under the Small Business Administration. Corporations located in
18 rural areas shall, in addition, try to qualify for lender status under
19 the United States Department of Agriculture's Rural Development
20 and Farm Services Agency.

21 (g) Become an agent for other financial institutions and financial
22 companies.

23 (h) *Become an agent for other state or federal governmental*
24 *agencies that need a qualified financial service provider, including,*
25 *but not limited to, the State Energy Resources Conservation and*
26 *Development Commission.*

27

28 Article 4. Administrative Structure

29

30 63089. The bank board shall adopt directives and requirements
31 concerning the implementation of this chapter and pursuant to
32 Chapter 1 (commencing with Section 14000) of Part 5 of Division
33 3 of Title 1 of the Corporations Code. Any regulations adopted
34 pursuant to Chapter 1 (commencing with Section 14000) of Part
35 5 of Division 3 of Title 1 of the Corporations Code, as that chapter
36 read on January 1, 2013, shall remain in effect until the bank board
37 adopts directives and requirements relating to the specific policy
38 or activity, but in no case beyond June 1, 2015.

39 63089.1. (a) The program manager acting under the guidance
40 of the executive director shall do all of the following:

- 1 ~~(a)~~
2 (1) Administer this chapter.
3 ~~(b)~~
4 (2) Enter into a contract between the bank and each corporation
5 for services to be provided by the corporations for one or more
6 programs *or financial products* under this chapter and Chapter 1
7 (commencing with Section 14000) of Part 5 of Division 3 of Title
8 1 of the Corporations Code.
9 ~~(c)~~
10 (3) In accordance with available resources, allow the use of
11 branch offices for the purposes of making these programs under
12 this chapter accessible to all areas of the state.
13 ~~(d)~~
14 (4) Require each corporation to submit an annual written plan
15 of operation.
16 ~~(e)~~
17 (5) Authorize the distribution, transfer, and withholding of
18 moneys in the expansion fund and trust funds.
19 ~~(f)~~
20 (6) Authorize the investment of expansion and trust fund
21 moneys.
22 ~~(g)~~
23 (7) Oversee the operations of one or more programs authorized
24 pursuant to this chapter *and by Section 8684.2*.
25 ~~(h)~~
26 (8) Act as liaison between corporations, other state and federal
27 agencies, lenders, and the Legislature.
28 ~~(i)~~
29 (9) Act as secretary to the California Small Business Board, and
30 attend meetings of the California Small Business Board and the
31 bank board.
32 ~~(j) Attend~~
33 (b) *The program manager may attend and participate at*
34 *corporation meetings. The program manager or his or her designee*
35 *shall be an ex officio, nonvoting representative on the board of*
36 *directors and loan committees of each corporation. The program*
37 *manager shall confer with the board of directors of each corporation*
38 *as appropriate and necessary to carry out his or her duties, but in*
39 *no case shall the program manager confer less than once each fiscal*
40 *year.*

1 ~~(k) Assist~~

2 (c) *In accordance with available resources, assist* corporations
3 in applying for public and private funding opportunities, and in
4 obtaining program support from the business community.

5 63089.2. (a) The use of state funds paid out to the trust fund
6 and the return on those funds from investment pursuant to Section
7 63089.56 is conditional pursuant to Sections 63089.3 and 63089.57.
8 Each corporation shall enter into a written signed agreement with
9 the bank to provide program management services for one or more
10 programs *or activities of the California Small Business Finance*
11 *Center* authorized under ~~this chapter~~ *Section 8684.2, this chapter,*
12 and Chapter 1 (commencing with Section 14000) of Part 5 of
13 Division 3 of Title 1 of the Corporations Code.

14 (b) Agreements with the corporations entered into pursuant to
15 this chapter are exempt from the requirements of ~~Sections~~ *Section*
16 10295, and Sections 10335 to 10381, inclusive, of the Public
17 Contract Code. The agreement shall, at a minimum, govern the
18 activities in which the corporation engages, the investment of state
19 funds and its return, and the budgeted administrative expenses the
20 corporations may incur.

21 (c) In the event the program manager and corporation do not
22 reach an agreement, the corporation may appeal one or more
23 conditions of the contract to the executive director or the bank
24 board by providing written notice to the executive director within
25 10 days of the final written contract proposal from the program
26 manager. The executive director or the bank board shall make a
27 determination within 30 days of receiving written notice.

28 (d) In the event that the program manager finds the corporation
29 has violated the terms of an active agreement, the program manager
30 may take any action under Section 63089.3 or 63089.57, or any
31 other action as appropriate. In the event the program manager finds
32 the corporation has substantively violated the terms of an active
33 agreement, the corporation shall have no authority to withdraw or
34 encumber the moneys in the trust fund or the return of those funds
35 by the issuance of guarantees, commitments for other financial
36 products, or by incurring expenses against the fund and its return
37 in any manner whatsoever, and the program manager may take
38 any action under Section 63089.3 or 63089.57, or any other action
39 as appropriate. Any guarantee or other encumbrance made by the
40 corporation in violation of this section shall be null and void, and

1 the state, the bank, the expansion fund, or the trust fund will not
2 be liable therefor.

3 63089.3. (a) The program manager may temporarily suspend
4 the guarantee authority or other financial product authority of a
5 corporation if in the determination of the program manager a
6 corporation has substantially failed to comply with any of the
7 requirements in subdivision (b), causing irreparable harm to the
8 program, the corporation’s ~~guarantee~~ *guarantee*, or any other
9 financial products authority. The notice of temporary suspension
10 sent to the corporation shall specify the reasons for the action.

11 (1) As used in this section, “guarantee or any other financial
12 products authority” means the authority to make or guarantee or
13 administer any other financial products that encumber funds in a
14 trust fund account, any account or subaccount under the direct
15 control of the bank or other state entity, or the expansion fund.

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

27 (b) Failure of a corporation to substantially comply with the
28 following may result in the suspension or termination of a
29 corporation:

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

35 (2) Failure to meet any fiscal, audit, *examination*, or portfolio
36 requirement, as contained in the directives and requirements *and*
37 *examination reports*.

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

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

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

6 (1) Terminate the temporary suspension.

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

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

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

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

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

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

35 (f) In considering any action specified in subdivision (c), the
36 program manager shall consider, along with other criteria as
37 specified in subdivision (b), the corporation's history and past
38 performance.

39 (g) If the program manager decides to take any action pursuant
40 to paragraphs (3) to (5), inclusive, of subdivision (c), the program

1 manager shall transfer all funds subject to the action, whether
2 encumbered or not, in the trust fund account of the suspended or
3 terminated corporation into either the expansion fund, or either
4 permanently or temporarily transfer the funds to the trust fund
5 account of another corporation *or a holding account in the*
6 *expansion fund or trust fund established for this purpose*, unless
7 an appeal is received from the corporation pursuant to subdivision
8 (h).

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

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

29 (j) Pursuant to subdivision (i), the executive director may
30 independently take action or seek the advice and recommendation
31 of the California Small Business Board prior to taking any of the
32 following actions:

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

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

38 (k) Following the executive director's concurrence any action
39 pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the
40 program manager shall transfer all funds subject to the action,

1 whether encumbered or not, in the trust fund account of the
2 suspended or terminated corporation into either the expansion
3 fund, or either permanently or temporarily transfer the funds to
4 the trust fund account of another corporation *or a holding account*
5 *in the expansion fund or trust fund established for this purpose.*
6 The corporation shall be notified of the funds transfer 10 days
7 before the effective date of the transfer. The corporation shall have
8 the right to appeal the executive director's decision to the bank
9 board within that 10-day period by sending written notice to the
10 chair of the bank board. Once the chair of the bank board receives
11 notice that the executive director's determination is being appealed,
12 the program manager's funds transfer shall be stayed.

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

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

- 28 (1) Rescind the action taken by the executive director.
29 (2) Modify the action taken by the executive director subject to
30 the adoption by the corporation of a specified remedial action plan
31 acceptable to the executive director.

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

33 (n) Following the bank board's concurrence with the executive
34 director's determination consistent with any action pursuant to
35 paragraphs (3) to (5), inclusive, of subdivision (c), the program
36 manager shall transfer all funds subject to the action, whether
37 encumbered or not, in the trust fund account of the suspended or
38 terminated corporation into either the expansion fund, or either
39 permanently or temporarily transfer the funds to the trust fund
40 account of another corporation *or a holding account in the*

1 *expansion fund or trust fund established for this purpose.* The
2 corporation shall be notified of the funds transfer 10 days before
3 the effective date of the transfer.

4 (o) Notwithstanding Section 63089.56, in the event a final
5 determination was made by the program manager, the executive
6 director or the bank board, whichever is applicable, to temporarily
7 transfer the funds of the corporation to the expansion fund or to
8 the trust fund account of another corporation *or a holding account*
9 *in the expansion fund or trust fund established for this purpose,*
10 upon compliance with all requirements of that final determination
11 as determined by the executive director, the transferred funds shall
12 be returned to the corporation's trust fund account. While the funds
13 of a corporation's trust fund account reside in the expansion fund,
14 use of the principal on the funds shall be governed by the
15 implementing directives and requirements specifying use of funds
16 in the expansion fund. Interest on the funds moved from a
17 corporation's trust fund account upon temporary withdrawal shall
18 be limited to payment of the corporation's administrative expenses,
19 as contained in the contract between the corporation and the bank
20 pursuant to this chapter.

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

37 63089.4. The bank is authorized to:

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

1 (b) Enter into contracts with corporations for program
2 management *and other financial product-related* services.

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

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

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

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

10 (g) Authorize new financial product programs *and activities*
11 pursuant to ~~the provisions~~ of this chapter.

12

13 Article 5. Expansion Fund and Trust Fund

14

15 63089.5. (a) There is hereby continued in existence in the State
16 Treasury the California Small Business Expansion Fund. All or a
17 portion of the funds in the expansion fund may be paid out, with
18 the approval of the Department of Finance, to a financial institution
19 or financial company that will establish a trust fund and act as
20 trustee of the funds.

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

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

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

26 (3) To pay administrative costs of corporations.

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

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

30 (c) The expansion fund and trust fund are created solely for the
31 purpose of receiving state, federal, or local government moneys,
32 and other public or private moneys to make loans, guarantees, and
33 other financial products ~~pursuant to this chapter~~ *that the California*
34 *Small Business Finance Center or a financial development*
35 *corporation is authorized to provide*. The program manager shall
36 provide written notice to the Joint Legislative Budget Committee
37 and to the Chief Clerk of the Assembly and the Secretary of the
38 Senate who shall provide a copy of the notice to the relevant policy
39 committees within 10 days of any nonstate funds being deposited
40 in the expansion fund. The notice shall include the source, purpose,

1 timeliness, and other relevant information as determined by the
 2 bank board.

3 (d) (1) One or more accounts in the expansion fund and the
 4 trust fund may be created by the program manager for corporations
 5 participating in one or more programs authorized under this chapter
 6 and Section 8684.2. Each account is a legally separate account,
 7 and shall not be used to satisfy loan guarantees or other financial
 8 product obligations of another corporation except when the
 9 expansion fund or trust fund is shared by multiple corporations.

10 (2) *The program manager may create one or more holding*
 11 *accounts in the expansion fund or the trust fund, or in both, to*
 12 *accommodate the temporary or permanent transfers of funds*
 13 *pursuant to Section 63089.3.*

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

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

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

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

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

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

35 (3) To pay administrative costs of corporations.

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

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

39 (c) The expansion fund and trust fund are created solely for the
 40 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 that the California
3 *Small Business Finance Center and a small business financial*
4 *development corporation are authorized to provide.*

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

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

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

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

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

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

34 (b) Any investments made in securities described in Section
35 16430 shall be governed by the investment policy approved by the
36 bank board.

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

1 63089.54. (a) There is hereby created in the State Treasury
2 the Small Business Disaster Recovery Loan Loss Reserve Account,
3 as part of the expansion fund. This account shall be used to pay
4 for losses resulting from loan guarantees issued pursuant to
5 subdivision (a) of Section 63089.90 or subdivision (b) of this
6 section, and disaster loan guarantees and other credit enhancement
7 defaults issued prior to the effective date of this section that are in
8 default.

9 (b) Any lending institution that issues a loan that is guaranteed
10 by resources in this account shall be fully reimbursed for the
11 guaranteed portion of principal and interest that result from a loan
12 or loans that are in default. If there are insufficient funds in this
13 account to fully satisfy all claimants, the full faith of the resources
14 in the General Fund are pledged to satisfy the obligations of this
15 account. This account may only guarantee as much loan dollar
16 value as is specifically authorized by the Director of Finance with
17 the concurrence of the Governor. This account shall receive all
18 moneys transferred pursuant to Section 63089.55, and any
19 unencumbered balances transferred to the California Small
20 Business Expansion Fund pursuant to Chapters 11 and 12 of the
21 First Extraordinary Session of the Statutes of 1989, and Chapter
22 1525 of the Statutes of 1990, as of July 1, 1992.

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

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

36 63089.56. (a) The funds in the expansion fund shall be paid
37 out to trust fund accounts by the Treasurer on funds drawn by the
38 Controller and requisitioned by the program manager, pursuant to
39 the purposes of this chapter. The program manager may transfer
40 funds allocated from the expansion fund to accounts, established

1 solely to receive the funds, in financial institutions or financial
2 companies designated by the bank to act as trustee. The financial
3 institutions or financial companies so designated shall be approved
4 by the state for the receipt of state deposits. Interest earned on the
5 trust fund accounts in financial institutions or financial companies
6 may be utilized by the corporations or the bank pursuant to the
7 purposes of this chapter.

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

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

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

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

32 (1) The default record of the corporation.

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

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

37 (4) The number and amount of surety bonds guaranteed by a
38 corporation.

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

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

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

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

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

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

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

38 63089.58. Each trust fund account shall consist of a loan
39 guarantee account, and, upon recommendation by the program
40 manager, a bond guarantee account or other financial product

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

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

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

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

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

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

1 directed by the Department of Finance pursuant to a statute enacted
2 by the Legislature, including each of the trust fund accounts within
3 the trust fund.

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

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

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

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

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

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

32 (c) The expansion fund and trust fund accounts shall be used to
33 guarantee obligations and other financial product obligations, to
34 pay the administrative costs of the corporations, and for other uses
35 pursuant to this chapter *and Section 8684.2*.

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

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

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

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

9 (c) The expansion fund and trust fund accounts shall be used to
10 guarantee obligations and other financial product obligations, to
11 pay the administrative costs of the corporations, and for other uses
12 pursuant to this chapter *and Section 8684.2*.

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

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

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

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

1 63089.62. (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.

26
 27
 28

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.

29
30 Article 7. Loan Guarantees

31
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~~, *guarantee*
11 *under this section* unless it determines that the following conditions
12 are satisfied:

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

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

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

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

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

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

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

32 (1) Reception and meeting area.

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

35 (3) Accounting and bookkeeping services.

36 (4) Research libraries.

37 (5) Onsite financial and management counseling.

38 (6) Parking.

39 (7) Flexible lease arrangements for flexible space.

40 (8) Computer or word processing facilities.

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

10

11 Article 8. Direct Lending and Other Debt Instruments

12

13 63089.80. (a) A corporation may utilize funds for direct

14 lending or other debt instruments pursuant to the directives and

15 requirements.

16 (b) The amount of funds available for direct lending and other

17 debt instruments shall be determined by the directives and

18 requirements. In its capacity as a direct lender, the corporation

19 may sell in the secondary market the guaranteed portion of each

20 loan, if guaranteed, so as to raise additional funds for direct lending.

21 (c) To execute the direct loan and other debt ~~instrument~~

22 ~~programs established in this chapter~~, *instruments authorized*

23 *pursuant to this chapter, including, but not limited to, those*

24 *authorized pursuant to Section 63088.5*, the bank may loan trust

25 funds to a corporation for the express purpose of lending those

26 funds to an identified borrower. The loan authorized by the bank

27 to the corporation shall be on terms similar to the loan between

28 the corporation and the borrower.

29 (d) The amount of the loan, *made to the corporation by the*

30 *bank*, may be in excess of the amount of a loan to any individual

31 borrower, but actual disbursements pursuant to the bank loan

32 agreement shall be required to be supported by a loan agreement

33 between the borrower and the corporation in an amount at least

34 equal to the requested disbursement. The loan between the bank

35 and the corporation shall be evidenced by a credit agreement. In

36 the event that any loan between the corporation and borrower is

37 not guaranteed by a governmental agency, the portion of the credit

38 agreement attributable to that loan shall be secured by assignment

39 of any note, executed in favor of the corporation by the borrower

40 to the bank. The terms and conditions of the credit agreement shall

1 be similar to the loan agreement between the corporation and the
2 borrower, which shall be collateralized by the note between the
3 corporation and the borrower.

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

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

23 (g) A corporation shall not issue a direct loan or other ~~financial~~
24 ~~product~~, *debt instrument* unless and until it determines that all of
25 the following conditions are satisfied:

26 (1) The direct loan or other ~~financial product~~ *debt instrument*
27 assistance would not be granted by a financial company or financial
28 institution under reasonable terms and conditions and the borrower
29 has demonstrated a reasonable prospect of repayment.

30 (2) The ~~loan or financial product~~ *direct loan or debt instrument*
31 proceeds will be used exclusively in this state.

32 (3) The direct loan or ~~financial product~~ *debt instrument* qualifies
33 as a small business loan or employment incentive loan.

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

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

39 (h) The maximum *direct* loan or other debt instrument amount
40 to a small business shall be set by the directives and requirements.

1 In the absence of fraud on the part of the corporation, the repayment
2 obligation pursuant to the loan or other debt instrument to the
3 corporation shall be limited to the amount of funds received by
4 the corporation for the *direct* loan or other debt instrument to the
5 small business and any other funds received from the bank that
6 are not disbursed. The corporation shall be authorized to charge a
7 fee to the small business borrower, in an amount determined
8 pursuant to the directives and requirements. The programs *and*
9 *debt instruments* provided for in this ~~subdivision~~ *article* shall be
10 available in all geographic areas of the state.

11
12 Article 9. Disaster Loan Guarantees

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

25 (b) The bank board may adopt directives and requirements to
26 implement the disaster loan guarantee program authorized by this
27 section. Any regulations adopted under Chapter 1 (commencing
28 with Section 14000) of Part 5 of Division 3 of Title 1 of the
29 Corporations Code shall remain in effect until the bank adopts
30 directives and requirements, *however, these regulations shall have*
31 *no effect after June 1, 2015.*

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

34 (1) The borrower cannot reasonably obtain a *disaster* loan
35 without some form of credit enhancement.

36 (2) The borrower has demonstrated a reasonable prospect of
37 repayment.

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

39 (4) The disaster loan qualifies as a small business loan or
40 employment incentive loan.

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

4

5

Article 10. Surety Bond Guarantees

6

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

19 (a) ~~There is no a low probability that the loan or other financial~~
20 ~~assistance~~ *surety bond* would be granted by a financial institution
21 or financial company under reasonable terms or conditions, and
22 ~~the borrower beneficiary~~ has demonstrated a reasonable prospect
23 ~~of repayment of the loan~~ *successful completion of the project*.

24 (b) ~~The loan proceeds~~ *surety bond project coverage* will be used
25 exclusively in this state.

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

28 (d)

29 (e) ~~The borrower beneficiary~~ has a minimum equity interest in
30 the business as determined by the directives and requirements.

31 (f)

32 (g) As a result of the ~~loan~~, *surety bond*, the jobs generated or
33 retained demonstrate reasonable conformance to the directives and
34 requirements specifying employment criteria.

35 63089.96. (a) In addition to the authority granted by Section
36 63089.95, pursuant to the directives and requirements a corporation
37 may act as guarantor on a surety bond for any small business
38 contractor, including, but not limited to, women, minority, and
39 disabled veteran contractors.

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

6
7 Article 11. Reporting

8
9 63089.97. Each corporation shall provide to the program
10 manager, in a format prescribed by him or her, the following data
11 and reports:

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

16 (b) A summary of all outstanding *direct* loans and other debt
17 instruments made by a corporation, as authorized by this chapter,
18 on a schedule determined by the program manager.

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

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

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

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

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

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

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

38 (f) No later than October 31 of each year commencing January
39 1, 2014, a copy of the corporation's prior fiscal year audit, auditor
40 findings, if any, and finding responses.

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

4 63089.98. (a) Annually, not later than January 1 of each year
 5 commencing January 1, 2014, the program manager shall prepare
 6 and submit to the Governor and the Legislature, pursuant to Section
 7 9795, a report for the preceding fiscal year ending June 30,
 8 containing the expansion fund and trust fund financial product
 9 activity of each corporation, including all of the following:

- 10 (1) ~~Loans~~, *Direct loans*, guarantees, and other financial products
- 11 awarded and outstanding balances.
- 12 (2) Default and loss statistics.
- 13 (3) Employment data.
- 14 (4) Ethnicity and gender data of participating contractors and
- 15 other entities, and experience of surety insurer participants in the
- 16 bond guarantee program.
- 17 (5) Significant events.

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

20 *SEC. 5. Pursuant to the Governor's Reorganization Plan No. 2*
 21 *of 2012, the Governor's Office of Business and Economic*
 22 *Development is the successor entity for purposes of small business*
 23 *assistance programs previously administered by the Business,*
 24 *Transportation and Housing Agency, including the Small Business*
 25 *Loan Guarantee Program, and is one of the implementing*
 26 *authorities for the federal State Small Business Credit Initiative*
 27 *Act (Title III of the Small Business Jobs Act of 2010, Public Law*
 28 *111-240).*

29 *Placing the Small Business Loan Guarantee Program within*
 30 *the California Small Business Finance Center within the California*
 31 *Infrastructure and Economic Development Bank within the*
 32 *Governor's Office of Business and Economic Development does*
 33 *not alter or impair any control or oversight of the Governor's*
 34 *Office of Business and Economic Development relating to funds*
 35 *allocated to this state pursuant to the federal State Small Business*
 36 *Credit Initiative Act (Title III of the Small Business Jobs Act of*
 37 *2010, Public Law 111-240). The placement of the Small Business*
 38 *Loan Guarantee Program is intended to improve program delivery,*
 39 *enhance oversight in order to ensure compliance with federal and*
 40 *state program requirements, and facilitate commitment of funds*

1 *allocated to the state pursuant to the federal State Small Business*
2 *Credit Initiative Act of 2010.*

3 ~~SEC. 5.~~

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

13 ~~SEC. 6.~~

14 *SEC. 7.* This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

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