

Assembly Bill No. 1247

CHAPTER 537

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, to add Chapter 6 (commencing with Section 63088) to Division 1 of Title 6.7 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.

[Approved by Governor October 4, 2013. Filed with
Secretary of State October 4, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1247, 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.

Appropriation: yes.

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

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 Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code is repealed.

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

CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL DEVELOPMENT CORPORATIONS

Article 1. Introduction

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

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

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

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

(d) It is the further intent of the Legislature to provide expanded resources allowing participation by small and emerging contractors in state public

works contracts. Increased access to surety bonding resources will assist in supporting participation by those firms in public works contracts, and by stimulating increased participation by small firms, the state will benefit from increased competition and lower bid costs.

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

Article 2. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 3. Program Manager

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

(1) Administer this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Treasurer or his or her designee.

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

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

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

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

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

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

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

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

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

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

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

Article 4. New Corporations

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 5. Corporation Board

14013. The corporate powers of a corporation shall be exercised by its board of directors.

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

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

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

(1) The financial community.

(2) The business community.

(3) The economically disadvantaged.

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

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

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

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

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

Article 6. Corporations, Miscellaneous

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

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

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

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

Article 7. Conflict of Interest

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Allocations pursuant to this section shall, for purposes of all provisions of law, be deemed to be for extraordinary emergency or disaster response operation costs, as provided in Section 8690.6, incurred by state employees assigned to work on the guarantees authorized by this section.

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

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

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

CHAPTER 6. SMALL BUSINESS FINANCIAL ASSISTANCE ACT OF 2013

Article 1. Introduction

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

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

63088.1. The Legislature finds all of the following:

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

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

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

Article 2. Definitions

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

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

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

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

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

(e) “California Small Business Finance Center” means the governmental unit within the bank, which is located within the Governor’s Office of Business and Economic Development, with the administrative responsibility for programs and activities authorized pursuant to Section 8684.2 of this code, Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, and this chapter.

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

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

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

(i) “Expansion fund” means the California Small Business Expansion Fund authorized pursuant to Section 63089.5.

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

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

(l) “Financial product” means the type of financial assistance described in Section 63088.5, authorized by this chapter, or that the California Small Business Finance Center or a small business financial development corporation is otherwise authorized to provide.

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

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

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

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

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

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

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

Article 3. Purpose

63088.5. (a) There is within the Governor’s Office of Business and Economic Development the California Infrastructure and Economic Development Bank, which shall, among other things, administer the California Small Business Finance Center that administers programs to assist businesses seeking new capital resources, including, but not limited to, the Small Business Loan Guarantee Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Administrative Structure

63089. The bank board shall adopt directives and requirements concerning the implementation of this chapter and pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code. Any regulations adopted pursuant to Chapter 1

(commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, as that chapter read on January 1, 2013, shall remain in effect until the bank board adopts directives and requirements relating to the specific policy or activity, but in no case beyond June 1, 2015.

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

- (1) Administer this chapter.
- (2) Enter into a contract between the bank and each corporation for services to be provided by the corporations for one or more programs or financial products under this chapter and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.
- (3) In accordance with available resources, allow the use of branch offices for the purposes of making these programs under this chapter accessible to all areas of the state.
- (4) Require each corporation to submit an annual written plan of operation.
- (5) Authorize the distribution, transfer, and withholding of moneys in the expansion fund and trust funds.
- (6) Authorize the investment of expansion and trust fund moneys.
- (7) Oversee the operations of one or more programs authorized pursuant to this chapter and by Section 8684.2.
- (8) Act as liaison between corporations, other state and federal agencies, lenders, and the Legislature.
- (9) Act as secretary to the California Small Business Board, and attend meetings of the California Small Business Board and the bank board.

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

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

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

(b) Agreements with the corporations entered into pursuant to this chapter are exempt from the requirements of Section 10295, and Sections 10335 to 10381, inclusive, of the Public Contract Code. The agreement shall, at a minimum, govern the activities in which the corporation engages, the

investment of state funds and its return, and the budgeted administrative expenses the corporations may incur.

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

(d) In the event that the program manager finds the corporation has violated the terms of an active agreement, the program manager may take any action under Section 63089.3 or 63089.57, or any other action as appropriate. In the event the program manager finds the corporation has substantively violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the moneys in the trust fund or the return of those funds by the issuance of guarantees, commitments for other financial products, or by incurring expenses against the fund and its return in any manner whatsoever, and the program manager may take any action under Section 63089.3 or 63089.57, or any other action as appropriate. Any guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and the state, the bank, the expansion fund, or the trust fund will not be liable therefor.

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

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

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

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

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

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

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

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

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

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

(1) Terminate the temporary suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) The corporation shall have the opportunity to submit written material to the bank board addressing the actions and findings stated in the executive director's determination. The bank board shall consider and make a final determination on the appeal within 30 days of receiving the appeal notice from the corporation, or such longer time as agreed to by the chair of the bank board and the corporation. The action of the executive director shall remain in effect until the bank board issues a decision. The corporation's performance contract shall remain in effect during the appeal period, and

the corporation shall continue to receive reimbursement of necessary operating expenses.

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

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

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

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

(n) Following the bank board's concurrence with the executive director's determination consistent with any action pursuant to paragraphs (3) to (5), inclusive, of subdivision (c), the program manager shall transfer all funds subject to the action, whether encumbered or not, in the trust fund account of the suspended or terminated corporation into either the expansion fund, or either permanently or temporarily transfer the funds to the trust fund account of another corporation or a holding account in the expansion fund or trust fund established for this purpose. The corporation shall be notified of the funds transfer 10 days before the effective date of the transfer.

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

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

any of the benefits of a small business financial development corporation following suspension.

63089.4. The bank is authorized to:

- (a) Approve new corporations recommended by the program manager.
- (b) Enter into contracts with corporations for program management and other financial product-related services.
- (c) Select a financial institution or financial company to act as trustee of the trust fund as specified in this chapter.
- (d) Invest expansion fund and trust fund moneys as specified in this chapter.
- (e) Affirm, modify, or rescind the determinations of the program manager and the executive director as specified in this chapter.
- (f) Adopt directives and requirements as specified in this chapter.
- (g) Authorize new financial product programs and activities pursuant to this chapter.

Article 5. Expansion Fund and Trust Fund

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

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

- (1) To pay defaulted loan guarantee or surety bond losses, or other financial product defaults or losses.
- (2) To fund direct loans and other debt instruments.
- (3) To pay administrative costs of corporations.
- (4) To pay state support and administrative costs.
- (5) To pay those costs necessary to protect a real property interest in a financial product default.

(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government moneys, and other public or private moneys to make loans, guarantees, and other financial products that the California Small Business Finance Center or a financial development corporation is authorized to provide. The program manager shall provide written notice to the Joint Legislative Budget Committee and to the Chief Clerk of the Assembly and the Secretary of the Senate who shall provide a copy of the notice to the relevant policy committees within 10 days of any nonstate funds being deposited in the expansion fund. The notice shall include the source, purpose, timeliness, and other relevant information as determined by the bank board.

(d) (1) One or more accounts in the expansion fund and the trust fund may be created by the program manager for corporations participating in one or more programs authorized under this chapter and Section 8684.2.

Each account is a legally separate account, and shall not be used to satisfy loan guarantees or other financial product obligations of another corporation except when the expansion fund or trust fund is shared by multiple corporations.

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

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

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

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

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

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

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

(3) To pay administrative costs of corporations.

(4) To pay state support and administrative costs.

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

(c) The expansion fund and trust fund are created solely for the purpose of receiving state, federal, or local government moneys, and other public or private moneys to make loans, guarantees, and other financial products that the California Small Business Finance Center and a small business financial development corporation are authorized to provide.

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

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

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

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

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

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

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

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

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

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

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

63089.55. The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic Uncertainties to the California Small Business Expansion Fund for use as authorized by the

bank board, in an amount necessary to make loan guarantees pursuant to Section 8684.2 and this chapter.

63089.56. (a) The funds in the expansion fund shall be paid out to trust fund accounts by the Treasurer on funds drawn by the Controller and requisitioned by the program manager, pursuant to the purposes of this chapter. The program manager may transfer funds allocated from the expansion fund to accounts, established solely to receive the funds, in financial institutions or financial companies designated by the bank to act as trustee. The financial institutions or financial companies so designated shall be approved by the state for the receipt of state deposits. Interest earned on the trust fund accounts in financial institutions or financial companies may be utilized by the corporations or the bank pursuant to the purposes of this chapter.

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

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

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

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

- (1) The default record of the corporation.
- (2) The number and amount of loans guaranteed by a corporation.
- (3) The number and amount of loans made by a corporation if state funds were used to make those loans.
- (4) The number and amount of surety bonds guaranteed by a corporation.
- (5) The number and amount of other financial product activity.
- (6) The number of jobs created or retained due to the financial product activity.

(d) The criteria specified in subdivision (c) shall not apply to a corporation that has been in existence for five years or less. If not already adopted, the bank board shall develop directives and requirements specifying the basis

for transferring account funds to those corporations that have been in existence for five years or less.

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

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

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

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

63089.58. Each trust fund account shall consist of a loan guarantee account, and, upon recommendation by the program manager, a bond guarantee account or other financial product account, each of which is a legally separate account, and the assets of one account shall not be used to satisfy loan guarantees or other financial product obligations of another corporation, except when a trust fund account is designated by the program manager to be shared by multiple corporations. The amount of funds allocated to a bond guarantee account shall be pursuant to the directives and requirements. A corporation shall not use trust fund accounts to secure a corporate indebtedness. State funds deposited in the trust fund accounts, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

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

(b) State funds may not be used to finance an expense incurred by a corporation in a location not approved pursuant to the contract between the bank and the corporation. The prohibition against use of state funds also

applies to the location of satellite offices, and the area served from a corporation office.

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

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

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

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

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

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

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

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

(b) Loan guarantees shall be secured by a reserve of at least 20 percent to be determined by the program manager unless a higher leverage ratio for

an individual corporation has been approved pursuant to subdivision (b) of Section 63089.56.

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

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

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

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

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

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

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

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

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

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

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

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

Article 6. Corporations, Miscellaneous

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

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

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

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

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

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

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

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

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

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

Article 7. Loan Guarantees

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

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

(c) A corporation shall not issue a guarantee under this section unless it determines that the following conditions are satisfied:

(1) There is a low probability that the loan being guaranteed would be granted by a financial company or financial institution under reasonable terms and conditions and the borrower has demonstrated a reasonable prospect of repayment.

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

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

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

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

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

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

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

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

Article 8. Direct Lending and Other Debt Instruments

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

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

(c) To execute the direct loan and other debt instruments authorized pursuant to this chapter, including, but not limited to, those authorized pursuant to Section 63088.5, the bank may loan trust funds to a corporation for the express purpose of lending those funds to an identified borrower. The loan authorized by the bank to the corporation shall be on terms similar to the loan between the corporation and the borrower.

(d) The amount of the loan, made to the corporation by the bank, may be in excess of the amount of a loan to any individual borrower, but actual

disbursements pursuant to the bank loan agreement shall be required to be supported by a loan agreement between the borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the bank and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the bank. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower.

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

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

(g) A corporation shall not issue a direct loan or other debt instrument unless and until it determines that all of the following conditions are satisfied:

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

(2) The direct loan or debt instrument proceeds will be used exclusively in this state.

(3) The direct loan or debt instrument qualifies as a small business loan or employment incentive loan.

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

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

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

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

Article 9. Disaster Loan Guarantees

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

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

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

- (1) The borrower cannot reasonably obtain a disaster loan without some form of credit enhancement.
- (2) The borrower has demonstrated a reasonable prospect of repayment.
- (3) The guaranteed loan will be used exclusively in this state.
- (4) The disaster loan qualifies as a small business loan or employment incentive loan.

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

Article 10. Surety Bond Guarantees

63089.95. In furtherance of the purposes set forth in Section 63088.1 of this code and Section 14001 of the Corporations Code, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the bank and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and

conditions with respect to any such guarantees or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan, unless and until it determines:

(a) There is a low probability that the surety bond would be granted by a financial institution or financial company under reasonable terms or conditions, and the beneficiary has demonstrated a reasonable prospect of successful completion of the project.

(b) The surety bond project coverage will be used exclusively in this state.

(c) The beneficiary has a minimum equity interest in the business as determined by the directives and requirements.

(d) As a result of the surety bond, the jobs generated or retained demonstrate reasonable conformance to the directives and requirements specifying employment criteria.

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

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

Article 11. Reporting

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Direct loans, guarantees, and other financial products awarded and outstanding balances.

(2) Default and loss statistics.

(3) Employment data.

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

(5) Significant events.

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

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

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

and facilitate commitment of funds allocated to the state pursuant to the federal State Small Business Credit Initiative Act of 2010.

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

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

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