



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code:  Section:

[Up^](#) [Add To My Favorites](#)

**GOVERNMENT CODE - GOV**

**TITLE 6.7. INFRASTRUCTURE FINANCE [63000 - 64132]** ( Title 6.7 added by Stats. 1994, Ch. 94, Sec. 1. )

**DIVISION 1. THE BERGESON-PEACE INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK ACT [63000 - 63089.99]** ( Heading of Division 1 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 1. )

**CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.99]** ( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )

**ARTICLE 4. Administrative Structure [63089 - 63089.4]** ( Article 4 added by Stats. 2013, Ch. 537, Sec. 4. )

**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.

(Added by Stats. 2013, Ch. 537, Sec. 4. (AB 1247) Effective October 4, 2013.)

**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, leverage, 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.

(Amended by Stats. 2016, Ch. 713, Sec. 1. (SB 936) Effective January 1, 2017.)

**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.

*(Added by Stats. 2013, Ch. 537, Sec. 4. (AB 1247) Effective October 4, 2013.)*

**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.

*(Added by Stats. 2013, Ch. 537, Sec. 4. (AB 1247) Effective October 4, 2013.)*

**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.

*(Added by Stats. 2013, Ch. 537, Sec. 4. (AB 1247) Effective October 4, 2013.)*