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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 5. Expansion Fund and Trust Fund [63089.5 - 63089.62] (Article 5 added by Stats. 2013, Ch. 537, Sec. 4.)

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 or that may be provided pursuant to Article 12 (commencing with Section 63089.99). 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 10 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.

(Amended by Stats. 2022, Ch. 68, Sec. 27. (SB 193) Effective June 30, 2022.)

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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.

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

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 10 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.

(Amended (as added by Stats. 2013, Ch. 537, Sec. 4, 1st text) by Stats. 2016, Ch. 713, Sec. 4. (SB 936) Effective January 1, 2017.)

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 10 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.

(Amended (as added by Stats. 2013, Ch. 537, Sec. 4, 1st text) by Stats. 2016, Ch. 713, Sec. 6. (SB 936) Effective January 1, 2017.)

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 10 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.

(Amended (as added by Stats. 2013, Ch. 537, Sec. 4, 1st text) by Stats. 2016, Ch. 713, Sec. 8. (SB 936) Effective January 1, 2017.)