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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 8. Direct Lending and Other Debt Instruments [63089.80- 63089.80.] (Article 8 added by Stats. 2013, Ch. 537, Sec. 4.)

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.

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