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SB-936 California Small Business Expansion Fund: corporate guarantees. (2015-2016)

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Senate Bill No. 936

CHAPTER 713

An act to amend Section 63089.1 of, and to amend and repeal Sections 63089.5, 63089.60, 63089.61, and 63089.62 of, the Government Code, relating to business.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 936, Hertzberg. California Small Business Expansion Fund: corporate guarantees.

Existing law, the Small Business Financial Assistance Act of 2013, establishes the California Small Business Expansion Fund, a continuously appropriated fund that includes General Fund moneys. The act requires guarantees made by small business financial development corporations to 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 specified, and requires these loan guarantees to be secured by a reserve of at least 20%, until January 1, 2018, and 25% thereafter, as specified.

This bill would reduce the required reserve to 10% indefinitely and would make conforming changes with respect to related statements of legislative intent.

Existing law prohibits the amount of guarantee liability outstanding at any one time from exceeding 5 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 specified, until January 1, 2018, and 4 times thereafter.

This bill would increase that maximum amount to 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 specified, would apply that increased amount indefinitely, and would make conforming changes.

Existing law requires the program manager under the guidance of the executive director of the California Infrastructure and Economic Development Bank, to, among other things, authorize the distribution, transfer, and withholding of moneys in the expansion fund and trust funds.

This bill would also require the program manager to leverage moneys in the expansion fund and trust funds.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 63089.1 of the Government Code is amended to read:

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.

SEC. 2. Section 63089.5 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is amended to read:

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 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.

SEC. 3. Section 63089.5 of the Government Code, as amended by Section 8 of Chapter 132 of the Statutes of 2014, is repealed.

SEC. 4. Section 63089.60 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is amended to read:

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.

SEC. 5. Section 63089.60 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is repealed.

SEC. 6. Section 63089.61 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is amended to read:

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.

SEC. 7. Section 63089.61 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is repealed.

SEC. 8. Section 63089.62 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is amended to read:

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.

SEC. 9. Section 63089.62 of the Government Code, as added by Section 4 of Chapter 537 of the Statutes of 2013, is repealed.