



DIVISION 1. THE BERGESON-PEACE INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK ACT  
(63000-63089.98)

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**California Government Code**

**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 - 63089.98]**

**CHAPTER 1. General Provisions [63000 - 63010]**

*( Chapter 1 added by Stats. 1994, Ch. 94, Sec. 1. )*

**ARTICLE 1. Findings and Declarations [63000 - 63002]**

*( Article 1 added by Stats. 1994, Ch. 94, Sec. 1. )*

**63000.**

The Legislature finds and declares the following:

(a) Economic revitalization, future development, and a healthy climate for jobs in California will depend upon a well-conceived system of public improvements that are essential to the economic well-being of the citizens of the state and are necessary to maintain, as well as create, employment within the state for business.

(b) It is necessary for public policy to support the efforts of businesses attempting to expand, businesses seeking to locate in California, and local economic development organizations, public agencies, and new entrepreneurs by dedicating public fiscal resources to confront obstacles and barriers that impede economic growth.

(c) Existing mechanisms that coordinate federal, state, local, and private financial resources are inadequate to attract and sustain that level of private investment that is essential to a growth economy.

(d) In order to secure and enhance the economic well-being of Californians, promote economic development in the state, and provide a healthy climate for the creation of jobs, it is necessary for public policy to support the efforts of expanding businesses, businesses seeking to locate in California, local development organizations, public bodies, and new entrepreneurs to gain access to capital through current and potential operations of financial markets.

(e) The high cost and the lack of availability of industrial loans for small- and medium-size businesses is making it difficult for thousands of these enterprises to get established, to maintain their present employment levels, or to expand employment.

(f) The problem of access to capital is acute in the high technology industry clusters because companies must often finance large capital expenditures early in their development cycle, and cannot obtain financing sufficient to cover the cost of those expenditures. Consideration should be given to industry clusters that may include the following:

- (1) Health care technology.
- (2) Multimedia.
- (3) Environmental technology.
- (4) Information technology.

(g) The high cost and limited availability of loans and capital has led a number of states to take action to remedy these conditions through concerted public and private investment programs that include efforts to do the following:

- (1) Use the state's access to capital markets more effectively for economic development.
- (2) Create financing pools to access national capital markets or help government sponsors and public-private economic development organizations obtain credit enhancement on their own.
- (3) Facilitate credit enhancement for selected specific projects.
- (4) Provide or arrange for loan insurance.
- (5) Create and support secondary markets for loan portfolios of urban and rural economic development corporations and others.
- (6) Improve access to international capital markets.
- (7) Provide opportunities for public pension funds and other institutional investors to play a larger role in state economic development.
- (8) Arrange for or provide subordinated debt for selected projects.
- (9) Increase support for local infrastructure development.

(h) Local governments in California bear a primary responsibility for the business of promoting job creation and economic development efforts. California's continued reliance on autonomous local entities often fails to adequately consider regional impacts of business expansion. Projects of a regional nature need the benefit of a state coordinating function to augment and enhance local economic development and environmental efforts.

(i) The State of California has not embarked on a major infrastructure financing effort since the decade of the 1960's, despite persistent unemployment and soaring population growth.

(j) California's ability to compete in a global economy depends upon its capacity to implement policies that take maximum advantage of public and private resources at the local, regional, state, and national levels. These policies should be coordinated with any future legislative plan involving growth management strategies designed to make economic growth compatible with environmental protections. It is the intent of the Legislature in enacting this act to create a mechanism to finance projects needed to implement economic development and job creation and growth management strategies, and to provide a secure and stable funding source for implementation of this act in order to meet critical economic, social, and environmental concerns.

(k) The State of California needs a financing entity structured with broad authority to issue bonds, provide guarantees, and leverage state and federal funds using techniques that will target public investment to facilitate economic development. The goal is to produce more private sector jobs with less public sector investment.

(l) The mechanisms for financing public improvements and private job creation strategies provided for in this act are in the public interest, serve a public purpose, and will promote the health, welfare, and safety of the citizens of the state.

(m) The public policies and responsibilities of the state, including all of the above purposes and functions, cannot be fully obtained without the use of financing assistance and can be most effectively furthered by the creation of the California Infrastructure and Economic Development Bank.

*(Amended by Stats. 2011, Ch. 31, Sec. 13. Effective June 29, 2011. Operative January 1, 2012, by Sec. 20 of Ch. 31.)*

[63002.](#)

This division shall be known and may be cited as the Bergeson-Peace Infrastructure and Economic Development Bank Act.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 3. Effective January 1, 1995.)*

**CHAPTER 1. General Provisions [63000 - 63010]** ( Chapter 1 added by Stats. 1994, Ch. 94, Sec. 1. )

**ARTICLE 2. Definitions [63010- 63010.]** ( Article 2 added by Stats. 1994, Ch. 94, Sec. 1. )

63010.

For purposes of this division, the following words and terms shall have the following meanings unless the context clearly indicates or requires another or different meaning or intent:

(a) "Act" means the Bergeson-Peace Infrastructure and Economic Development Bank Act.

(b) "Bank" means the California Infrastructure and Economic Development Bank.

(c) "Board" or "bank board" means the Board of Directors of the California Infrastructure and Economic Development Bank.

(d) "Bond purchase agreement" means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

(e) "Bonds" means bonds, including structured, senior, and subordinated bonds or other securities; loans; notes, including bond, revenue, tax, or grant anticipation notes; commercial paper; floating rate and variable maturity securities; and any other evidences of indebtedness or ownership, including certificates of participation or beneficial interest, asset backed certificates, or lease-purchase or installment purchase agreements, whether taxable or excludable from gross income for federal income taxation purposes.

(f) "Cost," as applied to a project or portion thereof financed under this division, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, licenses, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery, equipment, and financing charges; interest prior to, during, and for a period after completion of construction, renovation, or acquisition, as determined by the bank; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; and the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incidental to determining the feasibility of any project or incidental to the construction, acquisition, or financing of any project, and transition costs in the case of an electrical corporation.

(g) "Economic development facilities" means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, goods movement, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) "Electrical corporation" has the meaning set forth in Section 218 of the Public Utilities Code.

(i) "Executive director" means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(j) "Financial assistance" in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025.1; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

For purposes of this subdivision, "grant" does not include grants made by the bank except when acting as an agent or intermediary for the distribution or packaging of financing available from federal, private, or other public sources.

(k) "Financing order" has the meaning set forth in Section 840 of the Public Utilities Code.

(l) "Guarantee trust fund" means the California Infrastructure Guarantee Trust Fund.

(m) "Infrastructure bank fund" means the California Infrastructure and Economic Development Bank Fund.

(n) "Loan agreement" means a contractual agreement executed between the bank or a special purpose trust and a sponsor that provides that the bank or special purpose trust will loan funds to the sponsor and that the sponsor will repay the principal and pay the interest and redemption premium, if any, on the loan.

(o) "Participating party" means any person, company, corporation, association, state, or municipal governmental entity, partnership, firm, or other entity or group of entities, whether organized for profit or not for profit, engaged in business or operations within the state and that applies for financing from the bank in conjunction with a sponsor for the purpose of implementing a project. However, in the case of a project relating to the financing of transition costs or the acquisition of transition property, or both, on the request of an electrical corporation, or in connection with financing for an economic development facility, or for the financing of insurance claims, the participating party shall be deemed to be the same entity as the sponsor for the financing.

(p) "Project" means designing, acquiring, planning, permitting, entitling, constructing, improving, extending, restoring, financing, and generally developing public development facilities or economic

development facilities within the state or financing transition costs or the acquisition of transition property, or both, upon approval of a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(q) "Public development facilities" means real and personal property, structures, conveyances, equipment, thoroughfares, buildings, and supporting components thereof, excluding any housing, that are directly related to providing the following:

(1) "City streets" including any street, avenue, boulevard, road, parkway, drive, or other way that is any of the following:

(A) An existing municipal roadway.

(B) Is shown upon a plat approved pursuant to law and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(2) "County highways" including any county highway as defined in Section 25 of the Streets and Highways Code, that includes the land between the highway lines, whether improved or unimproved, and may comprise pavement, bridges, shoulders, gutters, curbs, guardrails, sidewalks, parking areas, benches, fountains, plantings, lighting systems, and other areas within the street lines, as well as equipment and facilities used in the cleaning, grading, clearance, maintenance, and upkeep thereof.

(3) "Drainage, water supply, and flood control" including, but not limited to, ditches, canals, levees, pumps, dams, conduits, pipes, storm sewers, and dikes necessary to keep or direct water away from people, equipment, buildings, and other protected areas as may be established by lawful authority, as well as the acquisition, improvement, maintenance, and management of floodplain areas and all equipment used in the maintenance and operation of the foregoing.

(4) "Educational facilities" including libraries, child care facilities, including, but not limited to, day care facilities, and employment training facilities.

(5) "Environmental mitigation measures" including required construction or modification of public infrastructure and purchase and installation of pollution control and noise abatement equipment.

(6) "Parks and recreational facilities" including local parks, recreational property and equipment, parkways, and property.

(7) "Port facilities" including airports, landports, waterports, railports, docks, harbors, ports of entry, piers, ships, small boat harbors and marinas, and any other facilities, additions, or improvements in connection therewith, that transport goods or persons.

(8) "Power and communications" including facilities for the transmission or distribution of electrical energy, natural gas, and telephone and telecommunications service.

(9) "Public transit" including air and rail transport, airports, guideways, vehicles, rights-of-way, passenger stations, maintenance and storage yards, and related structures, including public parking facilities, and equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

(10) "Sewage collection and treatment" including pipes, pumps, and conduits that collect wastewater from residential, manufacturing, and commercial establishments, the equipment, structures, and facilities used in treating wastewater to reduce or eliminate impurities or contaminants, and the facilities used in disposing of, or transporting, remaining sludge, as well as all equipment used in the maintenance and operation of the foregoing.

(11) "Solid waste collection and disposal" including vehicles, vehicle-compatible waste receptacles, transfer stations, recycling centers, sanitary landfills, and waste conversion facilities necessary to remove solid waste, except that which is hazardous as defined by law, from its point of origin.

(12) "Water treatment and distribution" including facilities in which water is purified and otherwise treated to meet residential, manufacturing, or commercial purposes and the conduits, pipes, and pumps that transport it to places of use.

(13) "Defense conversion" including, but not limited to, facilities necessary for successfully converting military bases consistent with an adopted base reuse plan.

(14) "Public safety facilities" including, but not limited to, police stations, fire stations, court buildings, jails, juvenile halls, and juvenile detention facilities.

(15) "State highways" including any state highway as described in Chapter 2 (commencing with Section 230) of Division 1 of the Streets and Highways Code, and the related components necessary for safe operation of the highway.

(16) (A) "Military infrastructure," including, but not limited to, facilities on or near a military installation, that enhance the military operations and mission of one or more military installations in this state. To be eligible for funding, the project shall be endorsed by the Office of Planning and Research.

(B) For purposes of this subdivision, "military installation" means any facility under the jurisdiction of the Department of Defense, as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(17) "Goods movement-related infrastructure" including port facilities, roads, rail, and other facilities and projects that move goods, energy, and information.

(r) "Rate reduction bonds" has the meaning set forth in Section 840 of the Public Utilities Code.

(s) "Revenues" means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor, or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment

of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.

(t) "Special purpose trust" means a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity authorized under the laws of the state to serve as an instrumentality of the state to accomplish public purposes and authorized by the bank to acquire, by purchase or otherwise, for retention or sale, the bonds of a sponsor or of the bank made or entered into pursuant to this division and to issue special purpose trust bonds or other obligations secured by these bonds or other sources of public or private revenues. Special purpose trust also means any entity authorized by the bank to acquire transition property or to issue rate reduction bonds, or both, subject to the approvals by the bank and powers of the bank as are provided by the bank in its resolution authorizing the entity to issue rate reduction bonds.

(u) "Sponsor" means any subdivision of the state or local government including departments, agencies, commissions, cities, counties, nonprofit corporations formed on behalf of a sponsor, special districts, assessment districts, and joint powers authorities within the state or any combination of these subdivisions that makes an application to the bank for financial assistance in connection with a project in a manner prescribed by the bank. This definition shall not be construed to require that an applicant have an ownership interest in the project. In addition, an electrical corporation shall be deemed to be the sponsor as well as the participating party for any project relating to the financing of transition costs and the acquisition of transition property on the request of the electrical corporation and any person, company, corporation, partnership, firm, or other entity or group engaged in business or operation within the state that applies for financing of any economic development facility, shall be deemed to be the sponsor as well as the participating party for the project relating to the financing of that economic development facility.

(v) "State" means the State of California.

(w) "Transition costs" has the meaning set forth in Section 840 of the Public Utilities Code.

(x) "Transition property" has the meaning set forth in Section 840 of the Public Utilities Code.

(Amended by Stats. 2015, Ch. 383, Sec. 3. Effective January 1, 2016.)

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 1. Creation of the Bank [63021 - 63028]**

*( Article 1 added by Stats. 1994, Ch. 94, Sec. 1. )*

#### **63021.**

(a) There is within the Governor's Office of Business and Economic Development the Infrastructure and Economic Development Bank which shall be responsible for administering this division.

(b) The bank shall be under the direction of an executive director appointed by the Governor, and who shall serve at the pleasure of the Governor. The appointment shall be subject to confirmation by the Senate.



*(Amended by Stats. 2013, Ch. 352, Sec. 308. Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)*

**63021.5.**

(a) The bank shall be governed and its corporate power exercised by a board of directors that shall consist of the following persons:

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

(2) The Treasurer or his or her designee.

(3) The Director of the Governor's Office of Business and Economic Development or his or her designee, who shall serve as chair of the board.

(4) An appointee of the Governor.

(5) The Secretary of Transportation or his or her designee.

(b) Any designated director shall serve at the pleasure of the designating power.

(c) Three of the members shall constitute a quorum and the affirmative vote of three board members shall be necessary for any action to be taken by the board.

(d) A member of the board shall not participate in any bank action or attempt to influence any decision or recommendation by any employee of, or consultant to, the bank that involves a sponsor of which he or she is a representative or in which the member or a member of his or her immediate family has a personal financial interest within the meaning of Section 87100. For purposes of this section, "immediate family" means the spouse, children, and parents of the member.

(e) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars (\$100) for each full day of attending meetings of the authority.

*(Amended by Stats. 2013, Ch. 353, Sec. 107. Effective September 26, 2013. Operative July 1, 2013, by Sec. 129 of Ch. 353.)*

**63022.**

The executive director shall manage and conduct the business and affairs of the bank, the infrastructure bank fund, and guarantee trust fund, subject to the direction of the board. Except as otherwise provided in this section, the board may assign to the executive director, by resolution, those duties generally necessary or convenient to carry out its powers and purposes under this chapter. Any action involving final approval of any bonds, notes, or loans shall require the approval of a majority of the members of the board. Subject to any conditions that the board may from time to time prescribe, the executive director may exercise any power, function, or duty conferred by law on the bank in connection with the administration, management, and conduct of the business and affairs of the bank, the infrastructure bank fund, and the guarantee trust fund.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 8. Effective January 1, 1995.)*

**63022.5.**

(a) The officers of the bank shall be subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)), the applicable rules and standards of the Municipal Securities Rulemaking Board, and all other applicable provisions of law.

(b) The bank may purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach fiduciary obligation by the fiduciary.

*(Amended by Stats. 1995, Ch. 863, Sec. 11. Effective January 1, 1996.)*

### 63023.

In administering and directing the day-to-day operations of the bank in regard to this division, the executive director, or whoever he or she shall assign, may do any of the following if authorized by resolution of the board:

- (a) Enter into contracts for investment, guarantee, or enhancement.
- (b) Establish procedures, guidelines, criteria, terms, conditions, or other requirements of any contract, bond, grant, or program, as the case may be, in order to carry out the intents and purposes of the board in authorizing any bond, loan, or grant program pursuant to this division.
- (c) Decline to guarantee any risk, or to enter into any contract, in which the minimum requirements of the guarantee trust fund or the infrastructure bank fund are not complied with.
- (d) Reinsure any risk or any part of any risk.
- (e) Make rules for payments through the infrastructure bank fund and the settlement of claims against the guarantee trust fund and determine to whom and through whom the payments are to be made.
- (f) Enter into any contracts or obligations relating to the infrastructure bank fund and the guarantee trust fund.
- (g) Invest and reinvest the moneys belonging to the infrastructure bank fund and the guarantee trust fund as provided by this division.
- (h) Enter into any contract or agreement, execute any instrument, conduct all business and affairs, and perform all acts relating to the infrastructure bank fund and the guarantee trust fund whether or not specifically designated in this division.

*(Amended by Stats. 1995, Ch. 863, Sec. 12. Effective January 1, 1996.)*

### 63023.1.

The board may delegate to the executive director, or whomever he or she shall assign, the authority to execute a contract or agreement, execute an instrument, conduct all business and affairs, and perform all acts relating to the infrastructure bank fund and the guarantee trust fund.

*(Added by Stats. 1994, Ch. 749, Sec. 9.5. Effective January 1, 1995.)*

### 63024.

The executive director may contract for technical services with the Department of Finance, the State Department of Health Care Services, the State Department of Public Health, the Department of Transportation, the Department of Water Resources, the Department of Resources Recycling and Recovery, the State Water Resources Control Board, the Governor's Office of Planning and Research, and any other necessary agencies, persons, or firms to enable the bank to properly perform the duties imposed by this division.

*(Amended by Stats. 2011, Ch. 518, Sec. 1. Effective January 1, 2012.)*

### 63024.5.

Where a state agency is authorized under state law to request that the bank issue bonds on its behalf, the agency may request, and the bank may issue, the bonds for the purpose authorized by state law and to fund any necessary reserves, capitalized interest, and costs of issuance associated with the bonds.

*(Added by Stats. 2011, Ch. 518, Sec. 2. Effective January 1, 2012.)*

### 63025.

The bank board shall do the following:

- (a) Adopt bylaws for the regulation of its affairs and the conduct of its business.
- (b) Adopt an official seal.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 10. Effective January 1, 1995.)*  
[63025.1.](#)

The bank board may do or delegate the following to the executive director:

- (a) Sue and be sued in its own name.
- (b) As provided in Chapter 5 (commencing with Section 63070), issue bonds and authorize special purpose trusts to issue bonds, including, at the option of the board, bonds bearing interest that is taxable for the purpose of federal income taxation, or borrow money to pay all or any part of the cost of any project, or to otherwise carry out the purposes of this division.
- (c) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this division.
- (d) Employ attorneys, financial consultants, and other advisers as may, in the bank's judgment, be necessary in connection with the issuance and sale, or authorization of special purpose trusts for the issuance and sale, of any bonds, notwithstanding Sections 11042 and 11043.
- (e) Contract for engineering, architectural, accounting, or other services of appropriate state agencies as may, in its judgment, be necessary for the successful development of a project.
- (f) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land use, recreation, and environmental experts employed by any sponsor or participating party if, in the bank's judgment, those services are necessary for the successful development of a project.
- (g) Acquire, take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state, or transition property as the bank may deem necessary or convenient for the financing of the project, upon terms and conditions that it considers to be reasonable.
- (h) Receive and accept from any source including, but not limited to, the federal government, the state, or any agency thereof, loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, a project, or any portion thereof.
- (i) Make loans to any sponsor or participating party, either directly or by making a loan to a lending institution, in connection with the financing of a project in accordance with an agreement between the bank and the sponsor or a participating party, either as a sole lender or in participation with other lenders. However, no loan shall exceed the total cost of the project as determined by the sponsor or the participating party and approved by the bank.
- (j) Make loans to any sponsor or participating party, either directly or by making a loan to a lending institution, in accordance with an agreement between the bank and the sponsor or participating party to refinance indebtedness incurred by the sponsor or participating party in connection with projects undertaken and completed prior to any agreement with the bank or expectation that the bank would provide financing, either as a sole lender or in participation with other lenders.
- (k) Mortgage all or any portion of the bank's interest in a project and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.
- (l) Assign or pledge all or any portion of the bank's interests in transition property and the revenues therefrom, or assets, things of value, mortgages, deeds of trust, bonds, bond purchase agreements, loan agreements, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible and the revenues therefrom, of a sponsor or a participating party to which the bank has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the bank, for the benefit of the holders of bonds.
- (m) Make, receive, or serve as a conduit for the making of, or otherwise provide for, grants, contributions, guarantees, insurance, credit enhancements or liquidity facilities, or other financial enhancements to a sponsor or a participating party as financial assistance for a project.

(n) Lease the project being financed to a sponsor or a participating party, upon terms and conditions that the bank deems proper but shall not be leased at a loss; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations thereof; include in any lease, if desired, provisions that the lessee shall have options to renew the lease for a period or periods, and at rents determined by the bank; purchase any or all of the project; or, upon payment of all the indebtedness incurred by the bank for the financing of the project, the bank may convey any or all of the project to the lessee or lessees.

(o) Charge and equitably apportion among sponsors and participating parties the bank's administrative costs and expenses incurred in the exercise of the powers and duties conferred by this division.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States, from other agencies of the state, or from any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this division.

(q) Notwithstanding any other provision of this division, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a sponsor or a participating party; and issue or assign any insurance or guarantee as security for the bank's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the bank's bonds, the bonds issued by a special purpose trust, or a sponsor's obligations to the bank or to a special purpose trust, including, but not limited to, bonds of a sponsor purchased by the bank or a special purpose trust for retention or sale, with funds or moneys that are legally available and that are due or payable to the sponsor by reason of any grant, allocation, apportionment or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, or with funds or moneys that are or will be legally available to the sponsor, the bank, or the state or any agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof; and in the event of written notice that the sponsor has not paid or is in default on its obligations to the bank or a special purpose trust, direct the Controller to withhold payment of those funds or moneys from the sponsor over which it is or will be custodian and to pay the same to the bank or special purpose trust or their assignee, or direct the state or any agencies thereof to which any grant, allocation, apportionment or appropriation of the federal government or agencies thereof is or will be legally available to pay the same upon receipt by the bank or special purpose trust or their assignee, until the default has been cured and the amounts then due and unpaid have been paid to the bank or special purpose trust or their assignee, or until arrangements satisfactory to the bank or special purpose trust have been made to cure the default.

(s) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or appropriate to carry out any power expressly given to the bank by this division, including, but not limited to, agreements for the sale of all or any part, including principal, interest, redemption rights or any other rights or obligations, of bonds of the bank or of a special purpose trust, liquidity agreements, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures or contracts providing for payments based on levels of, or changes in, interest rates or currency exchange rates, or contracts to exchange cash-flows or a series of payments, or contracts, including options, puts or calls to hedge payments, rate, spread, currency exchange, or similar exposure, or any other financial instrument commonly known as a structured financial product.

(t) Purchase, with the proceeds of the bank's bonds, transition property or bonds issued by, or for the benefit of, any sponsor in connection with a project, pursuant to a bond purchase agreement or otherwise. Bonds or transition property purchased pursuant to this division may be held by the bank,

pledged or assigned by the bank, or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the bank, and notwithstanding any other provision of law, may be bought by the bank at private sale.

(u) Enter into purchase and sale agreements with all entities, public and private, including state and local government pension funds, with respect to the sale or purchase of bonds or transition property.

(v) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(w) Authorize a special purpose trust or trusts to purchase or retain, with the proceeds of the bonds of a special purpose trust, transition property or bonds issued by, or for the benefit of, any sponsor in connection with a project or issued by the bank or a special purpose trust, pursuant to a bond purchase agreement or otherwise. Bonds or transition property purchased pursuant to this title may be held by a special purpose entity, pledged or assigned by a special purpose entity, or sold to public or private purchasers at public or negotiated sale, in whole or in part, with or without structuring, subordination or credit enhancement, separately or together with other bonds issued by a special purpose trust, and notwithstanding any other provision of law, may be bought by the bank or by a special purpose trust at private sale.

(x) Approve the issuance of any bonds, notes, or other evidences of indebtedness by the Rural Economic Development Infrastructure Panel, established pursuant to Section 15373.7.

(y) Approve the issuance of rate reduction bonds by an entity other than the bank or a special purpose trust to acquire transition property upon approval of the transaction in a financing order by the Public Utilities Commission, as provided in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(z) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value. The sources may include bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(aa) Do all things necessary and convenient to carry out its purposes and exercise its powers, provided, however, that nothing herein shall be construed to authorize the bank to engage directly in the business of a manufacturing, industrial, real estate development, or nongovernmental service enterprise. Further, the bank shall not be organized to accept deposits of money for time or demand deposits or to constitute a bank or trust company.

*(Amended by Stats. 1998, Ch. 4, Sec. 6. Effective January 1, 1999.)*

#### **63025.2.**

Nothing in Section 63025.1 shall be construed to extend or limit the authority of the bank that is otherwise provided in Section 19130.

*(Added by Stats. 1999, Ch. 84, Sec. 2. Effective July 12, 1999.)*

#### **63026.**

The fiscal powers granted to the bank by this part may be exercised without regard or reference to any other department, division, or agency of the state, except the Legislature. This division shall be deemed to provide an alternative method of doing the things authorized by this division, and shall be regarded as supplemental and additional to powers conferred by other laws.

*(Amended by Stats. 1998, Ch. 4, Sec. 7. Effective January 1, 1999.)*

#### **63027.**

(a) The bank may provide insurance or reinsurance of loans or portions thereof, or their debt service, including amounts payable as premiums of penalties in the event of mandatory or optional prepayment, made to finance a project, and to provide insurance or reinsurance or reserves, or portions thereof, or the yield therefrom, established to secure bonds issued to fund those loans or reserves.

(b) The bank may enter into or arrange agreements for insurance or reinsurance with users, mortgagors, lending institutions, insurers, and others, the bank being authorized to reinsure or cede risks to the insurers in any amounts as the bank may determine and the insurers, if otherwise authorized to reinsure or insure those risks in California, being hereby authorized to reinsure the bank or cede risks to the bank to the same extent as if the bank were a company authorized to reinsure or insure those risks.

(c) The bank may fix a rate or rates of premium for insurance or reinsurance, which need not be uniform, and may reflect any risks and classifications of risk as the bank determines to be reasonable.

(d) The bank may exercise those other powers as are necessary or incidental to insurance, reinsurance, and related matters.

(e) The bank shall make reasonable provisions for the security of loans made by the bank, and any insurance, reinsurance, and other financing arrangements negotiated by the bank.

(f) The insurance or reinsurance provided for by the bank shall not constitute a debt or pledge of the faith and credit of the state or any subdivision of the state.

*(Added by Stats. 1998, Ch. 4, Sec. 8. Effective January 1, 1999.)*

#### 63028.

The bank assumes and shall observe, keep, and perform all of the responsibilities, liabilities, and obligations of the former California Economic Development Financing Authority established under Part 10.2 (commencing with Section 15710) of Division 2 of Title 2, as it read prior to the effective date of this section, and the assumption of the responsibilities, liabilities, and obligations of the former California Economic Development Financing Authority shall occur without any execution or filing of any paper or any further act. Any reference in any law, contract, bond, indenture, or other document to the former California Economic Development Financing Authority shall be deemed, hereafter, to mean the bank.

*(Added by Stats. 1998, Ch. 4, Sec. 9. Effective January 1, 1999.)*

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 2. General Provisions [63030 - 63036]**

*( Article 2 added by Stats. 1994, Ch. 94, Sec. 1. )*

#### 63030.

Bonds issued by the bank or a special purpose trust are legal investments for all trust funds, the funds of all insurance companies, banks, both commercial and savings, trust companies, executors, administrators, trustees, and other fiduciaries, for state school funds, pension funds, and for any funds that may be invested in county, school, or municipal bonds. These bonds are securities that may legally be deposited with, and received by, any state or municipal officer or agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now, or may hereafter be, authorized by law, including, deposits to secure public funds.

*(Amended by Stats. 1995, Ch. 863, Sec. 14. Effective January 1, 1996.)*

#### 63031.

No liability shall be incurred by the bank beyond the extent to which funds have been provided under this division. However, for the purposes of meeting the necessary expenses of initial organization and operation until the date that the bank derives revenues or proceeds from bonds as provided under this division, the bank may borrow money as needed for the purposes of meeting the necessary expenses of initial organization and operation from the Pooled Money Investment Account, as specified in subdivision (w) of Section 63025.1 or from any special funds, including the special funds of existing financing authorities. The borrowed money shall be repaid with interest within a reasonable time after the bank receives revenues or proceeds from bonds as provided under this division.

*(Amended by Stats. 1995, Ch. 863, Sec. 15. Effective January 1, 1996.)*

**63032.**

(a) Neither the bank nor a special purpose trust authorized by the bank is required to pay any property taxes or assessments upon, or with respect to, any project or any property acquired by, or for, the bank under this division, or upon the income therefrom, so long as the bank, on behalf of the state, holds title to the project or to the property contained in the project.

(b) The exemption of the bank or of a special purpose trust from taxation of any property shall cease when title to the property is transferred from the bank to any taxable person or entity. This section does not exempt any taxable person or entity from taxation, including, but not limited to, taxation upon a possessory interest, with respect to any project, or the property of facilities contained in any project that may otherwise be applicable to the person.

*(Amended by Stats. 1995, Ch. 863, Sec. 16. Effective January 1, 1996.)*

**63033.**

The state does hereby pledge to, and agrees with, the holders of any bonds issued under this division, and with those parties who may enter into contracts with the bank pursuant to this division, that the state will not limit or alter the rights hereby vested in the bank to finance any project and to fulfill the terms of any loan agreement, lease, or other contract with the agency pursuant to this division, or in any way impair the rights or remedies of the bondholders or of the parties until those bonds, together with interest thereon, are fully discharged or provision for this discharge has been made and those contracts are fully performed on the part of the bank. The bank, as agent for the state, may include this pledge and undertaking for the state in its obligations or contracts.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

**63034.**

The bank shall establish a reasonable schedule of administrative fees, which shall be paid by the sponsor or the participating party pursuant to Section 63074, to reimburse the state for the costs of administering this division.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

**63035.**

The bank shall, not later than November 1 of each year, submit to the Governor and the Legislature, pursuant to Section 9795, a report for the preceding fiscal year ending on June 30 containing information on the bank's activities relating to the infrastructure bank fund and programs. The report shall include all of the following:



(a) (1) Information on the infrastructure bank fund, including, but not limited to, its present balance, moneys encumbered, moneys allocated, repayments, and other sources of revenues received during the fiscal year.

(2) Information on the impact of the activities funded by the infrastructure bank fund moneys, including, but not limited to, the number of jobs created and retained, the environmental impact that resulted, and economic value provided to the state.

(b) A specification of conduit and revenue bonds sold and interest rates thereon, including, but not limited to, the use of the bond proceeds.

(c) The amount of other public and private funds leveraged by the assistance provided.

(d) A report of revenues and expenditures for the preceding fiscal year, including all of the bank's costs. The information provided pursuant to this subdivision shall include, but need not be limited to, both of the following:

(1) The amount and source of total bank revenues. Revenues shall be shown by main categories of revenues, including the General Fund, special funds, federal funds, interest earnings, fees collected, and bond proceeds, for each bank program.

(2) The amount and type of total bank expenditures. Expenditures shall be shown by major categories of expenditures, including loans provided, debt service payments, and program support costs, for each bank program.

(e) A projection of the bank's needs and requirements for the coming year.

(f) Recommendations for changes in state and federal law necessary to meet the objectives of this division.

(g) The executive director shall post the report on the bank's Internet Web site.

*(Amended by Stats. 2014, Ch. 132, Sec. 5. Effective January 1, 2015.)*

#### **63035.5.**

The report required by Section 63035 shall be submitted to the Governor and the Joint Legislative Budget Committee on a quarterly basis during the 1999–2000 fiscal year and the 2000–01 fiscal year.

*(Added by Stats. 1999, Ch. 84, Sec. 3. Effective July 12, 1999.)*

#### **63036.**

It is the intent of the Legislature that the activities of the bank be fully coordinated with any future legislative plan involving growth management strategies designed to protect California's land resource, and ensure its preservation and use it in ways which are economically and socially desirable. Further, all public works financed pursuant to this division, including those projects financed through the use of industrial development bonds under Title 10 (commencing with Section 91500), shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

*(Amended by Stats. 2001, Ch. 938, Sec. 1. Effective January 1, 2002.)*

### **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 3. Local Resolution Applying for Bank Financing [63040 - 63041.5]**

*( Heading of Article 3 renumbered from Article 4 by Stats. 1998, Ch. 4, Sec. 12. )*

#### **63040.**



(a) Following consultation with appropriate state and local agencies, the bank shall establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the bank. Projects shall comply with the criteria, priorities, and guidelines adopted by the bank.

(b) The criteria, priorities, and guidelines shall, at a minimum, be based upon the following:

(1) The State Environmental Goals and Policy Report, or its successor, approved pursuant to Article 5 (commencing with Section 65041) of Chapter 1.5 of Division 1 of Title 7. If the State Environmental Goals and Policy Report, or its successor, has not been adopted within two years of a statutorily required update, compliance with this paragraph is not required until the report is updated.

(2) If the sponsor is a state agency, board, commission, or department, the Capital and Infrastructure Project Planning Report, prepared by the Director of Finance pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of Title 2.

(c) When the bank establishes or makes changes to the criteria, priorities, and guidelines, the bank shall notify the Governor, the fiscal and policy committees of the Legislature that exercise legislative oversight of the bank, and appropriate state and local agencies.

(d) The resolution required in Section 63041 shall have been adopted prior to the project's selection by the bank.

*(Amended by Stats. 2014, Ch. 132, Sec. 6. Effective January 1, 2015.)*

**63041.**

(a) Prior to submitting a project to the bank for consideration, the legislative body or bodies of the sponsor or sponsors of the project shall find, by resolution, each of the following:

(1) The project is consistent with the general plan of both the city and county, or city and county in the case of San Francisco, or only the county for projects in unincorporated areas in which the project is located.

(2) The proposed financing is appropriate for the specific project.

(3) The project facilitates effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources. The project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities.

(4) The project is consistent with the criteria, priorities, and guidelines for the selection of projects adopted pursuant to Section 63040.

(b) Upon the adoption of the resolution in subdivision (a) by the legislative body, the legislative body shall transmit the resolution to the executive director of the infrastructure bank.

*(Amended by Stats. 1999, Ch. 84, Sec. 4. Effective July 12, 1999.)*

**63041.5.**

(a) It is the intent of the Legislature to provide a one-time appropriation for financial assistance to local government to meet capital outlay and infrastructure needs.

(b) From the funds appropriated in Item 2920-111-0001 of the Budget Act of 1999, the sum of four hundred twenty-five million dollars (\$425,000,000) shall be available for financial assistance, including, but not limited to, leveraged revolving fund loans, to local government sponsors for public development facilities, as specified in subdivision (q) of Section 63010 of the Government Code.

(c) From the funds appropriated in Item 2920-111-0001 of the Budget Act of 1999 and in Item 2920-111-0001 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), the California Infrastructure and Economic Development Bank shall make no single loan in excess of 10 percent of the combined amount of these appropriations to the bank unless approved by unanimous consent of the membership of the Board of Directors of the California Infrastructure and Economic Development Bank and the Director of

Finance provides a 30-day written notice to the Chairperson and Vice-Chairperson of the Joint Legislative Budget Committee.

*(Added by Stats. 1999, Ch. 84, Sec. 5. Effective July 12, 1999.)*

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 4. Financing of Transition Costs [63042- 63042.]**

*( Heading of Article 4 renumbered from Article 6 by Stats. 1998, Ch. 4, Sec. 16. )*

#### **63042.**

Notwithstanding any other provision of this division, a project for the financing of transition costs and the acquisition of transition property upon the request of an electrical corporation shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63040) and Article 5 (commencing with Section 63043) shall not apply to the project or financing. The bank shall consider a project for financing transition costs and the acquisition of transition property upon filing of an application by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications from electrical corporations for the issuance or approval of rate reduction bonds. The review may be concurrent with the Public Utilities Commission's processing of an application for the pertinent financing order, so as to allow for the issuance of rate reduction bonds as quickly as feasible after the issuance of the pertinent financing order by the Public Utilities Commission. Notwithstanding any other provision of this division, the bank shall have no authority to alter or modify any term or condition related to the transition costs or the transition property as set forth in the pertinent financing order, and shall have no authority over any matter that is subject to the approval of the Public Utilities Commission under Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

*(Added by renumbering Section 63048 by Stats. 1998, Ch. 4, Sec. 17. Effective January 1, 1999.)*

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 5. Financing Economic Development Facilities [63043 - 63047]**

*( Heading of Article 5 amended by Stats. 1999, Ch. 83, Sec. 86. )*

#### **63043.**

Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040) and Article 4 (commencing with Section 63042), shall not apply to any conduit financing for economic development facilities by the bank directly for the benefit of a participating party.

*(Repealed and added by Stats. 1998, Ch. 4, Sec. 15. Effective January 1, 1999.)*

#### **63044.**

The bank shall consider a project for conduit financing for economic development facilities upon filing of an application with the bank by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications for the issuance or approval of bonds to finance economic development facilities.

*(Repealed and added by Stats. 1998, Ch. 4, Sec. 15. Effective January 1, 1999.)*

#### 63045.

In order to provide or arrange for the financing of economic development facilities, the bank may:

(a) Issue taxable revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for economic development projects compatible with the public interest as specified in Section 63046.

(b) Issue taxable revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for the revolving loan funds and economic development projects of small business development corporations, local economic development corporations, community development corporations, and nonprofit organizations, which revolving loan funds and economic development projects shall be compatible with the public interest.

(c) Issue tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) to provide financing for economic development facilities as permitted by federal law and in accordance with applicable California law relating to the distribution of state allocations for private activity bonds. Projects so financed shall be compatible with the public interest as specified in Section 63046.

(d) Issue tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) for economic development facilities of public sector and nonprofit organizations qualifying for exemption under federal law.

*(Repealed and added by Stats. 1998, Ch. 4, Sec. 15. Effective January 1, 1999.)*

#### 63046.

No financing shall be made by the bank under this article unless the bank shall have first determined that the financing or assistance meets the following public interest criteria:

(a) The financing, loan, grant, or other assistance is for a project or a use in the State of California.

(b) Those seeking funds or other assistance are capable of meeting obligations incurred under relevant agreements.

(c) In the case of loans or bonds, payments to be made under applicable financing documents are adequate to pay the current expenses of the bank in connection with the financing and to make payments on the bonds.

(d) The proposed financing is appropriate for the specific project.

*(Repealed and added by Stats. 1998, Ch. 4, Sec. 15. Effective January 1, 1999.)*

#### 63047.

(a) Any loan entered into pursuant to this article may contain provisions for payment of a penalty if any recipient of funds under this article leaves this state prior to the completion of the full term of the loan.

(b) Projects that the board determines will produce long-term employment creation or retention shall receive first priority for financing.

(c) Any recipient of funds under this article that utilizes the funds for construction purposes, shall certify that the contractors are properly licensed by the Contractors' State License Board.

(d) The bank shall require that the proposed economic development facilities be consistent with any existing local or regional comprehensive plan.

(e) The bank shall develop a policy regarding financing companies that move within this state so as to minimize any displacement of jobs.

(f) In addition to any other methods the bank may use to identify economic development projects, the bank shall utilize existing local economic development networks to identify these projects and prepare a plan, in consultation with local economic development networks and their organizations and representatives, to implement this policy.

*(Added by Stats. 1998, Ch. 4, Sec. 15. Effective January 1, 1999.)*

**CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

**ARTICLE 6. State Water Pollution Control Revolving Fund Program [63048 - 63048.5]**

*( Article 6 added by Stats. 2000, Ch. 1078, Sec. 1. )*

**63048.**

For purposes of this article, the following terms have the following meanings, unless the context clearly indicates or requires another meaning:

(a) "Board" means the State Water Resources Control Board.

(b) "Revolving fund" means the State Water Pollution Control Revolving Fund created by Chapter 6.5 (commencing with Section 13475) of Division 7 of the Water Code.

*(Added by Stats. 2000, Ch. 1078, Sec. 1. Effective January 1, 2001.)*

**63048.3.**

Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Article 63042), and Article 5 (commencing with Section 63043) do not apply to any financing provided by the bank to, or at the request of, the board in connection with the revolving fund.

*(Added by Stats. 2000, Ch. 1078, Sec. 1. Effective January 1, 2001.)*

**63048.5.**

(a) The bank may issue taxable or tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) and deposit the proceeds from the bonds into the revolving fund or use the proceeds to refund bonds previously issued under this article. Bond proceeds may also be used to fund necessary reserves, capitalized interest, or costs of issuance.

(b) Except as may be provided in the governing documents with respect to bond anticipation notes, each of the bonds issued under this article shall, to the extent provided in the governing documents, be payable from, and secured by, all or a portion of the revenues in the revolving fund and the assets of the revolving fund, to the extent the revenues and assets are pledged by the board for those purposes.

(c) Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the revolving fund and the assets of the revolving fund, and the security provided by the revolving fund. All bonds issued under this article shall contain on the face of the bonds a statement to the same effect.

*(Added by Stats. 2000, Ch. 1078, Sec. 1. Effective January 1, 2001.)*

**CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

**ARTICLE 6.3. Safe Drinking Water State Revolving Fund [63048.55 - 63048.57]**

*( Article 6.3 added by Stats. 2011, Ch. 518, Sec. 3. )*

**63048.55.**

For the purposes of this article, the following terms have the following meanings:

(a) "Department" means the State Department of Public Health.

(b) "Revolving fund" means the Safe Drinking Water State Revolving Fund established pursuant to Section 116760.30 of the Health and Safety Code.

*(Added by Stats. 2011, Ch. 518, Sec. 3. Effective January 1, 2012.)*

[63048.56.](#)

Notwithstanding any other law, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) shall not apply to any financing provided by the bank to, or at the request of, the department in connection with the revolving fund.

*(Added by Stats. 2011, Ch. 518, Sec. 3. Effective January 1, 2012.)*

[63048.57.](#)

(a) The bank may issue taxable or tax-exempt revenue bonds pursuant to Chapter 5 (commencing with Section 63070) and deposit the proceeds from the bonds into the revolving fund or use the proceeds to refund bonds previously issued under this article. Bond proceeds may also be used to fund necessary reserves, capitalized interest, or costs of issuance.

(b) Except as may be provided in the governing documents with respect to bond anticipation notes, each of the bonds issued under this article shall, to the extent provided in the governing documents, be payable from, and secured by, all or a portion of the revenues in the revolving fund and the assets of the revolving fund, to the extent the revenues and assets are pledged by the department for those purposes.

(c) Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision of the state, other than the bank, but shall be payable solely from the revolving fund and the assets of the revolving fund, and the security provided by the revolving fund. All bonds issued under this article shall contain on the face of the bonds a statement to that effect.

*(Added by Stats. 2011, Ch. 518, Sec. 3. Effective January 1, 2012.)*

**CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

**ARTICLE 6.5. Tribal Compact Assets Securitization [63048.6 - 63048.9]**

*( Article 6.5 added by Stats. 2004, Ch. 91, Sec. 4. )*

[63048.6.](#)

The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) "Compact assets" means moneys required to be paid to the state under Sections 4.3.1 and 4.3.3 of the designated tribal compacts and the state's rights to receive those payments.

(b) "Designated tribal compacts" means the amended and new tribal-state compacts, which are ratified by the Legislature, and that, among other things, require certain payments to the state in exchange for the exclusive right of the compact tribes to engage in certain gaming activities in their respective core geographic markets, all as specified in the amended and new compacts, and that are designated by the Director of Finance pursuant to subdivision (a) of Section 63048.65.

(c) "Operating expenses" means the reasonable operating expenses of the special purpose trust and the bank, including, but not limited to, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special

purpose trust, and fees and expenses incurred for professional consultants, advisors, fiduciaries, and legal counsel, including the fees and expenses of the Attorney General incurred in connection with the enforcement of the pledges and agreements of the state pursuant to Section 63048.8.

*(Added by Stats. 2004, Ch. 91, Sec. 4. Effective July 1, 2004.)*

**63048.63.**

(a) The Legislature hereby finds and declares:

(1) The financial and legal records of California Indian tribes and tribal business enterprises are records of a sovereign nation and are not subject to disclosure by private citizens or the state. This is explicitly recognized in amendments to tribal-state gaming compacts ratified by the Legislature, which provide for the securitization of annual payments to be received from the tribes by the state or by an agency, trust, fund, or entity specified by the state.

(2) In order to review the records of any Indian tribe relative to this securitization, the compacts require the execution of nondisclosure agreements.

(3) State entities statutorily charged with participating in the bond sale cannot perform those duties in the absence of that agreement, and the Legislature hereby acknowledges and agrees that documents containing tribal information are not public records, shall not be discussed in an open meeting, and that state officials privy to that information may execute nondisclosure agreements.

(b) Nothing in Chapter 3.5 of Division 7 of Title 1 (commencing with Section 6250) or any other provision of law shall permit the disclosure of any records of an Indian tribe received by the state, or by an agency, trust fund, or entity specified by the state, in connection with the sale of any portions of the designated tribal-state gaming compact assets or the issuance of bonds, or any summaries or analyses thereof. The transmission of the records, or the information contained in those records in an alternative form, to the state or the special purpose trust shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the state or special purpose trust shall be subject to this same exemption from disclosure.

(c) The state and the special purpose trust are authorized to enter into nondisclosure agreements with Indian tribes agreeing not to disclose the materials described in subdivision (b).

(d) The nondisclosure agreements may include provisions limiting the representatives of the state and the special purpose trust authorized to review or receive records of the Indian tribe to those individuals directly working on the sale of portions of the designated compact assets or the issuance of the bonds.

(e) Nothing in Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code shall be construed to prevent the bank from conducting a closed session to consider any records or information of an Indian tribe or any summaries or analyses thereof received by the state in connection with the sale of any portion of the compact assets or the issuance of bonds.

*(Added by Stats. 2004, Ch. 702, Sec. 6. Effective September 23, 2004.)*

**63048.65.**

(a) Prior to July 1, 2015, three hundred twenty-one million dollars (\$321,000,000) of the one billion two hundred million dollars (\$1,200,000,000) of loans from the Traffic Congestion Relief Fund to the General Fund was repaid using tribal gaming compact revenues. In 2016, an additional one hundred seventy-three million dollars (\$173,000,000) was repaid from the General Fund.

(b) The remaining seven hundred six million dollars (\$706,000,000) of loans from the Traffic Congestion Relief Fund to the General Fund shall be repaid pursuant to Section 14556.8.

*(Repealed and added by Stats. 2017, Ch. 5, Sec. 11. Effective April 28, 2017.)*

**63048.9.**

This article and all powers granted hereby shall be liberally construed to effectuate its intent and their purposes.

*(Added by Stats. 2004, Ch. 91, Sec. 4. Effective July 1, 2004.)*

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 7. Tobacco Settlement State Securitization [63049 - 63049.55]**

*( Article 7 added by Stats. 2002, Ch. 414, Sec. 2. )*

#### **63049.**

The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) "California escrow agreement" means the escrow agreement dated April 12, 2000, as amended, between the Attorney General, on behalf of the state, and the California escrow agent named in the agreement relating to the division between the state and the participating jurisdictions of amounts payable under the Master Settlement Agreement.

(b) "Consent decree and final judgment" means, collectively, the Consent Decree and Final Judgment entered in the Superior Court of the State of California for San Diego County on December 9, 1998, approving the Master Settlement Agreement, the memorandum of understanding, and the orders entered by the court on January 18, 2000, and July 30, 2001, approving the Agreement Regarding Interpretation of Memorandum of Understanding.

(c) "Master Settlement Agreement" means the settlement dated November 23, 1998, as amended, among the attorneys general of 46 states (including California), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and the other Subsequent Participating Manufacturers as defined therein.

(d) "Memorandum of understanding" means, collectively, the memorandum of understanding dated August 5, 1998, as amended, together with the Agreement Regarding Interpretation of Memorandum of Understanding, as amended, among the state and various local governments of the state to coordinate their pending cases and to allocate certain portions of the recovery under the Master Settlement Agreement.

(e) "Operating expenses" means the reasonable operating expenses of the special purpose trust, including, without limitation, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants and fiduciaries.

(f) "Tobacco assets" means all moneys required to be paid to the state under the Master Settlement Agreement, as further provided in the memorandum of understanding and the California escrow agreement, and all of the state's rights to receive those payments.

*(Amended by Stats. 2009, Ch. 28, Sec. 1. Effective August 6, 2009.)*

#### **63049.1.**

(a) Subject to subdivision (c) and subdivision (d), as applicable, the bank is hereby authorized to sell for, and on behalf of, the state, solely as its agent, all or any portion of the tobacco assets, or any residual interests therein, to a special purpose trust which is hereby established as a not-for-profit corporation



solely for that purpose and for the purposes necessarily incidental thereto, and to enter into one or more sales agreements with the special purpose trust as and on the terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. The principal office of the special purpose trust shall be located in Sacramento County. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank, and the five voting members of the State Public Works Board shall serve ex officio as the directors of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank or the State Public Works Board.

The special purpose trust is hereby authorized to issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the tobacco assets, or any residual interests therein, that it purchased as collateral and security for its bonds. The pledge of any of these assets and interests and of any revenues, reserves, and earnings pledged in connection therewith shall be valid and binding in accordance with its terms and have priority in accordance with its terms from the time the pledge is made and property so pledged shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The pledge shall not be subject to Division 9 (commencing with Section 9101) of the Commercial Code or Sections 954.5 and 955.1 of the Civil Code. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(b) (1) In order to assist the special purpose trust in financing or refinancing the purchase of tobacco assets, or any residual interests therein, by enhancing the security of the bonds issued for that purpose, upon request by the Director of Finance, the bank may include in, or add to, the sales agreement with the special purpose trust a covenant, binding on the state, to the effect that the Governor shall each year request from the Legislature an appropriation line item in the annual Budget Act, in a manner described further in this subdivision, from the General Fund for allocation by the Department of Finance to the special purpose trust in an amount equal to the debt service and operating expenses scheduled, or, in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding fiscal year on the bonds, including refunding bonds, issued by the special purpose trust to finance or refinance the purchase of tobacco assets, or any residual interests therein, pursuant to that sales agreement.

(2) The appropriation referred to in paragraph (1) may provide that it will have an initial zero funding amount, but shall contain provisions authorizing the Director of Finance to make allocations in augmentation of the appropriation, without further legislative approval, from the General Fund, up to the amount certified by the special purpose trust to be necessary to cover the difference, if negative, between the amount of tobacco assets received by the special purpose trust pursuant to the sales agreement by the end of April of any calendar year, plus any other amounts available in the debt service reserve fund or other fund held by the trustee for the bonds, less the amount of debt service on the bonds and operating expenses scheduled, or in the case of bonds bearing variable rates of interest, estimated, to become due during the next succeeding 12 months.



(3) Any amounts appropriated as provided in this subdivision shall be disbursed to the trustee for the bonds for the purpose of paying the debt service on the bonds and operating expenses specified in the certificate of the special purpose trust. Notwithstanding any other provision of this article, the Legislature shall not be obligated by this subdivision or any covenant made in a sales agreement, or any other provision of law, to appropriate or otherwise make funds available to pay debt service on the bonds or operating expenses.

(c) Based upon the terms of the sale agreements and bonds as established by the special purpose trust pursuant to subdivision (a) or (b), tobacco assets, or any residual interests therein, may be sold pursuant to this article, whether at one time or from time-to-time. The net proceeds of sale of any tobacco assets by the bank shall be deposited in the General Fund, except that the proceeds from the sale of any residual interests therein shall be deposited in the Tobacco Asset Sales Revenue Fund established pursuant to Section 63049.55. The use and application of the proceeds of any sale of tobacco assets, or any residual interests therein, or bonds shall not in any way affect the legality or validity of that sale or those bonds.

(d) On or after January 1, 2007, no bonds issued by the special purpose trust to finance or refinance the purchase of any tobacco assets, or any residual interests therein, shall include any enhancement of security pursuant to subdivision (b), other than refunding bonds for the purpose of refinancing or refunding existing enhanced bonds previously issued.

*(Amended by Stats. 2006, Ch. 641, Sec. 1. Effective January 1, 2007.)*

**63049.2.**

Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to any bonds issued by the special purpose trust established by this article. All matters authorized in this article are in addition to powers granted to the bank in this division.

*(Added by Stats. 2002, Ch. 414, Sec. 2. Effective January 1, 2003.)*

**63049.3.**

Any sale of some or all of the tobacco assets under this article shall be treated as a true sale and absolute transfer of the property so transferred to the special purpose trust and not as a pledge or grant of a security interest by the state, the bank board, the State Public Works Board, or the bank for any borrowing. The characterization of the sale of any of those assets as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the tobacco assets is transferred, nor by the state's acquisition of an ownership interest in any residual interest or a subordinate interest in the tobacco assets, nor by any characterization of the special purpose trust or its bonds for purposes of accounting, taxation, or securities regulation, nor by any other factor whatsoever.

*(Added by Stats. 2002, Ch. 414, Sec. 2. Effective January 1, 2003.)*

**63049.4.**

(a) On and after the effective date of each sale of tobacco assets, the state shall have no right, title, or interest in or to the tobacco assets sold, and the tobacco assets so sold shall be property of the special purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the tobacco assets sold by the state pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

On or before the effective date of any sale, the state, acting through its Attorney General, upon direction of the bank, shall notify the California escrow agent under the Master Settlement Agreement and the California escrow agreement that the sold tobacco assets have been sold to the special purpose trust and irrevocably instruct the California escrow agent that, as of the applicable effective date, the tobacco assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will not amend the Master Settlement Agreement, the memorandum of understanding, or the California escrow agreement, or take any other action, in any way that would materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way materially impair the rights and remedies of bondholders or the security for their bonds until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged. The state further pledges and agrees that it shall enforce its rights to collect all moneys due from the participating tobacco products manufacturers under the Master Settlement Agreement and, in addition, shall diligently enforce the model statute as contemplated in the Master Settlement Agreement (Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code) against all tobacco product manufacturers selling tobacco products in the state and that are not signatories to the Master Settlement Agreement, in each case in the manner and to the extent necessary in the judgment of the Attorney General to collect all moneys to which the state is entitled under the Master Settlement Agreement. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding these pledges and undertaking by the state, the Attorney General may in his or her discretion enforce any and all provisions of the Master Settlement Agreement, without limitation.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision thereof, other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

(e) Notwithstanding any other provision of law, the exclusive means to obtain review of a superior court judgment entered in an action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any bonds to be issued, or any other contracts to be entered into, or any other matters authorized by this article, shall be by petition to the Supreme Court for writ of review. Any petition shall be filed within 15 days following the notice of entry of the superior court judgment, and no extension of that period may be allowed. If no petition is filed within the time allowed therefor, or the petition is denied, with or without opinion, the decision of the superior court shall be final and enforceable as provided in subdivision (a) of Section 870 of the Code of Civil Procedure. In any case in which a petition has been filed within the time allowed therefor, the Supreme Court shall make any orders, as it may deem proper in the circumstances. If no answering party appeared in the superior court action, the only issues that may be raised in the petition are those related to the jurisdiction of the superior court.

(f) The Attorney General may negotiate amendments to the Master Settlement Agreement, the memorandum of understanding, and the California escrow agreement, provided that those amendments do not materially adversely alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way materially impair the rights and remedies of bondholders or the security for their bond until those bonds, together with the interest on the bonds and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged.

*(Amended by Stats. 2009, Ch. 28, Sec. 2. Effective August 6, 2009.)*

**63049.5.**

The state acknowledges and agrees that its 57 counties, the Cities of San Jose, Los Angeles, and San Diego, and the City and County of San Francisco, commonly and collectively known as the “participating jurisdictions,” have rights and interests in the memorandum of understanding. In recognition of the rights of the participating jurisdictions of the state contained in the memorandum of understanding, the state pledges that the sale of tobacco assets authorized by this article shall in no way include and the state shall not otherwise materially adversely alter, limit, or impair the rights of the participating jurisdictions, including, but not limited to, rights to receive payments, set forth in the memorandum of understanding. Nothing in this article shall be construed to alter the right of each of the participating jurisdictions to sell or assign some or all of its interest, and rights to receive payments, under the memorandum of understanding in the manner deemed appropriate by its governing body.

*(Amended by Stats. 2009, Ch. 28, Sec. 3. Effective August 6, 2009.)*

**63049.55.**

(a) The Tobacco Asset Sales Revenue Fund is hereby established in the State Treasury for the purpose of maintaining a separate account for the investment of proceeds received from the sale of any residual interests in tobacco assets and for the investment earnings on those proceeds.

(b) Pursuant to Article 4 (commencing with Section 16740) of Chapter 3 of Part 2 of Division 4 of Title 2, moneys in the fund may be transferred to the Surplus Money Investment Fund for investment, as long as that transfer does not jeopardize the tax-exempt status of the bonds.

(c) Upon direction by the Director of Finance, moneys in the fund shall be transferred to the General Fund.

(d) Pursuant to Section 16310, moneys in the fund may be borrowed for daily cashflow use by the General Fund.

*(Added by Stats. 2006, Ch. 641, Sec. 2. Effective January 1, 2007.)*

**CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

**ARTICLE 8. Financing of Insurance Claims [63049.6 - 63049.66]**

*( Article 8 added by Stats. 2003, Ch. 635, Sec. 2. )*

**63049.6.**

For purposes of this article, the following terms have the following meanings, in addition to the definitions contained in Section 63010, unless the context clearly indicates or requires another meaning:

(a) “Association” means the California Insurance Guaranty Association created pursuant to Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(b) “Department” means the Department of Insurance.

(c) "Fund" means the Insurance Assessment Bond Fund created by Section 1063.72 of the Insurance Code.

*(Added by Stats. 2003, Ch. 635, Sec. 2. Effective January 1, 2004.)*

[63049.62.](#)

Notwithstanding any other provision of this division, a financing of the costs of claims of insolvent insurers upon the request of the association pursuant to Section 1063.73 of the Insurance Code shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), Article 5 (commencing with Section 63043), Article 6 (commencing with Section 63048), and Article 7 (commencing with Section 63049) shall not apply to the financing provided by the bank to, or at the request of, the association or the department in connection with the fund. Notwithstanding any other provision of this division, the bank shall have no authority over any matter that is subject to the approval of the Insurance Commissioner under Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

*(Amended by Stats. 2010, Ch. 328, Sec. 94. Effective January 1, 2011.)*

[63049.64.](#)

(a) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and may loan the proceeds thereof to the association, and deposit the proceeds into a separate account in the fund, or use the proceeds to refund bonds previously issued under this article. Bond proceeds may also be used to fund necessary reserves, capitalized interest, credit enhancement costs, or costs of issuance.

(b) Bonds issued under this article shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the fund and other revenues and assets securing the bonds. All bonds issued under this article shall contain on the face of the bonds a statement to that effect.

(c) For purposes of this article, the term "project," as defined in subdivision (p) of Section 63010, shall include financing of the costs of claims of insolvent workers' compensation insurers, in an amount (together with associated costs of financing) that may be determined by the association in making a request for financing to the bank.

*(Added by Stats. 2003, Ch. 635, Sec. 2. Effective January 1, 2004.)*

[63049.66.](#)

The fund, and any other fund or account established pursuant to the issuance of bonds authorized by this article may be invested in any investment authorized pursuant to Section 63062, and any such fund or account shall be established outside of the centralized treasury system. The bank shall select as trustee for the bonds a corporation or banking association authorized to exercise corporate trust powers.

*(Added by Stats. 2003, Ch. 635, Sec. 2. Effective January 1, 2004.)*

## **CHAPTER 2. California Infrastructure and Economic Development Bank [63021 - 63049.68]**

*( Heading of Chapter 2 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 5. )*

### **ARTICLE 9. Financing of School District Emergency Apportionments [63049.67 - 63049.68]**

*( Article 9 added by Stats. 2004, Ch. 263, Sec. 9. )*

[63049.67.](#)

(a) Notwithstanding any other provision of this division, a financing of emergency apportionments upon the request of a school district pursuant to Article 2.7 (commencing with Section 41329.50) of Chapter 3 of Part 24 of Division 3 of Title 2 of the Education Code, is deemed to be in the public interest and eligible for financing by the bank. Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to the financing provided by the bank in connection with an emergency apportionment.

(b) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and provide the proceeds to a school district pursuant to a lease agreement. The proceeds may be used as an emergency apportionment, to reimburse the interim emergency apportionment from the General Fund authorized pursuant to subdivision (b) of Section 41329.52 of the Education Code, or to refund bonds previously issued under this section. Bond proceeds may also be used to fund necessary reserves, capitalized interest, credit enhancement costs, and costs of issuance.

(c) Bonds issued under this article are not deemed to constitute a debt or liability of the state or of any political subdivision of the state, other than a limited obligation of the bank, or a pledge of the faith and credit of the state or of any political subdivision. All bonds issued under this article shall contain on the face of the bonds a statement to the same effect.

(d) Any fund or account established in connection with the bonds shall be established outside of the centralized treasury system. Notwithstanding any other law, the bank shall select the financing team and the trustee for the bonds, and the trustee shall be a corporation or banking association authorized to exercise corporate trust powers.

(e) Pursuant to Section 41329.55 of the Education Code, a school district other than the Compton Community College District shall instruct the Controller to repay the lease from moneys in the State School Fund and the Education Protection Account designated for apportionment to the school district. Pursuant to Section 41329.55 of the Education Code, if the school district is the Compton Community College District, the Controller shall be instructed to repay the lease from moneys in Section B of the State School Fund. Any amounts necessary to make this repayment shall be drawn from the total statewide funding available for community college apportionment consisting of funds in Section B of the State School Fund. Thereafter the Controller shall transfer to Section B of the State School Fund, either in a single or multiple transfers, an amount equal to the total repayment, which amount shall be transferred from the amount designated for apportionment to the Compton Community College District from the State School Fund. If these transfers from the district prove inadequate to repay any repayments for any reason, the Compton Community College District is required to use any revenue sources available to it for transfer and repayment purposes.

(f) Notwithstanding any other law, as long as any bonds issued pursuant to this section are outstanding, the following requirements apply:

(1) The school district for which the bonds were issued is not eligible to be a debtor in a case under Chapter 9 of the United States Bankruptcy Code, as it may be amended from time to time, and no governmental officer or organization is or may be empowered to authorize the school district to be a debtor under that chapter.

(2) It is the intent of the Legislature that the Legislature should not in the future abolish the Compton Community College District or take any action that would prevent the Compton Community College from entering into or performing binding agreements or invalidate any prior binding agreements of the Compton Community College District, where invalidation may have a material adverse effect on the bonds issued pursuant to this section.

(3) The Compton Community College District shall not be reorganized or merged with another community college district unless all of the following apply:

(A) The successor district becomes by operation of law the owner of all property previously owned by the Compton Community College District.

(B) Any agreement entered into by the Compton Community College District in connection with bonds issued pursuant to this section are assumed by the successor district.

(C) The apportionment authorized by subdivision (e) remains in effect.

(D) Receipt by the bank of an opinion of bond counsel that the bonds issued for the Compton Community College District will remain tax exempt following the reorganization or merger.

(g) Nothing in this section limits the authority of the Legislature to abolish the Compton Community College District when bonds issued for that district are no longer outstanding. Further, the Legislature may provide for the redemption or defeasance of the bonds at any time so that no bonds are outstanding. If the Legislature provides for the redemption or defeasance of the bonds issued for the Compton Community College District in order to abolish that district, it is the intent of the Legislature that the funds required for the redemption or defeasance should be appropriated from Section B of the State School Fund.

(h) The bank may enter into contracts or agreements with banks, insurers, or other financial institutions or parties that it determines are necessary or desirable to improve the security and marketability of, or to manage interest rates or other risks associated with, the bonds issued pursuant to this section. The bank may pledge apportionments made by the Controller directly to the bond trustee pursuant to Section 41329.55 of the Education Code as security for repayment of any obligation owed to a bank, insurer, or other financial institution pursuant to this subdivision.

*(Amended by Stats. 2013, Ch. 48, Sec. 80. Effective July 1, 2013.)*

#### **63049.68.**

The State of California pledges that (a) the state will not alter the directive to the Controller to make apportionments to the bond trustee of moneys in the State School Fund and the Education Protection Account from that set forth in Section 41329.55 of the Education Code, and (b) the state will not amend or repeal subdivision (f) of Section 63049.67, in each case in any manner that would materially impair the security or other interests of holders of any bonds issued pursuant to this article. The bank is authorized to include this pledge in the bonds, or other documents entered into in connection with the bonds, as a covenant for the benefit of the bondholders.

*(Amended by Stats. 2013, Ch. 48, Sec. 81. Effective July 1, 2013.)*

### **CHAPTER 3. California Infrastructure and Economic Development Bank Fund [63050 - 63056]**

*( Heading of Chapter 3 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 17. )*

#### **63050.**

(a) There is hereby created in the State Treasury the California Infrastructure and Economic Development Bank Fund for the purpose of implementing the objectives and provisions of this division. Within the fund there shall also be established a Sponsor Revenue Bond Account, a Participating Party Revenue Bond Account, a State Infrastructure Revolving Account, and additional accounts and subaccounts that the bank may establish from time to time.

(b) Notwithstanding Section 13340 and except as provided in subdivision (c), all moneys in the infrastructure bank fund are continuously appropriated without regard to fiscal years for the support of the bank and shall be available for expenditure for the purposes stated in this division.

(c) Moneys in the infrastructure bank fund shall be available for expenditure for general administration only upon appropriation by the Legislature. This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt. Moneys in the fund shall be available

for the purpose of general administration of the authority only upon appropriation by the Legislature, but not more than 5 percent of any bond proceeds administered by the authority may be expended to cover the costs of issuance, as that terminology is defined under Section 147 (G) of the Internal Revenue Code.

(d) Notwithstanding any other provision of this division, not more than 15 percent of the financing annually approved by the executive director that utilizes state funds from the infrastructure bank fund may be expended upon educational facilities, environmental mitigation measures, and parks and recreational facilities.

(e) The executive director may transfer funds between the infrastructure bank fund and the guarantee trust fund when appropriate to accomplish the financing objectives of this division.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 18. Effective January 1, 1995.)*  
[63052.](#)

(a) The bank may pledge any or all of the moneys in the fund as security for payment of the principal of, and interest on, any particular issuance of bonds issued pursuant to this chapter. The bank may use any or all of the moneys in the fund, including the grant account, to retain or purchase for retention or sale, subordinated bonds issued by the bank, by a special purpose trust, or by a sponsor pursuant to this chapter. For these purposes, or as necessary or convenient to the accomplishment of any other purpose of the bank, the bank may divide the fund into separate accounts or subaccounts. All moneys accruing to the bank pursuant to this division from any sources shall be deposited in the fund.

(b) Subject to priorities that may be created by the pledge of particular moneys in the infrastructure bank fund to secure any issuance of revenue bonds of the bank, a special purpose trust, or a sponsor, and subject further to reasonable costs that may be incurred by the bank in administering the program authorized by this division, all moneys in the infrastructure bank fund derived from any source, shall be held in trust for the security and payment of revenue bonds of the bank, a special purpose trust, or a sponsor and shall not be used or pledged for any other purpose so long as the revenue bonds are outstanding and unpaid.

(c) Pursuant to any agreements with the holders of revenue bonds pledging any particular assets, revenues, or moneys, the bank may create separate accounts or subaccounts in the infrastructure bank fund to manage these assets, revenues, or moneys in the manner set forth in the agreements.

(d) The bank may, from time to time, direct the Treasurer to invest moneys in the infrastructure bank fund that are not required for its current needs, including proceeds from the sale of any bonds, in any eligible securities specified in Section 16430 as the bank shall designate. The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in any bank in this state or in any savings and loan association in this state. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2. Notwithstanding Section 16305.7, all interest or other increment resulting from the investment or deposit of moneys from the infrastructure bank fund shall be deposited in the infrastructure bank fund. Moneys in the infrastructure bank fund shall not be subject to transfer to any other funds pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2, except to the Surplus Money Investment Fund.

(e) Subject to any agreement with holders of particular bonds, in furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the infrastructure bank fund, including, but not limited to, proceeds of any of its bonds or refunding bonds, in obligations of financial institutions as are permitted by board resolution. The bank may alternatively require the transfer of moneys in the infrastructure bank fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.



(f) Subject to any agreement with the holders of particular bonds, all interest or other increment resulting from the investment or deposit shall be deposited in the infrastructure bank fund, notwithstanding Section 16305.7. Moneys in the infrastructure bank fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2, excepting the Surplus Money Investment Fund.

(g) The infrastructure bank fund shall be organized as a public enterprise fund.

(h) The bank shall cause all moneys in the infrastructure bank fund that are in excess of current requirements to be invested and reinvested, from time to time.

*(Amended by Stats. 1995, Ch. 863, Sec. 19. Effective January 1, 1996.)*

**63053.**

(a) The bank may administer and distribute among its accounts and subaccounts, at its discretion, the proceeds from any general obligation bonds issued in accordance with the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2).

(b) The assets of the infrastructure bank fund shall be available for the payment of the salaries and other expenses charged against it in accordance with this division.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 20.5. Effective January 1, 1995.)*

**63054.**

All expenses incurred in carrying out the purposes of this division shall be payable solely from funds provided pursuant to this division, and no liability or obligation shall be imposed upon the state and none shall be incurred by the agency beyond the extent to which money shall have been provided pursuant to this division.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

**63055.**

(a) Moneys in the infrastructure bank fund received from the proceeds of bonds issued pursuant to this division may not be transferred to any other fund except as necessary to pay the expenses of operating the program authorized by this division, nor shall the bank utilize any moneys under the direction and control of the California Housing Finance Agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the Housing Finance Fund, other than moneys in the infrastructure bank fund to satisfy liabilities arising from projects authorized by this division.

(b) The infrastructure bank fund, on behalf of the bank, may borrow or receive moneys from the bank or from any federal, state, or local agency or private entity, in order to create reserves in the infrastructure bank fund as provided in this division and as authorized by resolution of the board.

*(Amended by Stats. 1998, Ch. 4, Sec. 19. Effective January 1, 1999.)*

**63056.**

(a) Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditures of the infrastructure bank fund shall not be subject to the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget shall be prepared and reviewed not later than November 1 of each year and the bank shall submit to the Legislature a report of its activities for the prior fiscal year, as specified in Section 63035.

(b) The bank's budget regarding the infrastructure bank fund shall include the amount of credit and liabilities of the fund, based on an audit of the fund at the close of the prior fiscal year. The bank's operating budget shall be subject to review and appropriation in the annual Budget Act.



*(Amended by Stats. 2014, Ch. 132, Sec. 7. Effective January 1, 2015.)*

**CHAPTER 4. California Infrastructure Guarantee Trust Fund [63060 - 63067]**

*( Chapter 4 added by Stats. 1994, Ch. 94, Sec. 1. )*

**63060.**

(a) There is hereby created in the State Treasury the California Infrastructure Guarantee Trust Fund. Notwithstanding Section 13340 and except as provided in subdivision (b), all money in the guarantee trust fund is hereby continuously appropriated to the bank without regard to fiscal years for the purpose of insuring all or a portion of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the bank or a sponsor, and all or a part of any series of bonds issued by the bank, by a special purpose trust, or by a sponsor pursuant to this division, and for the purpose of defraying administrative expenses incurred by the bank in operating the programs of loan and bond guarantee. All insurance premiums received by the bank for insurance, guarantees, or enhancements provided pursuant to this division shall be deposited in the guarantee trust fund. The guarantee trust fund is authorized to guarantee all or a part of any of the accounts and subaccounts within the infrastructure bank fund, any contracts or obligations of the bank, a special purpose trust, or a sponsor, and all or part of any series of bonds issued by the bank, by a special purpose trust, or by a sponsor and to authorize payment on any guarantee or enhancement of the guarantee trust fund.

(b) Moneys in the infrastructure bank fund shall be available for expenditure for general administration only upon appropriation by the Legislature. This subdivision shall not limit the authority of the bank to expend funds directly related to the servicing of approved debt.

*(Amended by Stats. 1995, Ch. 863, Sec. 20. Effective January 1, 1996.)*

**63061.**

Notwithstanding Chapter 2 (commencing with Section 12850) of Part 2.5 of Division 3 of Title 2 and Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2, expenditure of the guarantee trust fund shall not be subject to the supervision or approval of any other officer or division of state government, with the exception of the Legislature. However, the bank's budget respecting the guarantee trust fund shall be prepared and reviewed not later than November 1 of each year and the bank shall submit to the Legislature a report of its activities for the prior fiscal year. However, the bank's budget regarding the infrastructure bank fund shall be prepared and reviewed in accordance with Section 50913, and, not later than November 1 of each year, the agency shall submit to the Legislature a report of its activities for the prior fiscal year. The bank's operating budget shall be subject to review and appropriation in the annual Budget Act.

*(Amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 23. Effective January 1, 1995.)*

**63062.**

(a) The bank may, from time to time, direct the Treasurer to invest moneys in the guarantee trust fund that are not required for its current needs in any eligible securities specified in Section 16430 that the bank shall designate. The bank may direct the Treasurer to invest the moneys by entering into repurchase agreements or reverse repurchase agreements, which, for purposes of this section, shall mean agreements for the purchase or sale of eligible securities pursuant to which the seller or buyer agrees to repurchase or sell back the securities on or before a specified date and for a specified amount. The bank may direct the Treasurer to invest the moneys in the subordinated securities of the bank, a special purpose trust, or a sponsor. The bank may direct the Treasurer to invest the moneys in investment agreements with corporations, financial institutions, or national associations within the

United States that are rated by a nationally recognized rating service within the top three rating categories of the service. For purposes of this section, investment agreements shall mean any agreement for the investment of moneys in the guarantee trust fund whether at fixed or variable interest rates, and may include, but not be limited to, repurchase agreements, notes, uncollateralized time deposits, certificates of deposit, and the subordinated securities of the bank, a special purpose trust, or a sponsor. The bank may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices in this state.

(b) In furtherance of Section 51373 of the Health and Safety Code, and to the extent permitted by law, the bank may also invest moneys of the guarantee trust fund in obligations of financial institutions that are permitted by board resolution. The bank may alternatively require the transfer of moneys in the guarantee trust fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(c) All interest or other increment resulting from the investment or deposit shall be deposited in the guarantee trust fund, notwithstanding Section 16305.7.

(d) The bank may create other accounts within the guarantee trust fund as are necessary or convenient to carry out the purposes of this article.

*(Amended by Stats. 1995, Ch. 863, Sec. 21. Effective January 1, 1996.)*

#### 63063.

(a) There is a guarantee reserve account in the guarantee trust fund to secure commitments under contracts to guarantee all or part of the bonds of the bank, a special purpose trust, or of a sponsor, any contracts or obligations of the bank, a special purpose trust, or of a sponsor, and all or part of the accounts or subaccounts within the infrastructure bank fund. The bank shall take all reasonable steps to ensure that the guarantee reserve account is continuously maintained at not less than the reserve account requirement established pursuant to subdivision (a) of Section 63064. The bank shall pay all of the following into the guarantee reserve account:

(1) Moneys appropriated and made available by the Legislature for deposit in the account.

(2) Any proceeds of bonds, including general obligation bonds, to the extent provided in the resolution, trust agreement, resolutions or trust agreements authorizing the issue thereof.

(3) Any other moneys that the bank may make available for the purpose of deposit to the guarantee reserve account.

(b) The bank shall not cause sums to be withdrawn from the guarantee reserve account in amounts that would reduce the moneys therein to less than the reserve account requirement, except as necessary to satisfy liabilities arising under contracts of guarantee. In the event that the loan guarantee reserve account is reduced to less than the reserve account requirement, the bank shall cease making commitments for, and contracts of, guarantees and enhancements until the guarantee reserve account has been restored to that requirement.

*(Amended by Stats. 1995, Ch. 863, Sec. 22. Effective January 1, 1996.)*

#### 63064.

(a) The Legislature may from time to time appropriate or transfer to the guarantee reserve account from funds or accounts that are legally available, an amount or amounts as the Legislature may determine. The Legislature may establish, and from time to time increase, for the guarantee reserve account a requirement that shall be known as the "reserve account requirement."

(b) If the bank determines that the amount in the reserve account is below the reserve account requirement, the executive director shall immediately certify in writing to the Joint Legislative Budget Committee, the Speaker of the Assembly, the Senate Committee on Rules, and the Governor, the sum required to restore the reserve fund to the reserve account requirement.

(c) Upon making the certification, the chief executive officer shall ask the Governor to request an appropriation, and shall use his or her best efforts to have a sum requested and appropriated.

(d) Upon receiving notice that the amount in the reserve account is below the reserve account requirement, the Legislature may, at its discretion, choose to appropriate and pay to the bank for deposit into the guarantee reserve account that sum that would restore the reserve account to an amount equal to the reserve account requirement.

(e) The bank may utilize any moneys that may be appropriated to the guarantee trust fund from time to time by the Legislature for effectuating its purposes, including, but not limited to, the payment of the initial expenses of administration and operation and the restoration of the reserve account to the reserve account requirement.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

[63065.](#)

(a) The obligation of the bank and of the state to pay any guarantee benefit pursuant to contracts of guarantee or any other contracts or obligations of the bank, a special purpose trust, or sponsor shall be a limited obligation of the bank payable solely from amounts deposited in the guarantee trust fund that are made available therefor under the respective contracts of guarantee. The guarantee of loans or bonds under this division shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment.

(b) All contracts of guarantee or any other contracts or obligations of the bank, special purpose trust, or a sponsor pursuant to this division shall contain on the face thereof a statement to the following effect: "Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this contract of guarantee."

(c) Moneys in the guarantee trust fund may not be transferred to any other fund except for payment on any guarantee or enhancements or except as necessary to pay the expenses of operating the program of bond guarantee and enhancement authorized by this division, nor shall the bank utilize any moneys under the direction and control of the agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the California Housing Finance Fund, other than moneys in the guarantee trust fund, to satisfy liabilities arising from contracts of guarantee authorized by this division.

*(Amended by Stats. 1995, Ch. 863, Sec. 23. Effective January 1, 1996.)*

[63066.](#)

The bank may charge and collect insurance guarantee or enhancement premiums or other fees for the insurance guarantees or enhancements described in this chapter and impose other reasonable charges and fees for services performed in connection with approval and processing of the guarantees or enhancements, or for pool assembly, loan servicing, or other services the bank may provide to a special service trust.

*(Amended by Stats. 1995, Ch. 863, Sec. 24. Effective January 1, 1996.)*

[63067.](#)

(a) Moneys in the infrastructure bank fund received from the proceeds of bonds issued pursuant to this division may not be transferred to any other fund except as necessary to pay the expenses of operating the program authorized by this division, nor shall the bank utilize any moneys under the direction and control of the agency, including, but not limited to, moneys in the California Housing Loan Insurance Fund and the Housing Finance Fund, other than moneys in the infrastructure bank fund to satisfy liabilities arising from projects authorized by this division.

(b) The infrastructure bank fund, on behalf of the bank or a special purpose trust, may borrow or receive moneys from any federal, state, or local agency or private entity, in order to create reserves in the infrastructure bank fund as provided in this division and as authorized by resolution of the board. *(Amended by Stats. 1995, Ch. 863, Sec. 25. Effective January 1, 1996.)*

#### **CHAPTER 5. Revenue Bonds [63070 - 63087]**

*( Heading of Chapter 5 amended (as added by Stats. 1994, Ch. 94) by Stats. 1994, Ch. 749, Sec. 24. )*

#### **63070.**

(a) The bank may, from time to time, issue its revenue bonds in a principal amount that the bank shall determine to be necessary to provide sufficient funds for its purposes, which may include, but shall not be limited to, providing funds for the payment of costs of a project, for the purchase of bonds of a special purpose trust or a sponsor, payment of interest on bonds of the bank or of a special purpose trust, establishment of reserves to secure bonds, refunding previously issued bonds or refunding bonds of the bank, special purpose trust, or a sponsor, and payment of other expenditures of the bank or special purpose trust incident to issuance of bonds or refunding bonds of the bank.

(b) The bank, by private sale pursuant to a bond purchase agreement, may purchase the bonds of any local sponsor or of any special purpose trust that are issued pursuant to any other provision of applicable law, and may be secured with any funds, moneys, or revenues that are legally available.

(c) The bank may also issue bonds or authorize a special purpose trust to issue bonds for the purpose of making loans to a sponsor to be used by a sponsor to pay for the cost of a project, and that loan may be secured with any funds, moneys, or revenues that are legally available, including, but not limited to, any legally available funds or moneys that are due or payable to the sponsor by reason of any grant, allocation, or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, and any legally available funds or moneys that are or will be due or payable to any sponsor, the bank, or the state or the agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof.

*(Amended by Stats. 1995, Ch. 863, Sec. 26. Effective January 1, 1996.)*

#### **63071.**

(a) Notwithstanding any other provision of law, but consistent with Sections 1 and 18 of Article XVI of the California Constitution, a sponsor may issue bonds for purchase by the bank pursuant to a bond purchase agreement. The bank may issue bonds or authorize a special purpose trust to issue bonds. These bonds may be issued pursuant to the charter of any city or any city and county that authorized the issuance of these bonds as a sponsor and may also be issued by any sponsor pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5) to pay the costs and expenses pursuant to this title, subject to the following conditions:

(1) With the prior approval of the bank, the sponsor may sell these bonds in any manner as it may determine, either by private sale or by means of competitive bid.

(2) Notwithstanding Section 54418, the bonds may be sold at a discount at any rate as the bank and sponsor shall determine.

(3) Notwithstanding Section 54402, the bonds shall bear interest at any rate and be payable at any time as the sponsor shall determine with the consent of the bank.

(b) The total amount of bonds issued to finance public development facilities that may be outstanding at any one time under this chapter shall not exceed five billion dollars (\$5,000,000,000). The total amount of rate reduction bonds that may be outstanding at any one time under this chapter shall not exceed ten billion dollars (\$10,000,000,000).

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

*(Amended by Stats. 2003, Ch. 635, Sec. 3. Effective January 1, 2004.)*

**63072.**

(a) The bank may give final approval for the issuance of the bonds or of the authorization of a special purpose trust upon terms it deems necessary or desirable.

(b) The executive director may establish the terms and conditions for the issuance of the bonds or of the authorization of a special purpose trust and take any other action necessary or desirable for the issuance of the bonds or of a special purpose trust authorized by the bank.

(c) Any action under this section shall be at the discretion of the bank.

*(Amended by Stats. 1995, Ch. 863, Sec. 28. Effective January 1, 1996.)*

**63073.**

The Treasurer, the Governor, or the Lieutenant Governor is an elected representative of the state authorized to fulfill the public approval requirement of Section 147(f) of Title 26 of the Internal Revenue Code (26 U.S.C.A. Sec. 147(f)), including subsequent amendments thereto, or its successor provision, for the issuance of tax-exempt bonds issued by the bank, a special purpose trust, or a sponsor pursuant to this chapter.

*(Amended by Stats. 2001, Ch. 508, Sec. 3. Effective January 1, 2002.)*

**63074.**

(a) Bonds may be authorized to finance a single project for a single sponsor or a participating party, a series of projects for a single sponsor or a participating party, a single project for several sponsors or participating parties, or several projects for several sponsors or participating parties.

(b) Except as otherwise expressly provided by the bank, every issue of its bonds shall be payable from any revenues or other moneys of the bank available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional bonds, subject only to any agreements with the holders of particular bonds pledging any particular revenues or moneys. Notwithstanding that the bonds may be payable from a special fund, these bonds shall be deemed to be negotiable instruments for all purposes.

(c) Subject to the limitations in Section 63071, bonds may be issued in one or more series, may be issued as serial bonds or as term bonds or as a combination thereof. The bonds shall be authorized by resolution of the bank and shall, as provided by the resolution, bear the date of issuance, the time of maturity, which shall not exceed 50 years from the date of issuance, bear the rate or rates of interest, be payable at the time or times provided, be in the denominations provided, be in the form or forms provided, carry the registration privileges provided, be executed in the manner provided, be payable in lawful money of the United States, or other designated currency, at the place or places provided, and be subject to any terms of redemption provided therein.

(d) Sale of the bonds of the bank or of a special purpose trust shall be coordinated by the Treasurer in accordance with Section 5702. The Treasurer shall sell the bonds within 90 days of receiving a certified copy of the resolution authorizing the sale of bonds, unless the board adopts a resolution extending the 90-day period.

(e) The sale may be a public or private sale, and for any price or prices, and on any terms and conditions, as the bank determines proper, after giving due consideration to the recommendations of any special purpose trust and any sponsor to be assisted from the proceeds of the bonds. Pending preparation of

definitive bonds, the Treasurer may issue interim receipts, certificates, or temporary bonds that shall be exchanged for definitive bonds.

*(Amended by Stats. 1995, Ch. 863, Sec. 30. Effective January 1, 1996.)*

**63075.**

Any resolution authorizing any bonds or the authorization of a special purpose trust or any issue of bonds of the bank or a special purpose trust may contain the following provisions, which shall be a part of the contract with the holders of the bonds to be authorized:

(a) Provisions pledging the full faith and credit of the bank, or pledging all or any part of the revenues of any project, or any revenue-producing contract or contracts made by the bank with any sponsor, or any other moneys of the bank, to secure the payment of the bonds or of any particular issue of bonds, subject to those agreements with bondholders as may then exist and consistent with Sections 1 and 18 of Article XVI of the California Constitution.

(b) Provisions setting out the rentals, fees, purchase payments, loan repayments, and other charges, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) Provisions setting aside reserves or sinking funds, or providing for the use of subordinated classes of bonds by the bank or a special purpose trust, and the regulation and disposition thereof.

(d) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(f) Limitations on the bank's expenditures for operation and administration, or other expenses.

(g) Definitions of acts or omissions to act that constitute a default in the duties of the bank to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(h) The mortgaging of any project and the site thereof for the purpose of securing the interests of the bondholders.

(i) The mortgaging of land, improvements, or other assets owned by a sponsor or participating party for the purpose of securing the interests of the bondholders.

*(Amended by Stats. 1995, Ch. 863, Sec. 31. Effective January 1, 1996.)*

**63076.**

Neither the officers of the bank nor any person executing the bonds of the bank or a special purpose trust shall be personally liable for the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

*(Amended by Stats. 1995, Ch. 863, Sec. 32. Effective January 1, 1996.)*

**63077.**

The bank, a special purpose trust, or any sponsor or participating party may, out of any funds available therefor, purchase their respective bonds. The bank and a special purpose trust may hold, pledge, cancel, or resell their bonds, subject to and in accordance with agreements with bondholders.

*(Amended by Stats. 1995, Ch. 863, Sec. 33. Effective January 1, 1996.)*

**63078.**

In the discretion of the bank, a special purpose trust, or the sponsor, as the case may be, any bonds issued under this chapter may be secured by a trust agreement between the bank, a special purpose trust, or the sponsor and a corporate trustee or trustees, that may include the Treasurer or any trust company or bank having the powers of a trust company within or without the state.



(a) The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign any funds or assets of the bank or special purpose trust legally available for pledge or assignment, all or a portion of the revenues to be received by the bank, directly or indirectly, with respect to the project, or the proceeds of any contract or contracts, loan or loan agreements, bond or bond purchase agreements, and may convey or mortgage the project or projects, or any portion thereof, to be financed out of the proceeds of the bonds. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including provisions specifically authorized to be included in any resolution or resolutions of the bank or a sponsor authorizing bonds.

(b) Any bank or trust company doing business under the laws of the state that may act as a depository of the proceeds of bonds or of revenues or other moneys shall furnish indemnifying bonds or pledge securities when required by the bank, a special purpose trust, or a sponsor.

(c) The trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition, any trust agreement or resolution may contain other provisions that the bank may deem reasonable and proper for the security of the bondholders.

(d) The trust agreement may provide for the pledge or assignment of funds or moneys in the custody of the Controller that are legally available to a sponsor and that are due or payable to the sponsor by reason of any grant, allocation, apportionment, or appropriation of the state or agencies thereof, and any legally available funds or moneys that are or will be due or payable, to any sponsor, the bank, the state or the agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof.

*(Amended by Stats. 1995, Ch. 863, Sec. 34. Effective January 1, 1996.)*

**63079.**

(a) Bonds issued under this chapter do not constitute a debt or liability of the state or of any political subdivision thereof, other than the bank or a special purpose trust, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the bank or special purpose trust, but are payable solely from the funds provided therefor under this chapter and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this title. All the bonds shall contain on the face thereof a statement to the following effect:

“Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond.”

(b) The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. Nothing in this section shall prevent, or be construed to prevent, the bank from pledging the full faith and credit of the infrastructure bank fund to the payment of bonds or issuance of bonds authorized pursuant to this chapter.

*(Amended by Stats. 1995, Ch. 863, Sec. 35. Effective January 1, 1996.)*

**63080.**

The validity of any bonds issued under this chapter shall not be affected by any proceedings related to the authorization or implementation of the project financed by the bonds.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

**63081.**

(a) The bank or a special purpose trust may issue bonds for the purpose of refunding any bonds, notes, or other securities of the bank, a special purpose trust, or a sponsor then outstanding, including the payment of any redemption premium thereon and any interest accrued, or to accrue, on their earliest or any subsequent date of redemption, purchase, or maturity of these bonds. The bank, or a sponsor, if it deems advisable, may issue or authorize a sponsor to issue bonds for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions, or enlargements of any project or any portion thereof.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds as provided in subdivision (a) may, in the discretion of the bank, be applied to the purchase or retirement at maturity or redemption of those outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending this application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption of those outstanding bonds on the date or dates as may be determined by the bank.

(c) Pending this use, the escrowed proceeds may be invested and reinvested by the Treasurer or a trustee in obligations of, or guaranteed by, the United States, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States, maturing at the time or times appropriate to assure prompt payment, of the principal, interest, and redemption premium, if any, of the outstanding bonds to be refunded. The interest, income, and profits, if any, earned or realized on the investment may also be applied to the payment of the outstanding bonds to be refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income, and profits, if any, earned or realized on the investments thereof, shall be returned to the agency for use in carrying out the purposes of this division.

(d) The portion of the proceeds of the bonds issued for the additional purpose of paying all or any part of the cost of construction and acquiring additions, improvements, extensions, or enlargements of any project may be invested and reinvested by the Treasurer or a trustee in obligations of, or guaranteed by, the United States, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States, maturing not later than the time or times when these proceeds will be needed for the purpose of paying all or any part of the cost. The interest, income, and profits, if any, earned or realized on this investment may be applied to the payment of all, or any part of, the cost or may be used by the bank in carrying out the purposes of this division.

*(Amended by Stats. 1995, Ch. 863, Sec. 36. Effective January 1, 1996.)*

**63082.**

Notwithstanding anything herein to the contrary, this act shall be supplemental to, and not in lieu of, the right of any sponsor to issue general obligation bonds or bonds that it is otherwise lawfully authorized to issue or cause to be issued.

*(Added by Stats. 1994, Ch. 94, Sec. 1. Effective January 1, 1995. Conditionally operative as prescribed by Sec. 17 of Ch. 94.)*

**63083.**

Any and all bonds issued by the bank or a special purpose trust, their transfer and the income therefrom, shall at all times be free from taxation of every kind by the state and by all political subdivisions of the state.

*(Amended by Stats. 1995, Ch. 863, Sec. 37. Effective January 1, 1996.)*

**63084.**

(a) Any issue of revenue bonds by the bank may be secured and made more attractive to capital markets through financial instruments, including, but not limited to:



- (1) Deeds of trust on the resources, facilities, and revenues of the projects.
- (2) Credit enhancements, including, but not limited to, letters of credit, bond insurance, and surety bonds provided by private financial institutions.
- (3) Insurance and guarantees provided by the bank itself.
- (b) The bank may make loans to help establish and support the revolving loan funds of small business development corporations, economic development corporations, community development corporations, and nonprofit corporations. The loans may be made from any appropriate account or subaccount of the California Infrastructure and Economic Development Bank Fund and as determined by the bank.

*(Added by Stats. 1998, Ch. 4, Sec. 21. Effective January 1, 1999.)*

**63085.**

Whenever the bank deems that it will increase the salability or the price of the bonds to obtain, prior to or after sale, a legal opinion from private counsel as to the validity or tax-exempt nature of the bonds, the bank may obtain a legal opinion. Payment for legal services may be made out of the proceeds of the sale of the bonds.

*(Added by Stats. 1998, Ch. 4, Sec. 22. Effective January 1, 1999.)*

**63086.**

The bank may employ financial consultants, advisers, and accountants, as may be necessary in its judgment, in connection with the issuance and sale of any bonds of the bank. Payment for these services may be made out of the proceeds of the sale of the bonds.

*(Added by Stats. 1998, Ch. 4, Sec. 23. Effective January 1, 1999.)*

**63087.**

Section 10295 and Sections 10335 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the bank in connection with the sale of bonds or notes authorized under this division.

*(Added by Stats. 1998, Ch. 4, Sec. 24. Effective January 1, 1999.)*

**CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

**ARTICLE 1. Introduction [63088 - 63088.1]**

*( Article 1 added by Stats. 2013, Ch. 537, Sec. 4. )*

**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.

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

**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.

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 2. Definitions [63088.3- 63088.3.]**

*( Article 2 added by Stats. 2013, Ch. 537, Sec. 4. )*

#### **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.

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 3. Purpose [63088.5 - 63088.6]**

*( Article 3 added by Stats. 2013, Ch. 537, Sec. 4. )*

#### **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.

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

#### **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.

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

### **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( 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. 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. 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. 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. 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. Effective October 4, 2013.)*

### **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( 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. 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 (as added by Stats. 2013, Ch. 537, Sec. 4) by Stats. 2016, Ch. 713, Sec. 2. Effective January 1, 2017.)*

**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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. 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. Effective January 1, 2017.)*

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 6. Corporations, Miscellaneous [63089.65 - 63089.67]**

*( Article 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

#### **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.

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

#### **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.

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

#### **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.

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 7. Loan Guarantees [63089.70 - 63089.71]**

*( Article 7 added by Stats. 2013, Ch. 537, Sec. 4. )*

#### **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.

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

#### **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.

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( 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. Effective October 4, 2013.)*

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 9. Disaster Loan Guarantees [63089.90- 63089.90.]**

*( Article 9 added by Stats. 2013, Ch. 537, Sec. 4. )*

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )

### **ARTICLE 10. Surety Bond Guarantees [63089.95 - 63089.96]**

( Article 10 added by Stats. 2013, Ch. 537, Sec. 4. )

#### **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.

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

#### **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.

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

## **CHAPTER 6. Small Business Financial Assistance Act of 2013 [63088 - 63089.98]**

*( Chapter 6 added by Stats. 2013, Ch. 537, Sec. 4. )*

### **ARTICLE 11. Reporting [63089.97 - 63089.98]**

*( Article 11 added by Stats. 2013, Ch. 537, Sec. 4. )*

#### **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) A list by city and county of the number and dollar value of all credit enhancements and debt instruments the corporation entered into, pursuant to this chapter, during the report year, and that are outstanding at the close of the fiscal year.
- (h) Any other statistical and other data, reports, or other information required by the directives and requirements or the program manager.

*(Amended by Stats. 2015, Ch. 191, Sec. 1. Effective January 1, 2016.)*

#### **63089.98.**

(a) Annually, not later than January 1 of each year commencing January 1, 2014, and notwithstanding Section 10231.5, 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) Geographic distribution by city and county of the direct loans, guarantees, and other financial products awarded and outstanding at the close of the fiscal year.

(6) Significant events.

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

*(Amended by Stats. 2015, Ch. 191, Sec. 2. Effective January 1, 2016.)*