

## Assembly Bill No. 2665

### CHAPTER 534

An act to amend Sections 71.4, 76.3, and 76.6 of the Harbors and Navigation Code, relating to harbors and ports.

[Approved by Governor September 15, 2004. Filed with Secretary of State September 15, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2665, Leslie. Harbors and ports: funding.

(1) Existing law authorizes the Department of Boating and Waterways, subject to the approval of the Legislature, to make loans to cities, counties, or districts having power to acquire, construct, and operate small craft harbors, for the planning, acquisition, construction, improvement, maintenance, or operation of small craft harbors and facilities in connection therewith, and connecting waterways, if the department finds that the project is feasible. The city, county, or district is required to establish the rates to be charged for the use of the boating facilities, subject to the approval of the department, in every loan contract. The department is required to monitor these rates to ensure that the berthing charges are reasonable and not exorbitant.

This bill, instead, would require the department to monitor the rates to ensure that the berthing charges are sufficient to ensure timely and complete repayment of the loan.

(2) Existing law authorizes the department to make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Existing law prohibits the department from making a loan to a private marina owner that exceeds 50% of the funds annually budgeted for purposes of these provisions. Existing law requires the annual rate of interest for the loans to be the prime or base rate of interest.

This bill would increase the maximum authorized amount of the loan to 75% of the funds annually budgeted for purposes of these provisions.

The bill would authorize the department to also make a loan to a recreational marina for the purpose of refinancing an existing loan, subject to specified conditions.

(3) Existing law provides that the length of a loan shall not exceed 20 years, or be longer than the length of borrower's leasehold estate, including renewal options, if the loan is based upon a leasehold estate of the borrower.



This bill would, instead, specify that the repayment period of a loan shall not exceed 20 years, or be longer than the length of borrower's leasehold estate, including renewal options, if the loan is based upon a leasehold estate of the borrower.

*The people of the State of California do enact as follows:*

SECTION 1. Section 71.4 of the Harbors and Navigation Code is amended to read:

71.4. (a) The department, subject to the approval of the Legislature in accordance with Section 85.2, may make loans to cities, counties, or districts having power to acquire, construct, and operate small craft harbors, for the planning, acquisition, construction, improvement, maintenance, or operation of small craft harbors and facilities in connection therewith, and connecting waterways, if the department finds that the project is feasible.

(b) The department shall establish, by rules and regulations, policies and standards to be followed in making loans pursuant to this section so as to further the proper development and maintenance of a statewide system of small craft harbors and connecting waterways. To the greatest extent possible, the department shall adhere to customary commercial practices to ensure that loans made pursuant to this section are adequately secured and that the loans are repaid consistent with the terms of the loan agreement. Any rules and regulations shall include policies and standards for restrooms, vessel pumpout facilities, oil recycling facilities, and receptacles for the purpose of separating, reusing, or recycling all solid waste materials.

(c) The department shall develop weighing and ranking criteria to qualify and prioritize the public loans.

(d) Any loan under this section shall be repaid as provided in Section 70.

(e) Rates to be charged for the use of the boating facilities shall be established by the city, county, or district, subject to the approval of the department, in every loan contract. The department shall concern itself with the rates charged only as prescribed in Section 71.8. The rates set shall be based on a monthly berthing charge, and the department shall monitor these rates to ensure that the berthing charges are sufficient to ensure timely and complete repayment of the loan.

(f) The department shall submit any project for which it recommends any loan be made to the Governor for inclusion in the Budget Bill.

(g) No loans shall be made to cities, counties, or districts pursuant to this article from funds appropriated in the Budget Act of 1999 for the purposes of this section until the practices and criteria described in



subdivisions (b) and (c) have been reviewed and approved by the Department of Finance. Any subsequent changes to those practices and criteria shall also be approved by the Department of Finance.

SEC. 2. Section 76.3 of the Harbors and Navigation Code is amended to read:

76.3. (a) The department may make loans to private marina owners for construction costs, not including planning, design, and other similar expenses, to develop a recreational marina. Loan funds from the department may be utilized for berthing facilities, dredging, parking, public access facilities, restrooms, vessel pumpout facilities, oil recycling facilities, utilities, landscaping, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other incidental boating-related amenities.

(b) No loan made by the department to a private marina owner shall exceed 75 percent of the funds annually budgeted for purposes of this article.

(c) The department shall not make a loan to a recreational marina that restricts access or bars the public other than what is consistent with general commercial business practices.

(d) Any private marina owner who purchases facilities previously developed with a department loan is eligible to apply for a new construction loan from the department.

(e) (1) The department may also make a loan to a recreational marina for the purpose of refinancing an existing loan, subject to the following conditions:

(A) Not more than 70 percent of the proceeds from the loan shall be used to refinance an existing loan.

(B) Not less than 30 percent of the loan proceeds shall be used for construction activity authorized under this section.

(C) The loan applicant shall provide documentation to the department proving to the satisfaction of the department that the existing loan prohibits the addition of a loan in second position.

(D) The loan applicant shall meet all other requirements under law for loan qualification, and any other applicable term or condition of law.

(2) This subdivision does not prohibit a person from applying for a loan under subdivision (a).

SEC. 3. Section 76.6 of the Harbors and Navigation Code is amended to read:

76.6. Loans made under this article shall include, but are not limited to, the following terms and conditions:

(a) The annual rate of interest charged by the department shall be a rate equal to 1 percent per annum plus the prevailing rate of interest existing in the marketplace for lending institutions' most creditworthy



borrowers. For purposes of this article, the prevailing rate of interest existing in the marketplace for lending institutions' most creditworthy borrowers means the prime or base rate of interest.

(b) The department shall require collateral in the amount of 110 percent of the loan.

(c) The repayment period of a loan shall not exceed 20 years, or be longer than the length of the borrower's leasehold estate, including renewal options, if the loan is based upon a leasehold estate of the borrower.

(d) All loans shall amortize the principal over the term of the loan. However, a loan shall become due and payable in full if the borrower sells or otherwise transfers the recreational marina developed with departmental funds, unless the transfer is, by reason of the death of the borrower, to the borrower's heirs, or the transfer is to another business entity controlled by the borrower in a transaction that does not result in a material change in control or ownership of the recreational marina.

(e) The department's loans shall not be subordinated to any future loans obtained by a private marina owner, except in those cases involving loans acquired for refinancing previous senior loans.

