

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 901

Introduced by Assembly Member V. Manuel Pérez

February 17, 2011

An act to amend ~~Section 22050 of the Financial Code, and to amend Sections 44559.1, 44559.2, and 44559.6 of the Health and Safety Code,~~ relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, as amended, V. Manuel Pérez. Capital Access Loan Program for small business.

~~Existing law, the California Finance Lenders Law, regulates consumer lending and provides that those provisions do not apply to specified persons.~~

~~This bill would exempt from those provisions a nonprofit federally tax-exempt corporation certified by the United States Small Business Administration.~~

Existing law establishes the Capital Access Loan Program, which is administered by the California Pollution Control Financing Authority, and defines the term “financial institution,” for purposes of that program. The authority is required to include specified terms in any contract that the authority enters into with a financial institution participating in the program, as specified. Existing law requires the authority to report annually to the Governor and the Legislature that describes the financial condition and the programmatic results of the Capital Access Loan Program for small businesses.

This bill would revise the definition of the term “financial institution” to include a small business financial development corporation or microenterprise development organization that meets standards that shall be established by the authority.

This bill would also require that the form contract used by the authority shall revise the requirement that the financial institution provide information that the authority may require to include the number of jobs created and the number of jobs retained. The bill would also specify, for purposes of the annual report to the Governor and the Legislature, that programmatic results include, but is not limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 ~~SECTION 1. Section 22050 of the Financial Code is amended~~
 2 ~~to read:~~
 3 ~~22050. (a) This division does not apply to any person doing~~
 4 ~~business under any law of any state or of the United States relating~~
 5 ~~to banks, trust companies, savings and loan associations, insurance~~
 6 ~~premium finance agencies, credit unions, small business investment~~
 7 ~~companies, California business and industrial development~~
 8 ~~corporations, or licensed pawnbrokers.~~
 9 ~~(b) This division does not apply to a check casher who holds a~~
 10 ~~valid permit issued pursuant to Section 1789.37 of the Civil Code~~
 11 ~~when acting under the authority of that permit, and shall not apply~~
 12 ~~to a person holding a valid license issued pursuant to Section 23005~~
 13 ~~of the Financial Code when acting under the authority of that~~
 14 ~~license.~~
 15 ~~(c) This division does not apply to a college or university making~~
 16 ~~a loan for the purpose of permitting a person to pursue a program~~
 17 ~~or course of study leading to a degree or certificate.~~
 18 ~~(d) This division does not apply to a broker-dealer acting~~
 19 ~~pursuant to a certificate then in effect and issued pursuant to~~
 20 ~~Section 25211 of the Corporations Code.~~

1 ~~(e) This division does not apply to any person who makes no~~
2 ~~more than one loan in a 12-month period as long as that loan is a~~
3 ~~commercial loan as defined in Section 22502.~~

4 ~~(f) This division does not apply to any public corporation as~~
5 ~~defined in Section 67510 of the Government Code, any public~~
6 ~~entity other than the state as defined in Section 811.2 of the~~
7 ~~Government Code, or any agency of any one or more of the~~
8 ~~foregoing, when making any loan so long as the public corporation,~~
9 ~~public entity, or agency of any one or more of the foregoing~~
10 ~~complies with all applicable federal and state laws and regulations.~~

11 ~~(g) This division does not apply to a nonprofit federally~~
12 ~~tax-exempt corporation certified by the United States Small~~
13 ~~Business Administration, organized to promote economic~~
14 ~~development in this state and whose primary activity consists of~~
15 ~~providing financing for business expansion.~~

16 ~~(h) This section shall become operative December 31, 2004.~~

17 ~~SEC. 2.~~

18 *SECTION 1.* Section 44559.1 of the Health and Safety Code
19 is amended to read:

20 44559.1. As used in this article, unless the context requires
21 otherwise, all of the following terms have the following meanings:

22 (a) “Authority” means the California Pollution Control
23 Financing Authority.

24 (b) “California Capital Access Fund” means a fund created
25 within the authority to be used for purposes of the program.

26 (c) “Executive director” means the Executive Director of the
27 California Pollution Control Financing Authority.

28 (d) (1) “Financial institution” means a federal- or state-chartered
29 bank, savings association, credit union, not-for-profit community
30 development financial institution certified under Part 1805
31 (commencing with Section 1805.100) of Chapter XVIII of Title
32 12 of the Code of Federal Regulations, or a consortium of these
33 entities. A consortium of those entities may include a nonfinancial
34 corporation, if the percentage of capitalization by all nonfinancial
35 corporations in the consortium does not exceed 49 percent.

36 (2) “Financial institution” also includes a lending institution
37 that has executed a participation agreement with the Small Business
38 Administration under the guaranteed loan program pursuant to
39 Part 120 (commencing with Section 120.1) of Chapter I of Title
40 13 of the Code of Federal Regulations and meets the requirements

1 of Section 120.410 of Chapter I of Title 13 of the Code of Federal
2 Regulations, a small business investment company licensed
3 pursuant to Part 107 (commencing with Section 107.20) of Chapter
4 I of Title 13 of the Code of Federal Regulations, and a small
5 business financial development corporation or microenterprise
6 development organization that meets standards that shall be
7 established by the authority. For loans where all or part of the fees
8 and matching contributions are paid by an entity participating in
9 the program pursuant to subdivision (e) of Section 44559.2,
10 “financial institution” also includes financial lenders, as defined
11 in Section 22009 of the Financial Code, making commercial loans,
12 as defined in Section 22502 of the Financial Code.

13 (3) A financial institution described in paragraph (2) shall be
14 domiciled or have its principal office in the State of California.

15 (e) “Loss reserve account” means an account in the State
16 Treasury or any financial institution that is established and
17 maintained by the authority for the benefit of a financial institution
18 participating in the Capital Access Loan Program established
19 pursuant to this article for the purposes of the following:

20 (1) Depositing all required fees paid by the participating
21 financial institution and the qualified business.

22 (2) Depositing contributions made by the state and, if applicable,
23 the federal government or other sources.

24 (3) Covering losses on enrolled qualified loans sustained by the
25 participating financial institution by disbursing funds accumulated
26 in the loss reserve account.

27 (f) “Participating financial institution” means a financial
28 institution that has been approved by the authority to enroll
29 qualified loans in the program and has agreed to all terms and
30 conditions set forth in this article and as may be required by any
31 applicable federal law providing matching funding.

32 (g) “Passive real estate ownership” means ownership of real
33 estate for the purpose of deriving income from speculation, trade,
34 or rental, but does not include any of the following:

35 (1) The ownership of that portion of real estate being used or
36 intended to be used for the operation of the business of the owner
37 of the real estate.

38 (2) The ownership of real estate for the purpose of construction
39 or renovation, until the completion of the construction or renovation
40 phase.

1 (h) “Program” means the Capital Access Loan Program created
2 pursuant to this article.

3 (i) “Qualified business” means a small business concern that
4 meets both of the following criteria, regardless of whether the
5 small business concern has operations that affect the environment:

6 (1) It is a corporation, partnership, cooperative, or other entity,
7 whether that entity is a nonprofit entity or an entity established for
8 profit, that is authorized to conduct business in the state.

9 (2) It has its primary business location within the boundaries of
10 the state.

11 (j) (1) “Qualified loan” means a loan or a portion of a loan
12 made by a participating financial institution to a qualified business
13 for any business activity that has its primary economic effect in
14 California. A qualified loan may be made in the form of a line of
15 credit, in which case the participating financial institution shall
16 specify the amount of the line of credit to be covered under the
17 program, which may be equal to the maximum commitment under
18 the line of credit or an amount that is less than that maximum
19 commitment. A qualified loan made under the program may be
20 made with the interest rates, fees, and other terms and conditions
21 agreed upon by the participating financial institution and the
22 borrower.

23 (2) “Qualified loan” does not include any of the following:

24 (A) A loan for the construction or purchase of residential
25 housing.

26 (B) A loan to finance passive real estate ownership.

27 (C) A loan for the refinancing of an existing loan when and to
28 the extent that the outstanding balance is not increased.

29 (D) A loan, the proceeds of which will be used in any manner
30 that could cause the interest on any bonds previously issued by
31 the authority to become subject to federal income tax.

32 (k) “Severely affected community” means any area classified
33 as an enterprise zone pursuant to the Enterprise Zone Act (Chapter
34 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
35 the Government Code), any area, as designated by the executive
36 director, contiguous to the boundaries of a military base designated
37 for closure pursuant to Section 2687 of Title 10 of the United States
38 Code, as amended, and any other comparable economically
39 distressed geographic area so designated by the executive director
40 from time to time.

1 (l) “Small Business Assistance Fund” means a fund created
2 within the authority pursuant to Section 44548.

3 (m) “Small business concern” has the same meaning as in
4 Section 632 of Title 15 of the United States Code, or as otherwise
5 provided in regulations of the authority.

6 ~~SEC. 3.~~

7 SEC. 2. Section 44559.2 of the Health and Safety Code is
8 amended to read:

9 44559.2. (a) The authority may contract with any financial
10 institution for the purpose of allowing the financial institution to
11 participate in the Capital Access Loan Program established by this
12 article.

13 (b) For purposes of this section, the authority may contract with
14 participating financial institutions and shall utilize a standard form
15 of contract that is reviewed and approved by the Department of
16 General Services. The standard form of contract shall provide for
17 all of the following:

18 (1) The creation of a loss reserve account by the authority for
19 the benefit of the financial institution.

20 (2) The financial institution, qualified business, and the
21 authority will deposit moneys to the credit of the institution’s loss
22 reserve account when the financial institution makes a qualified
23 loan to a qualified business.

24 (3) The liability of the state and the authority to the financial
25 institution under the contract is limited to the amount of money
26 credited to the loss reserve account of the institution.

27 (4) The financial institution shall provide the information that
28 the authority may require, including financial information that is
29 identifiable with, or identifiable from the financial records of a
30 particular customer who is the recipient of a qualified loan. In
31 addition to any other information that the authority may require,
32 the financial institution shall provide the complete North American
33 Industry Classification System (NAICS) for the qualified business,
34 the number of jobs created, the number of jobs retained, and
35 information that provides the precise geographic location of both
36 the qualified business and the borrower, if different.

37 (5) The financial institution will file a report with the executive
38 director setting out a full description of the board of directors,
39 including size, race, ethnicity, and gender.

1 (6) The participating financial institution will require each
2 borrower, prior to receiving a loan under the program, to sign a
3 written representation to the participating financial institution that
4 the borrower has no legal, beneficial, or equitable interest in the
5 nonrefundable premium charges or any other funds credited to the
6 loss reserve account established by the authority for the
7 participating financial institution.

8 (7) Other terms that the authority may require for purposes of
9 this article.

10 (c) A financial institution is not subject to laws restricting the
11 disclosure of financial information when the financial institution
12 provides information to the authority as required by paragraph (4)
13 of subdivision (b).

14 (d) A credit union operating pursuant to a certificate issued
15 under the California Credit Union Law (Division 5 (commencing
16 with Section 14000) of the Financial Code) may participate in the
17 Capital Access Loan Program established pursuant to this article
18 only to the extent participation is in compliance with the California
19 Credit Union Law. Nothing in this article shall be construed to
20 limit the authority of the Commissioner of Financial Institutions
21 to regulate credit unions subject to the commissioner's jurisdiction
22 under the California Credit Union Law.

23 (e) Any individual, company, corporation, institution, utility,
24 government agency, or other entity, including any consortium of
25 these persons or entities, whether public or private, may participate
26 in the Capital Access Loan Program established pursuant to this
27 article by depositing funds in the California Capital Access Fund
28 under those terms and conditions as may be deemed appropriate
29 by the authority.

30 ~~SEC. 4.~~

31 *SEC. 3.* Section 44559.6 of the Health and Safety Code is
32 amended to read:

33 44559.6. The authority shall annually prepare a report to the
34 Governor and the Legislature that describes the financial condition
35 and programmatic results of the capital access loan program for
36 small businesses authorized under this article. Programmatic results
37 shall include, but not be limited to, for all outstanding loans on
38 the date the report is issued and new loans issued since the report
39 from the prior year, the total number of businesses served, jobs

- 1 created, jobs retained, the geographic distribution of the loans, and
- 2 the breakdown of businesses served by industry sector.

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