

ASSEMBLY BILL

No. 1699

Introduced by Assembly Member Torres

February 15, 2012

An act to add Chapter 3.9 (commencing with Section 50560) to Part 2 of Division 31 of, and to repeal Section 50515.2 of, the Health and Safety Code, relating to affordable housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1699, as introduced, Torres. Affordable housing.

Existing law authorizes the Department of Housing and Community Development to provide technical assistance to groups and persons with various housing needs and to administer various housing loan programs. Existing law authorizes the department to extend the term of existing multifamily housing loans made under specified programs upon the request of any borrower, subject to certain conditions, as provided.

This bill would authorize the department to extend the term of an existing department loan, subordinate a department loan to new debt, and authorize an investment of tax credit equity under certain rental housing finance programs, subject to specified conditions. The bill would authorize the department to adopt guidelines that are not subject to the Administrative Procedures Act, 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. The Legislature finds and declares all of the
- 2 following:

1 (a) Over the past 30 years, the Legislature has authorized and
2 funded a variety of affordable rental housing development finance
3 programs administered by the Department of Housing and
4 Community Development, each with its own unique requirements
5 for ongoing operation.

6 (b) The vast majority of developments funded under these
7 programs have operated successfully, and remain an important
8 source of high-quality, highly affordable units for extremely low
9 income and very low income households. However, some
10 developments need significant renovation, beyond that which can
11 be covered by existing project reserves, or are running at a deficit
12 that is not sustainable on a long-term basis. As developments age,
13 more and more are likely to fall into this category.

14 (c) There are decreasing sources of public funding available to
15 cover needed renovations, and to eliminate operating deficits. For
16 at least the next few years, private debt and equity generated
17 through the sale of low-income housing tax credits will likely be
18 the main source of capital for this purpose.

19 (d) Accessing private debt and tax credit equity sometimes
20 requires restructuring the regulatory restrictions applicable to a
21 development, including increasing rents. Recognizing this, the
22 Legislature previously enacted legislation, Senate Bill 707 in 2007,
23 authorizing the restructuring of regulatory restrictions for some of
24 the oldest developments. This legislation applied only to selected
25 department programs that were active in the 1980s.

26 (e) Renovation needs have come to light in a number of projects
27 financed under another set of department programs, dating from
28 the early to mid 1990s. To address these needs, authority is needed
29 for a similar restructuring of regulatory restrictions for these
30 projects.

31 (f) It is the intent of the Legislature that the regulatory
32 restructurings needed to facilitate renovations and eliminate
33 operating deficits minimize the impact on existing tenants,
34 particularly those with the lowest incomes, and preserve as much
35 affordability as possible.

36 (g) Rather than have multiple different restructuring programs,
37 it is more efficient to have one program, applicable to all of the
38 department's older programs, with variations only where essential
39 to address unique situations associated with the existing historical
40 programs.

1 SEC. 2. Section 50515.2 of the Health and Safety Code is
2 repealed.

3 ~~50515.2. (a) Notwithstanding any other law, the department~~
4 ~~may extend the term of an existing multifamily housing loan made~~
5 ~~by the department under the original Rental Housing Construction~~
6 ~~Program established by Chapter 9 (commencing with Section~~
7 ~~50735); the Special User Housing Rehabilitation Program~~
8 ~~established by Section 50670; or the Deferred Payment~~
9 ~~Rehabilitation Loan Program established by Chapter 6.5~~
10 ~~(commencing with Section 50660) upon the request of any~~
11 ~~borrower subject to the following conditions:~~

12 ~~(1) The borrower shall provide to the department a complete~~
13 ~~report showing all existing tenants, their incomes, as reported in~~
14 ~~the most recent annual income certification, and the rents currently~~
15 ~~charged to each tenant.~~

16 ~~(2) The borrower shall agree to an extension of the term of the~~
17 ~~loan by an additional 55 years from the date of departmental~~
18 ~~approval. If the department determines that the remaining useful~~
19 ~~life of a project is less than 55 years, the loan may be extended for~~
20 ~~the remaining useful life of the project, but not less than 30 years.~~
21 ~~The department may convert the existing outstanding principal~~
22 ~~and any accrued interest into the new loan amount. The interest~~
23 ~~rate on the extended term shall be 3 percent simple interest. All~~
24 ~~future payments of principal and interest may be deferred except~~
25 ~~for a percentage of interest equal to the percentage charged in the~~
26 ~~Multifamily Housing Program (Chapter 6.7 (commencing with~~
27 ~~Section 50675)) for the department's ongoing monitoring and~~
28 ~~management responsibilities.~~

29 ~~(3) The borrower shall agree to amend or replace the existing~~
30 ~~regulatory agreement to include terms generally equivalent to those~~
31 ~~used in the Multifamily Housing Program. In addition, the borrower~~
32 ~~shall agree to replace, amend, or revise any other loan documents~~
33 ~~as necessary to accomplish the purposes of this section.~~

34 ~~(4) (A) The borrower shall agree to a rent schedule that ensures~~
35 ~~that all assisted units are affordable to households earning no more~~
36 ~~than 60 percent of the area median income and that at least 35~~
37 ~~percent of all assisted units shall be reserved for, affordable to,~~
38 ~~and occupied by, households earning less than or equal to the~~
39 ~~midlevel target used by the Multifamily Housing Program, unless~~
40 ~~the department finds both of the following:~~

1 (i) ~~That the project income is insufficient to maintain fiscal~~
2 ~~integrity, as that term is used in the Multifamily Housing Program,~~
3 ~~and is insufficient to maintain the rents required under this~~
4 ~~subparagraph pursuant to the terms of the Uniform Multifamily~~
5 ~~Regulations, or any successor regulations, except that commercial~~
6 ~~vacancy loss shall be projected based on the operating history of~~
7 ~~the project, commercial vacancy rates in the neighborhood, and~~
8 ~~similar factors typically used by commercial lenders.~~

9 (ii) ~~That the borrower has exhausted all available potential~~
10 ~~sources of rental subsidies, including, but not limited to, federal,~~
11 ~~state, and local funds.~~

12 (B) ~~If the department finds that a reduction in the percentage~~
13 ~~of assisted units to less than 35 percent of assisted units is justified,~~
14 ~~it shall ensure that the largest possible percentage is reserved for~~
15 ~~the targeted households.~~

16 (C) ~~For the purposes of this paragraph, “midlevel target used~~
17 ~~by the Multifamily Housing Program” shall mean the following:~~

18 (i) ~~For counties with an area median income of 110 percent or~~
19 ~~less of the state median income, it shall mean households earning~~
20 ~~30 percent of state median income, expressed as a percentage of~~
21 ~~area median income.~~

22 (ii) ~~For counties with an area median income that exceeds 110~~
23 ~~percent of the state median income, it shall mean households~~
24 ~~earning less than 35 percent of state median income, expressed as~~
25 ~~a percentage of area median income.~~

26 (5) ~~No tenant residing in a project at the time of an extension~~
27 ~~authorized by this section may be displaced as a result of the~~
28 ~~regulatory revisions authorized by this section, and, for the initial~~
29 ~~operating year after approval of the extension, that tenant may not~~
30 ~~have his or her rent increased above the amounts specified in his~~
31 ~~or her preexisting regulatory agreements, except that no tenant~~
32 ~~may pay less than 30 percent of his or her income, calculated~~
33 ~~pursuant to the Multifamily Housing Program criteria. If a rent~~
34 ~~increase authorized under this section would exceed a 10 percent~~
35 ~~increase in payment for a lower income tenant, the project owner~~
36 ~~shall phase in the increase so that it does not exceed 10 percent~~
37 ~~per year. After the initial operating year after the extension~~
38 ~~authorized under this section, the rents for all regulated units that~~
39 ~~are subject to the new agreement may be adjusted in the percentage~~
40 ~~calculated pursuant to the Multifamily Housing Program criteria,~~

1 plus the amount necessary to bring an individual tenant up to the
2 30-percent-of-income standard, provided that the total annual
3 increase does not exceed 10 percent. Rent adjustments for all
4 tenants occupying assisted units at the time of the extension shall
5 be based on the tenant's initial rent established under this
6 paragraph. Upon vacancy of an assisted unit occupied at the time
7 of the extension, the new base rent for that unit shall be established
8 consistent with the standards used in the Multifamily Housing
9 Program for the regulated income band, subject to the reservation
10 of units required under paragraph (4).

11 (b) The department may approve an extension of a loan made
12 by the department if it determines that the project has, or will have
13 after rehabilitation or repairs, a potential remaining useful life of
14 at least 30 years and that the project is deemed financially feasible
15 pursuant to the terms of its Uniform Multifamily Regulations or
16 successor regulations.

17 (c) The department may subordinate its loan or loans to refinance
18 existing senior debt and to additional permanent financing if that
19 additional senior debt is used only for rehabilitation, repairs, or
20 improvements, or both, including related soft costs, that are modest
21 in size, scope, and cost, as determined by the department and
22 necessary to maintain and extend the useful life of the project.

23 (d) (1) For the purposes of this subdivision, the "agency
24 projects" are the 26 projects assisted through the original Rental
25 Housing Construction Program with funds administered by the
26 California Housing Finance Agency.

27 (2) Upon the request of a borrower the agency may extend the
28 term of an existing loan for an agency project by a period that is
29 equal to the remaining useful life of the project, as determined by
30 the agency, but not more than 55 years and not less than 30 years
31 from the date of agency approval, under terms that are substantially
32 consistent with the purposes of this section, if all of the following
33 conditions are met:

34 (A) The borrower shall provide to the agency the report
35 described in paragraph (1) of subdivision (a).

36 (B) The extension shall be subject to the conditions set forth in
37 paragraph (2) of subdivision (a).

38 (C) The rent levels and tenant protections described in
39 paragraphs (4) and (5) of subdivision (a) shall be satisfied, except
40 that the agency, not the department, shall make the determination

1 required under clause (i) of subparagraph (A) of paragraph (4) of
2 subdivision (a) that the project income is insufficient to meet the
3 agency's affordable multifamily lending program requirements.

4 (3) Any determination or approval under this section regarding
5 the agency projects shall be by the agency rather than the
6 department.

7 (4) The borrower and the agency shall amend, replace, or revise
8 any other loan documents or agreements governing the loans for
9 the agency projects as necessary to accomplish the purposes of
10 this section.

11 (5) All funds received by the agency for the agency projects,
12 whether by loan repayment, foreclosure, accrued interest, or
13 otherwise, shall be used to provide assistance to existing or future
14 projects financed by or through the agency pursuant to terms
15 consistent with the agency's affordable multifamily lending
16 programs.

17 (e) It is the intent of the Legislature in enacting this section that
18 the department should manage its reserves for the original Rental
19 Housing Construction Program in a manner that will allow for the
20 continuation of current benefits to current low-income tenants for
21 the longest period of time possible. Accordingly, rent subsidies
22 shall be continued only for units occupied by lower income tenants
23 who were in residence at the time of the extension authorized under
24 this section.

25 (f) It is the intent of the Legislature in enacting this section to
26 provide to the department the flexibility necessary to preserve the
27 affordable rental units for which the state has already made a
28 significant public investment. Accordingly, the department may
29 implement this section through guidelines that shall not be subject
30 to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title
31 2 of the Government Code.

32 (g) This section shall become operative on July 1, 2008.

33 SEC. 3. Chapter 3.9 (commencing with Section 50560) is added
34 to Part 2 of Division 31 of the Health and Safety Code, to read:

35

36

CHAPTER 3.9. PORTFOLIO RESTRUCTURING

37

38 50560. (a) The department may approve an extension of a
39 department loan, the subordination of a department loan to new
40 debt, or an investment of tax credit equity under one or more of

1 the following rental housing finance programs: the original Rental
2 Housing Construction Program established by Chapter 9
3 (commencing with Section 50735), the Special User Housing
4 Rehabilitation Program established by Section 50670, the Deferred
5 Payment Rehabilitation Loan Program established by Chapter 6.5
6 (commencing with Section 50660), the rental component of the
7 California Housing Rehabilitation Program established by Section
8 50668.5, the component of the Rental Housing Construction
9 Program funded with bond proceeds governed by Section 50771.1,
10 and the Family Housing Demonstration Program established by
11 Chapter 15 (commencing with Section 50880).

12 (b) Once the department has approved a loan extension,
13 subordination, or tax credit investment pursuant to subdivision (a),
14 the statutes enumerated in subdivision (a), and the regulations
15 promulgated pursuant to these statutes, shall no longer apply.
16 Developments under subdivision (a) shall instead be governed by
17 this chapter and guidelines adopted pursuant to subdivision (c).

18 (c) It is the intent of the Legislature in enacting this chapter to
19 provide to the department the flexibility necessary to maintain the
20 quality of the affordable rental housing units for which the state
21 has already made a significant public investment. The department
22 may implement this chapter through guidelines that shall not be
23 subject to Chapter 2.5 (commencing with Section 11340) of Part
24 1 of Title 2 of the Government Code. These guidelines shall be
25 developed through a process that allows for public input prior to
26 their adoption.

27 50561. (a) The department may extend the term of an existing
28 rental housing development loan and the time for repayment for
29 additional terms as long as the rental housing development is being
30 operated in a manner consistent with the regulatory agreement and
31 the development requires an extension in order to continue to
32 operate in a manner consistent with this chapter. Each extension
33 shall be for a period of not less than 10 years and the total term of
34 the revised loan shall not exceed 55 years, or not more than 58
35 years if needed to match the term of tax credit restrictions. The
36 interest rate shall be 3 percent simple interest. The department may
37 defer payments. As necessary to generate sufficient revenue to
38 cover the cost of processing loan transactions and long-term
39 monitoring of program requirements, the department may also
40 assess loan processing and monitoring fees, require periodic or

1 capitalized loan payments, and require that cashflow be applied
2 on a priority basis toward department loan payments. In
3 determining the fees and payments to be charged, the department
4 shall seek to minimize the impact on tenants with the lowest
5 incomes and on the capacity of the developments to support private
6 debt or secure tax credit investments.

7 (b) To the minimum extent needed to support new debt or to
8 secure tax credit equity to pay for necessary rehabilitation costs,
9 as determined by the department based on third-party assessments,
10 rents for assisted units may be increased as follows:

11 (1) For developments originally financed under the bond-funded
12 component of the Rental Housing Construction Program pursuant
13 to Section 50771.1, rents may be increased up to a maximum of
14 30 percent of 60 percent of area median income, for units
15 designated in the development's original regulatory agreement as
16 lower income units, and up to a maximum of 30 percent of 35
17 percent of area median income, for units designated in the
18 development's original regulatory agreement as very low income
19 units.

20 (2) For developments originally financed under other programs,
21 and located in counties with an area median income of 110 percent
22 or less of state median income, rents for at least 35 percent of
23 assisted units shall be restricted to no more than 30 percent of 30
24 percent of state median income, expressed as a percentage of area
25 median income. For developments originally financed under other
26 programs, and located in other counties, rents for at least 35 percent
27 of assisted units shall be restricted to no more than 30 percent of
28 35 percent of state median income, expressed as a percentage of
29 area median income. Rents for the balance of the assisted units
30 may be increased up to a maximum of 30 percent of 60 percent of
31 area median income.

32 (3) For existing tenants with incomes not exceeding 35 percent
33 of area median income, increases shall be limited to 5 percent per
34 year, until the rents reach the levels specified in paragraphs (1)
35 and (2) of subdivision (b) of Section 50561. For existing tenants
36 with incomes exceeding 35 percent of area median income,
37 increases shall be limited to 10 percent per year, until they reach
38 the levels specified in paragraphs (1) and (2) of subdivision (b) of
39 Section 50561. When existing tenants move, the rent for their units

1 may be increased immediately up to the levels specified in
2 paragraphs (1) and (2) of subdivision (b) of Section 50561.

3 (4) Once rents reach their new ultimate restricted level, future
4 rent increases shall be based on increases in the area median
5 income.

6 (c) When existing tenants move, and rents are adjusted as
7 specified in subdivision (b), the income limit for new tenants shall
8 correspond with the rent limit.

9 (d) When rents are adjusted pursuant to this section, and income
10 limits reset, income levels and rent limits shall be calculated
11 consistent with the calculation methodology used under the Low
12 Income Housing Tax Credit program and the Multifamily Housing
13 Program.

14 50562. (a) When a department loan is extended or
15 subordinated, or when a new tax credit investment occurs, the
16 department shall enter into a new regulatory agreement with the
17 development's owner, or amend the existing agreement. The new
18 or amended regulatory agreement shall:

19 (1) Set standards for tenant selection to ensure occupancy by
20 the eligible households.

21 (2) Govern the terms of occupancy agreements.

22 (3) Restrict rents for assisted units, consistent with this chapter.

23 (4) Provide for periodic inspections, occupancy and financial
24 reports, and financial audits for the development.

25 (5) Govern the use of operating income for the development.

26 (6) Govern the use of reserves for the development.

27 (7) Have a term for not less than the term of the loan, including
28 any extension.

29 (8) Include other provisions necessary to carry out the purposes
30 of this chapter.

31 (b) The agreement shall be binding upon the development's
32 owner and successors in interest upon sale or transfer of the
33 development property, and regardless of any prepayment of the
34 loan.

35 (c) The agreement shall be recorded in the office of the county
36 recorder in the county in which the development is located.

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