

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1109**

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**Introduced by Assembly Member Bonilla**

February 22, 2013

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An act to amend Section ~~50515.2~~ 50802 of the Health and Safety Code, relating to housing, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1109, as amended, Bonilla. ~~Affordable housing.~~ *Emergency housing and assistance.*

*Existing law requires the Department of Housing and Community Development to administer the Emergency Housing and Assistance Program. Under the program, moneys from the continuously appropriated Emergency Housing and Assistance Fund are available for the purposes of providing shelter, as specified, to homeless persons at as low a cost and as quickly as possible, without compromising the health and safety of shelter occupants, to encourage the move of homeless persons from shelters to a self-supporting environment as soon as possible, to encourage provision of services for as many persons at risk of homelessness as possible, to encourage compatible and effective funding of homeless services, and to encourage coordination among public agencies that fund or provide services to homeless individuals, as well as agencies that discharge people from their institutions.*

*Existing law requires the department to distribute funds appropriated for activities providing for capital development programs, including acquisition, leasing, construction, and rehabilitation of sites for emergency shelter and transitional housing for homeless persons, as*

grants in the form of forgivable deferred loans, as prescribed. Existing law requires the department to terminate the grant and require the repayment of the deferred loan in full, if a transfer or conveyance of the project property that results in the property no longer being used as an emergency shelter or transitional housing occurs before the term of the loan expires.

This bill would provide that when property is transitioned from an emergency shelter or transitional housing to permanent affordable housing, as specified, and serves people who are homeless or at risk of homelessness, an existing loan may be deferred and forgiven, as if the property had remained an emergency shelter or transitional housing. By authorizing the use of continuously appropriated funds for a new purpose, this bill would make an appropriation.

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, including the Joe Serna, Jr. Farmworker Housing Grant Program.

This bill would make technical, nonsubstantive changes to a provision of the Joe Serna, Jr. Farmworker Housing Grant Program.

Vote: majority <sup>2</sup>/<sub>3</sub>. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

- 1     SECTION 1. Section 50802 of the Health and Safety Code is
- 2     amended to read:
- 3     50802. (a) The department shall ensure that not less than 20
- 4     percent of the moneys in the Emergency Housing and Assistance
- 5     Fund shall be allocated to nonurban counties during any given
- 6     fiscal year. If the funds designated for facilities operation that are
- 7     allocated to nonurban counties are not awarded by the end of that
- 8     fiscal year, then those unencumbered funds shall be allocated in
- 9     the next fiscal year to urban counties. Funds for capital
- 10    development that are not awarded by the end of the second fiscal
- 11    year shall be awarded in the subsequent fiscal year to urban
- 12    counties.
- 13    (b) The amount of funds that the department allocates from the
- 14    Emergency Housing and Assistance Fund to each region, excluding
- 15    funds allocated pursuant to subdivision (a), shall be based upon a

1 formula that accords at least 20 percent weight to each of the  
2 following factors:

3 (1) The relative number of persons in the region below the  
4 poverty line according to the most recent federal census, updated,  
5 if possible, with an estimate by the Department of Finance,  
6 compared to the total of the urban counties.

7 (2) The relative number of persons unemployed within each  
8 region, based on the most recent one-year period for which data  
9 is available, compared to the total of the urban counties.

10 (c) Grant funds shall be disbursed as expeditiously as possible  
11 by the department.

12 (d) The department shall use not more than 5 percent of the  
13 amount available for funds pursuant to this chapter to defray the  
14 department's administrative costs pursuant to this chapter.

15 (e) Notwithstanding any other provision of this chapter, the  
16 department shall distribute funds appropriated for purposes of the  
17 activities specified in paragraph (2) of subdivision (a) of Section  
18 50803 as grants in the form of forgivable deferred loans, subject  
19 to all of the following:

20 (1) (A) Funding shall be made available to each project as a  
21 loan with a term of five years for rehabilitation, seven years for  
22 substantial rehabilitation, or 10 years for acquisition and  
23 rehabilitation or new construction. Each deferred loan shall be  
24 secured by a deed of trust and promissory note. Repayment of the  
25 loan shall be deferred as long as the project is used as an emergency  
26 shelter or transitional housing. At the completion of the specified  
27 year term, the loan shall be forgiven. If a transfer or conveyance  
28 of the project property, however, occurs prior to that time that  
29 results in the property no longer being used as an emergency shelter  
30 or transitional housing, the department shall terminate the grant  
31 and require the repayment of the deferred loan in full.

32 (B) *If the property is transitioned from an emergency shelter*  
33 *or transitional housing to permanent affordable housing, including,*  
34 *but not limited to, permanent supportive housing and rapid*  
35 *rehousing, and serves people who are homeless or at risk of*  
36 *homelessness, the loan may also be deferred and forgiven*  
37 *according to subparagraph (A), as if it had remained an emergency*  
38 *shelter or transitional housing.*

1 (i) For purposes of this subparagraph, “permanent supportive  
 2 housing” has the same meaning as the term “supportive housing,”  
 3 as defined in paragraph (2) of subdivision (b) of Section 50675.14.

4 (ii) For purposes of this subparagraph, “rapid rehousing”  
 5 means housing that focuses on moving homeless individuals and  
 6 families into appropriate housing as quickly as possible.

7 (iii) For purposes of this subparagraph, “people who are  
 8 homeless” includes individuals described in Section 11302 of Title  
 9 42 of the United States Code, and paragraph (2) of subdivision  
 10 (e) of Section 11139.3 of the Government Code.

11 (2) Applications for funding shall be made pursuant to  
 12 department-issued statewide “Notices of Funding Availability”  
 13 without the need for additional regulations.

14 (3) The department shall set forth the criteria for evaluating  
 15 applications in the “Notices of Funding Availability” and shall  
 16 make deferred loans based on those applications that best meet the  
 17 criteria.

18 (4) The department shall specify in the “Notice of Funding  
 19 Availability” both maximum and minimum grant amounts that  
 20 may be varied for urban and nonurban counties.

21 (5) Contracts for projects that have not begun construction  
 22 within the initial 12-month period shall be terminated and funds  
 23 reallocated. The department, however, may extend this period by  
 24 a period not to exceed 12 months.

25 ~~SECTION 1. Section 50515.2 of the Health and Safety Code~~  
 26 ~~is amended to read:~~

27 ~~50515.2. (a) Notwithstanding any other law, the department~~  
 28 ~~may extend the term of an existing multifamily housing loan made~~  
 29 ~~by the department under the original Rental Housing Construction~~  
 30 ~~Program established by Chapter 9 (commencing with Section~~  
 31 ~~50735), the Special User Housing Rehabilitation Program~~  
 32 ~~established by Section 50670, or the Deferred Payment~~  
 33 ~~Rehabilitation Loan Program established by Chapter 6.5~~  
 34 ~~(commencing with Section 50660) upon the request of any~~  
 35 ~~borrower subject to the following conditions:~~

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

1     ~~(2) The borrower shall agree to an extension of the term of the~~  
2 ~~loan by an additional 55 years from the date of departmental~~  
3 ~~approval. If the department determines that the remaining useful~~  
4 ~~life of a project is less than 55 years, the loan may be extended for~~  
5 ~~the remaining useful life of the project, but not less than 30 years.~~  
6 ~~The department may convert the existing outstanding principal~~  
7 ~~and any accrued interest into the new loan amount. The interest~~  
8 ~~rate on the extended term shall be 3 percent simple interest. All~~  
9 ~~future payments of principal and interest may be deferred except~~  
10 ~~for a percentage of interest equal to the percentage charged in the~~  
11 ~~Multifamily Housing Program (Chapter 6.7 (commencing with~~  
12 ~~Section 50675)) for the department's ongoing monitoring and~~  
13 ~~management responsibilities.~~

14     ~~(3) The borrower shall agree to amend or replace the existing~~  
15 ~~regulatory agreement to include terms generally equivalent to those~~  
16 ~~used in the Multifamily Housing Program. In addition, the borrower~~  
17 ~~shall agree to replace, amend, or revise any other loan document~~  
18 ~~as necessary to accomplish the purposes of this section.~~

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

26         ~~(i) That the project income is insufficient to maintain fiscal~~  
27 ~~integrity, as that term is used in the Multifamily Housing Program,~~  
28 ~~and is insufficient to maintain the rents required under this~~  
29 ~~subparagraph pursuant to the terms of the Uniform Multifamily~~  
30 ~~Regulations, or any successor regulations, except that commercial~~  
31 ~~vacancy loss shall be projected based on the operating history of~~  
32 ~~the project, commercial vacancy rates in the neighborhood, and~~  
33 ~~similar factors typically used by commercial lenders.~~

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

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

1     ~~(C) For the purposes of this paragraph, “midlevel target used~~  
2 ~~by the Multifamily Housing Program” means the following:~~  
3     ~~(i) For counties with an area median income of 110 percent or~~  
4 ~~less of the state median income, households earning 30 percent of~~  
5 ~~state median income, expressed as a percentage of area median~~  
6 ~~income.~~  
7     ~~(ii) For counties with an area median income that exceeds 110~~  
8 ~~percent of the state median income, households earning less than~~  
9 ~~35 percent of state median income, expressed as a percentage of~~  
10 ~~area median income.~~  
11     ~~(5) A tenant residing in a project at the time of an extension~~  
12 ~~authorized by this section may not be displaced as a result of the~~  
13 ~~regulatory revisions authorized by this section, and, for the initial~~  
14 ~~operating year after approval of the extension, that tenant may not~~  
15 ~~have his or her rent increased above the amounts specified in his~~  
16 ~~or her preexisting regulatory agreements, except that no tenant~~  
17 ~~may pay less than 30 percent of his or her income, calculated~~  
18 ~~pursuant to the Multifamily Housing Program criteria. If a rent~~  
19 ~~increase authorized under this section would exceed a 10 percent~~  
20 ~~increase in payment for a lower income tenant, the project owner~~  
21 ~~shall phase in the increase so that it does not exceed 10 percent~~  
22 ~~per year. After the initial operating year after the extension~~  
23 ~~authorized under this section, the rents for all regulated units that~~  
24 ~~are subject to the new agreement may be adjusted in the percentage~~  
25 ~~calculated pursuant to the Multifamily Housing Program criteria,~~  
26 ~~plus the amount necessary to bring an individual tenant up to the~~  
27 ~~30-percent-of-income standard, provided that the total annual~~  
28 ~~increase does not exceed 10 percent. Rent adjustments for all~~  
29 ~~tenants occupying assisted units at the time of the extension shall~~  
30 ~~be based on the tenant’s initial rent established under this~~  
31 ~~paragraph. Upon vacancy of an assisted unit occupied at the time~~  
32 ~~of the extension, the new base rent for that unit shall be established~~  
33 ~~consistent with the standards used in the Multifamily Housing~~  
34 ~~Program for the regulated income band, subject to the reservation~~  
35 ~~of units required under paragraph (4).~~  
36     ~~(b) The department may approve an extension of a loan made~~  
37 ~~by the department if it determines that the project has, or will have,~~  
38 ~~after rehabilitation or repairs, a potential remaining useful life of~~  
39 ~~at least 30 years and that the project is deemed financially feasible~~

1 pursuant to the terms of its Uniform Multifamily Regulations or  
2 successor regulations:

3 (e) The department may subordinate its loan or loans to refinance  
4 existing senior debt and to additional permanent financing if that  
5 additional senior debt is used only for rehabilitation, repairs, or  
6 improvements, or both, including related soft costs, that are modest  
7 in size, scope, and cost, as determined by the department and  
8 necessary to maintain and extend the useful life of the project.

9 (d) (1) For the purposes of this subdivision, the “agency  
10 projects” are the 26 projects assisted through the original Rental  
11 Housing Construction Program with funds administered by the  
12 California Housing Finance Agency.

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

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

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

24 (C) The rent levels and tenant protections described in  
25 paragraphs (4) and (5) of subdivision (a) shall be satisfied, except  
26 that the agency, not the department, shall make the determination  
27 required under clause (i) of subparagraph (A) of paragraph (4) of  
28 subdivision (a) that the project income is insufficient to meet the  
29 agency’s affordable multifamily lending program requirements.

30 (3) Any determination or approval under this section regarding  
31 the agency projects shall be by the agency rather than the  
32 department.

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

37 (5) All funds received by the agency for the agency projects,  
38 whether by loan repayment, foreclosure, accrued interest, or  
39 otherwise, shall be used to provide assistance to existing or future  
40 projects financed by or through the agency pursuant to terms

1 consistent with the agency's affordable multifamily lending  
2 programs.

3 (e) It is the intent of the Legislature in enacting this section that  
4 the department should manage its reserves for the original Rental  
5 Housing Construction Program in a manner that will allow for the  
6 continuation of current benefits to current low-income tenants for  
7 the longest period of time possible. Accordingly, rent subsidies  
8 shall be continued only for units occupied by lower income tenants  
9 who were in residence at the time of the extension authorized under  
10 this section.

11 (f) It is the intent of the Legislature in enacting this section to  
12 provide to the department the flexibility necessary to preserve the  
13 affordable rental units for which the state has already made a  
14 significant public investment. Accordingly, the department may  
15 implement this section through guidelines that shall not be subject  
16 to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title  
17 2 of the Government Code.

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

19 (h) This section shall not apply to loan extensions and senior  
20 debt subordinations executed by the department and recorded after  
21 the effective date of the guidelines adopted by the department  
22 pursuant to subdivision (h) of Section 50560.