

AMENDED IN SENATE AUGUST 5, 2014
AMENDED IN ASSEMBLY APRIL 23, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2161

Introduced by Assembly Member Chau

February 20, 2014

An act to amend Sections 50560, 50561, 50562, and 50563 of, and to add Section ~~50406.8~~ 50565 to, the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2161, as amended, Chau. Affordable housing.

Existing law authorizes the Department of Housing and Community Development to approve an extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity under specified rental housing finance programs, subject to specified conditions.

This bill would include within these provisions the reinstatement of a qualifying unpaid matured loan, as defined. This bill would require a qualifying unpaid matured loan reinstated under these provisions to be treated as if its term has been extended from the expired due date for purposes of calculating obligations of the borrower to the department.

~~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, upon request of the borrower of any loan issued by the department that has reached maturity, either to reloan the original amount of the matured loan, plus accrued interest, on the same terms and conditions as the original loan, or to restructure the loan, in which event specified provisions relating to the approval of an extension of a department loan, the subordination of a department loan to new debt, or an investment of tax credit equity under specified rental housing finance programs, shall apply.~~

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 50560 of the Health and Safety Code is
2 amended to read:
3 50560. (a) Subject to the requirements of this chapter, the
4 department may approve an extension of a department loan, *the*
5 *reinstatement of a qualifying unpaid matured loan*, the
6 subordination of a department loan to new debt, or an investment
7 of tax credit equity under one or more of the following rental
8 housing finance programs: the original Rental Housing
9 Construction Program established by Chapter 9 (commencing with
10 Section 50735), the Special User Housing Rehabilitation Program
11 established by Section 50670, the Deferred Payment Rehabilitation
12 Loan Program established by Chapter 6.5 (commencing with
13 Section 50660), the rental component of the California Natural
14 Disaster Assistance Program established by Chapter 6.5
15 (commencing with Section 50671), the State Earthquake
16 Rehabilitation Assistance Program established by Chapter 6.5
17 (commencing with Section 50671), the rental component of the
18 California Housing Rehabilitation Program established by Section
19 50668.5, the component of the Rental Housing Construction
20 Program funded with bond proceeds governed by Section 50771.1,
21 the Family Housing Demonstration Program established by Chapter
22 15 (commencing with Section 50880), and the Families Moving
23 to Work Program established by Chapter 15 (commencing with
24 Section 50880).

1 (b) Once the department has approved a loan extension,
2 *reinstatement of a qualifying unpaid matured loan*, subordination,
3 or tax credit investment pursuant to this chapter, the statutes
4 enumerated in subdivision (a), and the regulations promulgated
5 pursuant to these statutes, shall no longer apply to developments
6 restructured pursuant to this chapter. These developments shall
7 instead be governed by this chapter and guidelines adopted
8 pursuant to subdivision (h).

9 (c) All projects restructured pursuant to this chapter shall comply
10 with the affirmative marketing and language accessibility
11 requirements set forth in Section 50736 of this code and Section
12 65863 of the Government Code.

13 (d) The department may approve an extension of a loan, *the*
14 *reinstatement of a qualifying unpaid matured loan*, the
15 subordination of a department loan to new debt, or an investment
16 of tax credit equity if it determines that the project has, or will
17 have after rehabilitation or repairs, a potential remaining useful
18 life equal to or greater than the term of the restructured loan.

19 (e) The department may subordinate its loan to refinance existing
20 senior debt only as necessary for project feasibility and to
21 reimburse borrower advances for predevelopment costs, recent
22 capital improvements, and recent operating deficits.

23 (f) If the extension of a department loan, *the reinstatement of a*
24 *qualifying unpaid matured loan*, the subordination of a department
25 loan to new debt, or an investment of tax credit equity will result
26 in a rent increase for tenants of a development, the department
27 may only subordinate a loan to senior debt if necessary to increase
28 the feasibility of a project and to fund reasonable rehabilitation or
29 improvements including soft costs. The application to refinance
30 shall include a third-party analysis that supports the need for
31 refinancing.

32 (g) The department may approve additional senior debt only as
33 necessary to finance rehabilitation or repairs, including soft costs,
34 that are modest in size, scope, and cost, as determined by the
35 department.

36 (h) It is the intent of the Legislature in enacting this chapter to
37 provide to the department the flexibility necessary to maintain the
38 quality of the affordable rental housing units for which the state
39 has already made a significant public investment. The department
40 may implement this chapter through guidelines that shall not be

1 subject to Chapter 2.5 (commencing with Section 11340) of Part
2 1 of Title 2 of the Government Code. These guidelines shall be
3 developed through the following process:

4 (1) The department shall provide a notice of proposed action as
5 described in Section 11346.5 of the Government Code to the public
6 at least 21 days before the close of the public comment period.

7 (2) The department shall schedule at least one public hearing
8 as described in Section 11346.8 of the Government Code before
9 the close of the public comment period.

10 (3) The department shall maintain a rulemaking file as described
11 in Section 11347.3 of the Government Code.

12 (4) The final version of the guidelines shall be accompanied by
13 a final statement of reason as described in subdivision (a) of
14 Section 11346.9 of the Government Code.

15 (5) The rules and guidelines shall be effective immediately upon
16 adoption by the department.

17 *SEC. 2. Section 50561 of the Health and Safety Code is*
18 *amended to read:*

19 50561. (a) The department may approve an extension of an
20 existing rental housing development loan, *the reinstatement of a*
21 *qualifying unpaid matured loan*, the subordination of a department
22 loan to new debt, or an investment of tax credit equity as long as
23 the rental housing development is being operated in a manner
24 consistent with the regulatory agreement and the development
25 requires an extension in order to continue to operate in a manner
26 consistent with this chapter. Each extension shall be for a period
27 of not less than 10 years and each extension shall not exceed 55
28 years, or 58 years if needed to match the term of tax credit
29 restrictions. The interest rate shall be 3 percent simple interest. All
30 loan payments shall be deferred for the full term of the loan, except
31 for residual receipts payments. These residual receipts payments
32 shall be structured to avoid reducing the amount of payments on
33 local public agency loans resulting solely from changes in the
34 payment terms on the department’s loan, and not resulting from
35 fees or other payments to the borrower, and shall otherwise be
36 consistent with the provisions of the department’s Uniform
37 Multifamily Regulations or successor regulations. The department
38 may charge a monitoring fee to cover the aggregate monitoring
39 costs it incurs in years that the loan is extended and charge a
40 transaction fee to cover its costs for processing restructuring

1 transactions. The department may waive or defer some or all fees,
2 if it determines that a particular development or class of
3 developments does not have the ability to make these payments.
4 In determining the fees and payments to be charged, the department
5 shall seek to share monitoring activities with other regulatory
6 agencies and to minimize the impact on tenants with the lowest
7 incomes and on the capacity of the developments to support private
8 debt or secure tax credit investments.

9 (b) To the minimum extent necessary to support new debt to
10 pay for rehabilitation, rents for assisted units in these developments
11 may be adjusted. This rehabilitation shall be determined by the
12 department to be demonstrably necessary, based on third-party
13 assessment and on the department's own inspection. Assisted units
14 in developments with a specific, department-approved plan to
15 undertake the necessary rehabilitation, at a level that equals or
16 exceeds the minimum per-unit rehabilitation cost standards under
17 the low-income housing tax credit program, may be adjusted as
18 follows:

19 (1) For developments originally financed under the bond-funded
20 component of the Rental Housing Construction Program pursuant
21 to Section 50771.1, and the Family Housing Demonstration
22 Program, rents may be increased up to a maximum of 30 percent
23 of 60 percent of area median income, for units designated in the
24 development's original regulatory agreement as lower income
25 units, and up to a maximum of 30 percent of 35 percent of area
26 median income, for units designated in the development's original
27 regulatory agreement as very low income units.

28 (2) For developments originally financed under other programs,
29 rents for at least 35 percent of the assisted units, or as specified in
30 the original regulatory agreement governing the development,
31 whichever is greater, shall be restricted to the midlevel target used
32 by the Multifamily Housing Program. Rents for the balance of the
33 assisted units may be increased up to a maximum of 30 percent of
34 60 percent of area median income. For purposes of this paragraph,
35 "midlevel target used by the Multifamily Housing Program" shall
36 mean either of the following:

37 (A) For counties with an area median income of 110 percent or
38 less of state median income, it shall mean 30 percent of 30 percent
39 of state median income, expressed as a percentage of area median
40 income.

1 (B) For counties with an area median income that exceeds 110
2 percent of the state median income, it shall mean, 30 percent of
3 35 percent of state median income, expressed as a percentage of
4 area median income.

5 (c) Rent increases for tenants living in assisted units at the time
6 of restructuring pursuant to this chapter shall be limited as follows:

7 (1) For existing tenants with incomes not exceeding 35 percent
8 of area median income, increases shall be limited to 5 percent per
9 year, until the rents reach the levels set under subdivision (b).

10 (2) For existing tenants with incomes exceeding 35 percent of
11 area median income, increases shall be limited to 10 percent per
12 year, until they reach the levels specified in paragraphs (1) and (2)
13 of subdivision (b) of Section 50561.

14 (3) It is the intent of the Legislature that rent increases for
15 existing tenants authorized by this subdivision shall not be greater
16 than necessary to ensure the financial feasibility of the project.
17 The projected maximum rent for tenants in assisted units, as
18 determined by subdivision (b), shall not exceed 50 percent of the
19 household's actual income. This requirement shall be applied using
20 maximum rent levels and household incomes determined at the
21 time of restructuring or at the time of the department's approval
22 of the restructuring.

23 (4) If the refinance of a loan results in a rent increase, the project
24 sponsor shall provide tenants with the following notifications:

25 (A) Notice six months prior to the scheduled rent increase with
26 an estimate of the amount of the increase.

27 (B) Notice 90 days prior to the actual increase with the exact
28 amount of the new rent.

29 (d) If existing tenants move, the rent for these units may be
30 increased immediately up to the level specified in paragraphs (1)
31 and (2) of subdivision (b). The income limit for new tenants shall
32 correspond with the rent limit set pursuant to paragraphs (1) and
33 (2) of subdivision (b).

34 (e) Once rents achieve the levels set forth in paragraphs (1) and
35 (2) of subdivision (b), income levels and rent limits shall be
36 calculated consistent with the calculation methodology used under
37 the Low Income Housing Tax Credit program and the Multifamily
38 Housing Program, and rent increases shall be based on increases
39 in the area median income.

1 (f) Eligible households displaced as a result of rehabilitation
2 pursuant to this section shall be accorded first priority in occupying
3 comparable units in the development from which they were
4 displaced, subsequent to rehabilitation. Tenants of rental housing
5 developments repaired with assistance provided under this chapter
6 who are temporarily or permanently displaced as a result of
7 rehabilitation or other repair work, shall be entitled to relocation
8 benefits pursuant to, and subject to, the requirements of Section
9 7260 of the Government Code. Sponsors of assisted rental housing
10 developments shall be responsible for providing the benefits and
11 assistance. The costs of the benefits and the assistance provided
12 to tenants shall be eligible for funding by a loan provided pursuant
13 to this section.

14 (g) The guidelines adopted by the department pursuant to
15 subdivision (h) of Section 50560 shall be patterned after the
16 regulations governing the Multifamily Housing Program, including
17 the Uniform Multifamily Regulations, except that the department
18 may adopt different standards for the following factors:

19 (1) Commercial vacancy loss assumptions must reflect project
20 operating history.

21 (2) Debt service coverage ratios.

22 (3) Payment terms and principal amount of senior debt,
23 considering financial market conditions, including costs and
24 department risk, as determined by the department.

25 (4) Developer fee limitations shall be consistent with California
26 Tax Credit Allocation Committee regulations for inclusion in the
27 basis for projects receiving 9 percent tax credits, for projects
28 receiving the special rent increases contemplated by this chapter,
29 and, consistent with the requirements of other funding sources, for
30 projects not receiving special rent increases.

31 (5) Replacement reserve deposit amounts must be based on
32 projected costs over 20 years, adjusted for inflation, and as shown
33 in an independent replacement reserve analysis.

34 (h) It is the intent of the Legislature in enacting this section that
35 the department shall manage its reserves for the original Rental
36 Housing Construction Program in a manner that will allow for the
37 continuation of benefits to current low-income tenants for the
38 longest period of time possible up to the term of the original
39 regulatory agreement or the depletion of the annuity funds,
40 whichever occurs first. Accordingly, rents for those households in

1 units subsidized by the annuity fund established pursuant to Section
 2 50748 may be increased to 30 percent of household income. Any
 3 household affected by the rent increase permitted by this
 4 subdivision shall be given at least 90 days advanced notice of the
 5 increase.

6 (i) (1) The department shall, within available resources, post
 7 on its Internet Web site information regarding household incomes
 8 and rents for developments approved for restructuring.

9 (2) The information shall be provided within six months of a
 10 restructuring and, thereafter, no less than every three years.

11 (3) The information shall include the following or similar
 12 information:

13 (A) The monthly rent of each household at the time of
 14 restructuring.

15 (B) The current monthly rent of each household.

16 (C) The annual income of each household as a percentage of
 17 area median income at the time of restructuring.

18 (D) The current income of each household as a percentage of
 19 area median income.

20 *SEC. 3. Section 50562 of the Health and Safety Code is*
 21 *amended to read:*

22 50562. (a) If a department loan is extended or subordinated,
 23 *the department approves the reinstatement of a qualifying unpaid*
 24 *matured loan, or if a new tax credit investment occurs, then the*
 25 department shall enter into a new regulatory agreement with the
 26 development's owner, or amend the existing agreement. The
 27 agreement shall be binding upon the development's owner and
 28 successors in interest upon sale or transfer of the development
 29 property, regardless of any prepayment of the loan. The agreement
 30 shall be recorded in the office of the county recorder in the county
 31 in which the development is located. The new or amended
 32 regulatory agreement shall:

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

35 (2) Govern the terms of occupancy agreements.

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

37 (4) Provide for periodic inspections by the department.

38 (5) Require occupancy and financial reports, and financial audits
 39 for the development.

40 (6) Govern the use of operating income for the development.

1 (7) Govern the use of reserves for the development.

2 (8) Have a term for not less than the term of the loan, including
3 any extension.

4 (9) Include other provisions necessary to carry out the purposes
5 of this chapter.

6 (b) The development's owner shall agree to replace or amend
7 any other loan document to accomplish the purposes of this chapter.

8 *SEC. 4. Section 50563 of the Health and Safety Code is*
9 *amended to read:*

10 50563. (a) Sections 50560 and 50562 shall apply to the
11 restructuring of loans for group homes, except as modified in this
12 section.

13 (b) The department may approve an extension of a department
14 loan at the end of the current loan term to an existing owner of a
15 group home, *or the reinstatement of a qualifying unpaid matured*
16 *loan to an existing owner of a group home*, as long as the group
17 home is being operated in a manner consistent with the regulatory
18 agreement and the group home requires an extension in order to
19 operate in a manner consistent with this chapter. The extension
20 may be for a period of no less than 10 years and up to 30 years.

21 (c) The guidelines adopted by the department pursuant to
22 subdivision (h) of Section 50560 may simplify requirements as
23 appropriate to group homes and may include a limitation on
24 occupancy of vacant units or rooms to extremely low-income
25 households, rent limitations appropriate to required income levels,
26 requirements that property be maintained, financial reporting, and
27 other provisions as determined necessary by the department.

28 (d) Loan terms contained in the existing promissory note shall
29 apply during the period of the loan extension. All unpaid principal
30 and interest shall be due at the end of the extension. However, the
31 department may require periodic payments of principal or interest,
32 or both, during the extension period. If the borrower repays the
33 loan prior to the end of the extension, regulatory requirements
34 shall be removed. As necessary to generate sufficient revenue to
35 cover the cost of processing loan transactions and long-term
36 monitoring of program requirements, the department may also
37 assess loan processing and monitoring fees. This subdivision shall
38 not authorize a rent increase that exceeds 30 percent of the
39 household's actual income, based upon the most recent income
40 certification.

1 (e) Rent increases for tenants living in assisted units at the time
 2 of restructuring pursuant to this chapter shall be limited as follows:

3 (1) For existing tenants with incomes not exceeding 30 percent
 4 of area median income, rent increases shall be limited to 5 percent
 5 per year until rents reach the levels for targeted income levels
 6 specified in the regulatory agreement.

7 (2) For existing tenants with incomes exceeding 30 percent of
 8 area median income, rent increases shall be limited to 10 percent
 9 per year until rents reach the levels for targeted income levels
 10 specified in the regulatory agreement.

11 (f) It is the intent of the Legislature in enacting this chapter that
 12 the department shall manage its reserves for the original Rental
 13 Housing Construction Program in a manner that will allow for the
 14 continuation of benefits to current low-income tenants for the
 15 longest period of time possible up to the term of the original
 16 regulatory agreement or the depletion of the annuity funds.
 17 Accordingly, rent subsidies shall be continued only for units
 18 occupied by lower income tenants who were in residence at the
 19 time of the extension authorized under this section and rents for
 20 those households shall be increased to 30 percent of household
 21 income.

22 *SEC. 5. Section 50565 is added to the Health and Safety Code,*
 23 *immediately following Section 50564, to read:*

24 *50565. (a) For purposes of this chapter, “qualifying unpaid*
 25 *matured loan” shall mean either of the following:*

26 *(1) A loan made pursuant to the programs listed in subdivision*
 27 *(a) of Section 50560 that is in material compliance, as determined*
 28 *by the department, with all loan terms and conditions, including,*
 29 *but not limited to, those required by the department loan documents*
 30 *or applicable statutes and regulations, or otherwise required by*
 31 *the department, other than having reached the due date of its*
 32 *promissory note without being paid.*

33 *(2) A matured loan that is not in compliance, as described in*
 34 *paragraph (1), and is being transferred to another borrower*
 35 *approved by the department.*

36 *(b) A reinstatement of a qualifying unpaid matured loan under*
 37 *this chapter shall be treated as if its term has been extended from*
 38 *the expired due date for purposes of calculating obligations of the*
 39 *borrower to the department.*

1 SECTION 1. ~~Section 50406.8 is added to the Health and Safety~~
2 ~~Code, to read:~~

3 ~~50406.8. Notwithstanding any other law, the department, upon~~
4 ~~the request of the borrower of any loan issued by the department~~
5 ~~that has reached maturity, may do either of the following, at the~~
6 ~~option of the borrower:~~

7 ~~(a) Reloan the original amount of the matured loan, plus accrued~~
8 ~~interest, on the same terms and conditions as the original loan.~~

9 ~~(b) Restructure the loan, in which event the provisions of~~
10 ~~Chapter 3.9 (commencing with Section 50560) shall apply.~~

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