

AMENDED IN SENATE JUNE 9, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2392

Introduced by Assembly Member Nazarian

February 18, 2016

An act to add and repeal Sections 17053.50 and 23650 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Section 44559.11 of, and to add Section 44559.14 to, the Health and Safety Code, relating to seismic safety, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2392, as amended, Nazarian. ~~Income taxes: credit: seismic retrofits.~~ *California Seismic Safety Capital Access Loan Program.*

Existing law establishes the Capital Access Loan Program to assist small businesses in financing the costs of complying with environmental mandates and the remediation of contamination on their properties, and also establishes within the program the California Americans with Disabilities Act Small Business Capital Access Loan Program to assist small businesses in financing the costs of projects that alter or retrofit existing small business facilities to comply with the federal Americans with Disabilities Act. Under existing law, both programs are administered by the California Pollution Control Financing Authority (authority).

This bill would establish within the Capital Access Loan Program the California Seismic Safety Capital Access Loan Program to assist residential property owners and small business owners in seismically

retrofitting residences and small businesses by covering losses on qualified loans for those purposes, as specified. The bill would require the authority to administer the program, including regulations and funds received for the program, as specified. The bill would also authorize the authority to, by regulation, implement loan loss reserve programs to benefit any individual person engaged in qualifying activities that require financing, as specified.

This bill would establish the California Seismic Safety Capital Access Loan Program Fund and would continuously appropriate that fund to the authority to carry out the purposes of the California Seismic Safety Capital Access Loan Program.

~~The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.~~

~~This bill, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, would allow a tax credit under both laws in an amount equal to 30% of the qualified costs paid or incurred by a qualified taxpayer for any seismic retrofit construction on a qualified building, as provided. The bill would require a taxpayer, in order to be eligible for the credit, to obtain 2 certifications from the appropriate jurisdiction with authority for building code enforcement of the area in which the building is located: one prior to seismic retrofit construction that certifies that the building is an at-risk property, and a second subsequent to construction that certifies that the completed construction is seismic retrofit construction, as defined, and specifies a dollar amount of qualified costs. The bill would further require the taxpayer to provide the second certification to, and apply for the allocation of the credit with, the Franchise Tax Board. The bill would require the Franchise Tax Board to allocate credits on a first-come-first-served basis. The bill would provide that the credit would have an aggregate cap under both laws of \$12,000,000 plus the amount of previously unallocated credit for each calendar year, as provided.~~

~~Existing law requires a bill that would authorize a new credit against the tax imposed by the Personal Income Tax Law or the Corporation Tax Law to contain specific goals, purposes, and objectives that the new credit will achieve and detailed performance indicators and data collection requirements for determining whether the new credit achieves these goals, purposes, and objectives.~~

~~This bill would make findings specifying the goals, purposes, and objectives of the above-described tax credits and detailing the~~

performance indicators and data collection requirements for determining whether the credits meet these goals, purposes, and objectives.

~~This bill would take effect immediately as a tax levy.~~

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

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

1 SECTION 1. Section 44559.11 of the Health and Safety Code
2 is amended to read:

3 44559.11. (a) It is the intent of the Legislature to ensure that
4 the state, through the authority, may make maximum, efficient use
5 of capital access programs enacted by all federal and state agencies,
6 as well as funding available from any governmental program whose
7 goals may be advanced by providing funding to the Capital Access
8 Loan Program.

9 (b) In furtherance of this intent, and notwithstanding any other
10 provision of this article, when the contributions required pursuant
11 to Section 44559.4 are entirely funded by a ~~source public or~~
12 ~~quasi-public entity~~ other than the ~~authority~~, *authority's fee revenue*
13 *under Sections 44525 and 44548*, the authority may, by regulation
14 adopted pursuant to subdivision (b) of Section ~~44520~~, *44520 or*
15 *subdivision (e) of Section 44559.14*, establish alternate provisions
16 as necessary to enable the authority to participate in the alternative
17 funding source ~~program~~. *program, including implementing loan*
18 *loss reserve programs to benefit any individual person engaged*
19 *in qualifying activities in furtherance of the public or quasi-public*
20 *entity's policy objectives in the state that require financing.*

21 SEC. 2. Section 44559.14 is added to the Health and Safety
22 Code, to read:

23 44559.14. (a) (1) *It is the intent of the Legislature in enacting*
24 *the act adding this section to create and fund a program to assist*
25 *residential property owners and small business owners in*
26 *seismically retrofitting residences and small businesses. It is not*
27 *the intent of the Legislature to assist the physical expansion of*
28 *small businesses and residences.*

29 (2) *The Legislature hereby establishes the California Seismic*
30 *Safety Capital Access Loan Program. The program shall cover*
31 *losses on qualified loans by participating lenders to qualified*
32 *residential property owners or qualified small businesses for*

1 eligible projects, as specified under this section. The program shall
2 be administered by the California Pollution Control Financing
3 Authority and follow the terms and conditions for the Capital
4 Access Loan Program in this article with the additional program
5 requirements specified under this section.

6 (b) For purposes of this section, unless the context requires
7 otherwise, the following words and terms shall have the following
8 meanings:

9 (1) “Seismic retrofit construction” means alteration performed
10 on or after January 1, 2017, of a qualified building or its
11 components to substantially mitigate seismic damage. “Seismic
12 retrofit construction” includes, but is not limited to, all of the
13 following:

14 (A) Anchoring the structure to the foundation.

15 (B) Bracing cripple walls.

16 (C) Bracing hot water heaters.

17 (D) Installing automatic gas shutoff valves.

18 (E) Repairing or reinforcing the foundation to improve the
19 integrity of the foundation against seismic damage.

20 (F) Anchoring fuel storage.

21 (G) Installing an earthquake-resistant bracing system for
22 mobilehomes that are registered with the Department of Housing
23 and Community Development.

24 (2) “Eligible costs” means the costs paid or incurred on or after
25 January 1, 2017, for an eligible project, including any engineering
26 or architectural design work necessary to permit or complete the
27 eligible project less the amount of any grant provided by a public
28 entity for the eligible project. “Eligible costs” do not include costs
29 paid or incurred for any of the following:

30 (A) Maintenance, including abatement of deferred or inadequate
31 maintenance, and correction of violations unrelated to the seismic
32 retrofit construction.

33 (B) Repair, including repair of earthquake damage.

34 (C) Seismic retrofit construction required by local building
35 codes as a result of addition, repair, building relocation, or change
36 of use or occupancy.

37 (D) Other work or improvement required by local building or
38 planning codes as a result of the intended seismic retrofit
39 construction.

1 (E) Rent reductions or other associated compensation,
2 compliance actions, or other related coordination involving the
3 qualified residential property owner or qualified small business
4 and any other party, including a tenant, insurer, or lender.

5 (F) Replacement of existing building components, including
6 equipment, except as needed to complete the seismic retrofit
7 construction.

8 (G) Bracing or securing nonpermanent building contents.

9 (H) The offset of costs, reimbursements, or other costs
10 transferred from the qualified residential property owner or
11 qualified small business to others.

12 (3) “Eligible project” means seismic retrofit construction that
13 is necessary to ensure that the qualified building is capable of
14 substantially mitigating seismic damage, and the financing
15 necessary to pay eligible costs of the project.

16 (4) “Qualified building” means a building that is certified by
17 the appropriate local building code enforcement authority for the
18 jurisdiction in which the building is located as hazardous and in
19 danger of collapse in the event of a catastrophic earthquake.

20 (5) “Qualified loan” means a loan or portion of a loan as
21 defined in subdivision (j) of Section 44559.1, where the proceeds
22 of the loan or portion of the loan are limited to the eligible costs
23 for an eligible project under this program, and where the loan or
24 portion of the loan does not exceed two hundred fifty thousand
25 dollars (\$250,000).

26 (6) “Qualified small business” means a business referred to in
27 subdivisions (i) and (m) of Section 44559.1 that owns and occupies,
28 or intends to occupy, a qualified building for the operation of the
29 business.

30 (7) “Qualified residential property owner” means either an
31 owner and occupant of a residential building that is a qualified
32 building or a qualified small business that owns one or more
33 residential buildings, including a multiunit housing building, that
34 is a qualified building.

35 (c) (1) The California Seismic Safety Capital Access Loan
36 Program Fund is established in the State Treasury and shall be
37 administered by the authority pursuant to Sections 44548 and
38 44549 for this program. For purposes of this section, the references
39 in Sections 44548 and 44549 to “small business” shall include
40 “qualified residential property owner,” as defined in this section.

1 *Notwithstanding Section 13340 of the Government Code, all*
 2 *moneys in the fund are continuously appropriated to the authority*
 3 *for carrying out this section. The authority may divide the fund*
 4 *into separate accounts. All moneys accruing to the authority*
 5 *pursuant to this section from any source shall be deposited into*
 6 *the fund.*

7 (2) *All moneys in the fund derived from any source shall be held*
 8 *in trust for the life of this program, for program expenditures and*
 9 *costs of administering this section, as follows:*

10 (A) *Program expenditures shall include both of the following:*

11 (i) *Contributions paid by the authority in support of qualified*
 12 *loans.*

13 (ii) *Costs for a qualified expert to validate that the proceeds of*
 14 *the loans are eligible costs, as defined under this section.*

15 (iii) *Reasonable costs to educate the small business community,*
 16 *residential property owners, and participating lenders about the*
 17 *program, including travel within the state.*

18 (B) *Administrative expenditures shall be limited to 5 percent of*
 19 *the initial appropriation plus 5 percent of all moneys recaptured,*
 20 *and shall include all of the following:*

21 (i) *Personnel costs.*

22 (ii) *Service and vending contracts, other than program*
 23 *expenditures described in subparagraph (A), that are necessary*
 24 *to carry out the program.*

25 (iii) *Other reasonable direct and indirect administrative costs.*

26 (3) *The authority may direct the Treasurer to invest moneys in*
 27 *the fund that are not required for its current needs in the eligible*
 28 *securities specified in Section 16430 of the Government Code as*
 29 *the authority shall designate. The authority may direct the*
 30 *Treasurer to deposit moneys in interest-bearing accounts in state*
 31 *or national banks or other financial institutions having principal*
 32 *offices located in the state. The authority may alternatively require*
 33 *the transfer of moneys in the fund to the Surplus Money Investment*
 34 *Fund for investment pursuant to Article 4 (commencing with*
 35 *Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of*
 36 *the Government Code. All interest or other increment resulting*
 37 *from an investment or deposit shall be deposited into the fund,*
 38 *notwithstanding Section 16305.7 of the Government Code. Moneys*
 39 *in the fund shall not be subject to transfer to any other fund*
 40 *pursuant to any provision of Part 2 (commencing with Section*

1 16300) of Division 4 of Title 2 of the Government Code, excepting
2 the Surplus Money Investment Fund.

3 (d) The authority shall adopt regulations pursuant to Section
4 44520 to implement the program, including provisions to:

5 (1) Establish a new loss reserve account for each participating
6 lender enrolling loans in this program.

7 (2) Obtain a certification from each participating lender and
8 qualified small business or qualified residential property owner
9 upon enrollment of a qualified loan that the proceeds of the loan
10 will be used for the eligible costs of an eligible project.

11 (3) Contribute an additional incentive from the fund for each
12 loan enrolled for a qualified small business or qualified residential
13 property owner located in a severely affected community.

14 (4) Restrict the enrollment of a qualified loan in any other
15 Capital Access Loan Program for a qualified small business or
16 qualified residential property owner offered by the authority as
17 long as funds are available for this program.

18 (5) Limit the term of loss coverage for each qualified loan to
19 no more than 10 years.

20 (6) Recapture from the loss reserve account the authority's
21 contribution for each enrolled loan upon the maturation of that
22 loan or after 10 years from the date of enrollment, whichever
23 happens first, to be deposited in the fund and applied to future
24 program and administrative expenditures.

25 (e) The authority may adopt regulations relating to residential
26 property owner or small business financing as emergency
27 regulations in accordance with Chapter 3.5 (commencing with
28 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
29 Code. For purposes of that Chapter 3.5, including Section 11349.6
30 of the Government Code, the adoption of the regulations shall be
31 considered by the Office of Administrative Law to be necessary
32 for the immediate preservation of the public peace, health and
33 safety, and general welfare. The regulations shall be repealed 180
34 days after their effective date, unless the adopting authority or
35 agency complies with that Chapter 3.5.

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All matter omitted in this version of the bill appears in the bill as amended in the Assembly, May 16, 2016. (JR11)

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