

AMENDED IN SENATE APRIL 1, 2008

**SENATE BILL**

**No. 1311**

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**Introduced by Senator Simitian**

February 20, 2008

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An act to amend ~~Section~~ *Sections 44559.3 and 44559.4* of the Health and Safety Code, relating to the Capital Access Loan Program.

LEGISLATIVE COUNSEL'S DIGEST

SB 1311, as amended, Simitian. California Pollution Control Financing Authority: Capital Access Loan Program.

Existing law establishes the Capital Access Loan Program for small businesses, administered by the California Pollution Control Financing Authority, which provides loans through participating financial institutions to qualifying small businesses. The authority is required to create a loss reserve account for each financial institution. The financial institution and the borrower are each required to pay a fee of an equal amount into the loss reserve account. The authority is required to contribute an amount not less than the total amount of the combined fees paid by the borrower and the participating financial institution, if no matching funds are available under a federal capital access program or other source.

This bill would reduce the contribution of the authority to an amount not less than the amount of fees paid by the participating financial institution. *The bill would authorize the authority to withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account, to be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.*

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 44559.3 of the Health and Safety Code  
2     is amended to read:

3     44559.3. (a) The authority shall establish a loss reserve  
4     account for each financial institution with which the authority  
5     makes a contract.

6     (b) The loss reserve account for a financial institution shall  
7     consist of moneys paid as fees by borrowers and the financial  
8     institution, moneys transferred to the account from a small business  
9     assistance fund, any matching federal moneys, and any other  
10    moneys provided by the authority or other source.

11    (c) Notwithstanding any other provision of law, the authority  
12    may establish and maintain loss reserve accounts with any financial  
13    institution under such policies as the authority may adopt.

14    (d) All moneys in a loss reserve account established pursuant  
15    to this article are the exclusive property of, and solely controlled  
16    by, the authority. Interest or income earned on moneys credited to  
17    the loss reserve account shall be deemed to be part of the loss  
18    reserve account. The authority may withdraw ~~any time~~ from the  
19    loss reserve account ~~not more than 50 percent of~~ all interest or  
20    other income that has been credited to the loss reserve account;  
21    ~~except that subsequent to the first such withdrawal, the authority~~  
22    ~~may not withdraw more than 50 percent of all interest or other~~  
23    ~~income that has been credited to the loss reserve account since the~~  
24    ~~time of the last such withdrawal.~~ Any withdrawal made pursuant  
25    to this subdivision may be made prior to paying any claim and  
26    shall be used for the sole purpose of offsetting ~~administrative~~ costs  
27    associated with carrying out the program, *including administrative*  
28    *costs and loss reserve account contributions.*

29    (e) The combined amount to be deposited by the participating  
30    financial institution into any individual loss reserve account over  
31    a three-year period, in connection with any single borrower or any  
32    group of borrowers among which a common enterprise exists, shall  
33    be not more than one hundred thousand dollars (\$100,000).

1 SECTION 1.

2 SEC. 2. Section 44559.4 of the Health and Safety Code is  
3 amended to read:

4 44559.4. (a) If a financial institution that is participating in  
5 the Capital Access Loan Program established pursuant to this  
6 article decides to enroll a qualified loan under the program in order  
7 to obtain the protection against loss provided by its loss reserve  
8 account, it shall notify the authority in writing on a form prescribed  
9 by the authority, within 10 days after the date on which the loan  
10 is made, of all of the following:

- 11 (1) The disbursement of the loan.
- 12 (2) The dollar amount of the loan enrolled.
- 13 (3) The interest rate applicable to, and the term of, the loan.
- 14 (4) The amount of the agreed upon premium.

15 (b) The financial institution may make a qualified loan to be  
16 enrolled under the program to an individual, or to a partnership or  
17 trust wholly owned or controlled by an individual, for the purpose  
18 of financing property that will be leased to a qualified business  
19 that is wholly owned by that individual. In that case, the property  
20 shall be treated as meeting the requirements of paragraph (1) of  
21 subdivision (g) of Section 44559.1.

22 (c) When making a qualified loan that will be enrolled under  
23 the program, the participating financial institution shall require  
24 the qualified business to which the loan is made to pay a fee of  
25 not less than 2 percent of the principal amount of the loan, but not  
26 more than 3 ½ percent of the principal amount. The financial  
27 institution shall also pay a fee in an amount equal to the fee paid  
28 by the borrower. The financial institution shall deliver the fees  
29 collected under this subdivision to the authority for deposit in the  
30 loss reserve account for the institution. The financial institution  
31 may recover from the borrower the cost of its payments to the loss  
32 reserve account through the financing of the loan, upon the  
33 agreement of the financial institution and the borrower.

34 (d) When depositing fees collected under subdivision (c) to the  
35 credit of the loss reserve account for a participating financial  
36 institution, the authority shall do the following:

- 37 (1) If no matching funds are available under a federal capital  
38 access program or other source, the authority shall transfer to the  
39 loss reserve account an amount that is not less than the amount of  
40 the fees paid by the participating financial institution. However,

1 if the qualified business is located within a severely affected  
2 community, the authority shall transfer to the loss reserve account  
3 an amount equal to 150 percent of the amount of the fees paid by  
4 the participating financial institution.

5 (2) If matching funds are available under a federal capital access  
6 program or other source, the authority shall transfer, on an  
7 immediate or deferred basis, to the loss reserve account the amount  
8 required by that federal program or other source. However, the  
9 total amount deposited into the loss reserve account shall not be  
10 less than the amount which would have been deposited in the  
11 absence of matching funds.

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