

Senate Bill No. 1311

CHAPTER 401

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

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1311, 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.

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

SECTION 1. Section 44559.3 of the Health and Safety Code is amended to read:

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

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

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

(d) All moneys in a loss reserve account established pursuant to this article are the exclusive property of, and solely controlled by, the authority. Interest or income earned on moneys credited to the loss reserve account shall be deemed to be part of the loss reserve account. The authority may withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account. Any withdrawal made pursuant to this subdivision may be made prior to paying any claim and shall be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

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

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

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

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

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

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

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

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. However, if the qualified business is located within a severely affected community, the authority shall transfer to the loss reserve account an amount equal to 150 percent of the amount of the fees paid by the participating financial institution.

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