

X. Statute (California Health & Safety Code)

Division 27. California Pollution Control Financing Authority Act. Article 2. Organization of Authority

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans and grants authorized under subdivision (g) of Section 44526 as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5. *(Amended by Stats. 2009, Ch. 643, Sec. 7. (SB 832) Effective November 2, 2009.)*

Division 27. California Pollution Control Financing Authority Act. Article 8. Capital Access Loan Program for Small Businesses

44559. (a) The Legislature finds and declares that small businesses are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential of economically beneficial reuse, and to succeed economically, generating additional revenue to state and local governments that can be used for environmental improvements, all to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business regardless of whether the operations of the small business affect the

environment, and to permit business loans to be included in the program for small businesses whose operations do not, necessarily, affect the environment. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

(Amended by Stats. 2000, Ch. 915, Sec. 11. Effective January 1, 2001.)

44559.1. As used in this article, unless the context requires otherwise, all of the following terms have the following meanings:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) (A) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations, and a small business financial development corporation, as defined in Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or microbusiness lender, as defined in Section 12100 of the Government Code, that meets standards that shall be established by the authority. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, "financial institution" also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

(B) A financial institution described in this paragraph shall be domiciled or have its principal office in the State of California.

(3) "Financial institution" also includes an insured depository institution, insured credit union, or community development financial institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

- (1) Depositing all required fees paid by the participating financial institution and the qualified business.
- (2) Depositing contributions made by the state and, if applicable, the federal government or other sources.
- (3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) “Passive real estate ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

- (1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.
- (2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) “Program” means the Capital Access Loan Program created pursuant to this article.

(i) “Qualified business” means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

- (1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.
- (2) It has its primary business location within the boundaries of the state.

(j) (1) “Qualified loan” means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) “Qualified loan” does not include any of the following:

- (A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.

(m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

(Amended by Stats. 2014, Ch. 132, Sec. 9. (AB 2749) Effective January 1, 2015.)

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete North American Industry Classification System (NAICS) for the qualified business, the number of jobs created, the number of jobs retained, and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the

program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

(Amended by Stats. 2011, Ch. 483, Sec. 3. (AB 901) Effective January 1, 2012.)

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 law, the authority may establish and maintain loss reserve accounts with any financial institution under any policies 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, or a portion of, the 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).
(Amended by Stats. 2011, Ch. 484, Sec. 2. (AB 981) Effective January 1, 2012.)

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 15 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 executive director may authorize an additional five days for a financial institution to submit the written notification described in subdivision (a) to the authority on a loan-by-loan basis for a reason limited to conditions beyond the reasonable control of the financial institution.

(c) 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 (i) of Section 44559.1.

(d) 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 1/2 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. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

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

(1) If matching funds are not 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 not less than 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.

(f) This section shall become operative on April 1, 2017.

(Amended (as added by Stats. 2012, Ch. 274, Sec. 2) by Stats. 2016, Ch. 86, Sec. 192. (SB 1171) Effective January 1, 2017. Section operative April 1, 2017, by its own provisions.)

44559.5. (a) The authority shall establish procedures under which financial institutions participating in the program established pursuant to this article may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. A participating financial institution that charges off all or part of an enrolled loan to the loss reserve account may file a claim for reimbursement with the authority if both of the following conditions are met:

(1) The claim occurs contemporaneously with the action of the participating financial institution to charge off all or part of the loan.

(2) The charge off on an enrolled loan is made in a manner that is consistent with the participating financial institution's usual method for making determinations on business loans that are not enrolled loans.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include the amount of loan principal charged off, accrued interest on the principal, reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, and any other related costs. Proper documentation of the expenses shall be presented at the time of the claim.

(c) If a participating financial institution files two or more claims contemporaneously, and there are insufficient funds in the reserve fund at that time to cover the entire amount of such claims, the institution may designate the order of priority in which the claims shall be paid.

(d) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans. The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan, less any reasonable out-of-pocket expenses incurred in collection of such amount.

(e) In any case in which the payment of a claim under this section has fully covered a participating financial institution's loss on an enrolled loan, the participating financial institution shall assign to the authority, and to any applicable federal agency in the event federal matching funds are involved, any right, title, or interest to any collateral, security, or other right of recovery in connection with a loan made under the program.

(f) The executive director may adopt necessary rules for the authority to carry out its duties, functions, and powers relating to the program established pursuant to this article.

(Added by Stats. 1993, Ch. 1164, Sec. 4. Effective January 1, 1994.)

44559.6. The authority shall annually prepare a report to the Governor and the Legislature that describes the financial condition and programmatic results of the capital access loan program for small businesses authorized under this article. Programmatic results shall include, but not be limited to, the total number of businesses served, jobs created, jobs retained, the geographic distribution of the loans, and the breakdown of businesses served by industry sector for all new loans issued since the report for the prior year.

(Amended by Stats. 2011, Ch. 483, Sec. 4. (AB 901) Effective January 1, 2012.)

44559.7. The authority may enter into agreements with commercial banks or other financial institutions, or with other agencies of the state, to provide necessary assistance in carrying out the program authorized by this article, including origination and servicing of loans.

(Added by Stats. 1993, Ch. 1164, Sec. 4. Effective January 1, 1994.)

44559.8. Notwithstanding this article, the authority may facilitate the development of a secondary market for a loan enrolled in the capital access loan program by providing security for that loan, thereby increasing participation in the program by financial institutions and improving access to capital for small businesses. For purposes of this section, the actions that the authority may take include, but are not necessarily limited to, assigning all, or a portion of, any loss reserve account to any other entity in connection with providing security for a loan, including a trustee of a securitization trust, transferring an enrolled loan from a participating financial institution to a securitization trust, and assisting underwriters in marketing a loan to the secondary market.

(Added by Stats. 1999, Ch. 756, Sec. 4. Effective October 10, 1999.)

44559.9. The authority shall expand the Capital Access Loan Program established by this article to include outreach to financial institutions that service agricultural interests in the state for the purpose of funding air pollution control measures.

(Added by Stats. 2003, Ch. 479, Sec. 13. Effective January 1, 2004.)

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

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

(Amended by Stats. 2016, Ch. 32, Sec. 69. (SB 837) Effective June 27, 2016.)

44559.12. (a) Consistent with subdivision (b) of Section 44559.11, the authority may establish loss reserve accounts for the purposes of financing terminal rental adjustment clause leasing, if funds are available for contribution into the loss reserve account from any source other than the authority. The authority shall not contribute any funds into a loss reserve account created pursuant to this section. Funds provided by the federal government for the purposes of providing a loan loss reserve program shall not be contributed to an account created pursuant to this section.

(b) The executive director may establish conditions for terminal rental adjustment clause leasing loss reserve accounts created pursuant to this section.

(c) As used in this section, "terminal rental adjustment clause" means "terminal rental adjustment clause" as defined in Section 7701(h)(3) of Title 26 of the United States Code.

(Added by Stats. 2011, Ch. 492, Sec. 2. (SB 225) Effective October 6, 2011.)

44559.13. (a) It is the intent of the Legislature in this act to create and fund the California Americans with Disabilities Act Small Business Capital Access Loan Program to assist small businesses in complying with the

Americans with Disabilities Act. It is not the intent of the Legislature to assist the physical expansion of small businesses that includes modifications that comply with the Americans with Disabilities Act. The program shall be administered by the California Pollution Control Financing Authority and follow the terms and conditions for the Capital Access Loan Program for Small Businesses in this article with the additional program requirements specified under this section.

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

(1) "Americans with Disabilities Act" means the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and amendments thereto.

(2) "California Americans with Disabilities Act Small Business Capital Access Loan Program Fund" or "fund" means a fund established and administered by the authority pursuant to Sections 44548 and 44549 to be used for purposes of this program.

(3) (A) "Eligible cost" means and includes all or any part of the price of construction, purchase price of real or personal property, the price of demolishing or removing any buildings or structures, the price of all machinery and equipment, the amount of financing charges and interest before, during, and for a period not to exceed the later of one year or one year following completion of construction, as determined by the authority, the price of insurance during construction, the amount of funding or financing noncapital expenses, the amount of reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements, the price of engineering, financial, and legal services and other service contracts, the price of plans, specifications, studies, surveys, estimates, administrative expenses, and any other expenses of funding or financing, that are necessary and allocable to the eligible project.

(B) "Eligible cost" shall not include costs not directly related to physical alterations necessary for compliance with the Americans with Disabilities Act.

(4) "Eligible project" means the physical alterations or retrofits to an existing small business facility of less than 10,000 square feet necessary to ensure that facility is in compliance with the Americans with Disabilities Act, and the financing necessary to pay eligible costs of the project.

(5) "Qualified loan" means a loan or portion of a loan as defined in subdivision (j) of Section 44559.1, where the proceeds of the loan or portion of the loan are limited to the eligible costs for an eligible project under this program, and where the loan or portion of the loan does not exceed fifty thousand dollars (\$50,000).

(6) "Small business" or "qualified business" means a business that is independently owned and operated and not dominant in its field that meets both of the following additional criteria:

(A) It has 30 or fewer full-time equivalent employees, or it has less than five million dollars (\$5,000,000) in total gross annual income from all sources.

(B) It does not provide overnight accommodations.

(c) (1) The California Americans with Disabilities Act Small Business Capital Access Loan Program Fund is established in the State Treasury for, and shall be administered by the authority pursuant to Sections 44548

and 44549 for, this program. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the authority for carrying out the purposes of this section. The authority may divide the fund into separate accounts. All moneys accruing to the authority pursuant to this section from any source shall be deposited into the fund.

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

(A) Program expenditures shall include all of the following:

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

(ii) Payments made to borrowers enrolling loans to participate in the program, to the extent that moneys other than the initial appropriation are deposited into the fund by the authority and are authorized for that use pursuant to paragraph (3) of subdivision (d).

(iii) Reasonable costs to educate the small business community and participating lenders about the program, including travel within the state.

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

(i) Personnel costs.

(ii) Service and vending contracts necessary to carry out the program.

(iii) Other reasonable direct and indirect administrative costs.

(3) The authority may direct the Treasurer to invest moneys in the fund that are not required for its current needs in the eligible securities specified in Section 16430 of the Government Code as the authority shall designate. The authority may direct the Treasurer to deposit moneys in interest-bearing accounts in state or national banks or other financial institutions having principal offices located in the state. The authority may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from an investment or deposit shall be deposited into the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, excepting the Surplus Money Investment Fund.

(d) The authority shall adopt regulations pursuant to subdivision (c) of Section 44520 to implement the program, including provisions specific to this program as described in this section and further including provisions to:

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

(2) Obtain a certification from each participating lender and small business upon enrollment of a qualified loan that the proceeds of the loan will be used for the eligible costs of an eligible project.

(3) Contribute an additional incentive from the fund for each loan enrolled for a qualified business located in a severely affected community, or make nonreimbursable payments from other moneys to participating borrowers to offset all or a portion of the reasonable costs of architectural inspections obtained from a person who is certified as an access specialist pursuant to the program described in Section 4459.5 of the Government Code.

(4) Restrict the enrollment of a qualified loan in any other Capital Access Loan Program for small business offered by the authority as long as funds are available for this program.

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

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

(Amended (as amended by Stats. 2017, Ch. 644, Sec. 2) by Stats. 2018, Ch. 645, Sec. 13. (AB 1547) Effective September 21, 2018.)

44559.14. (a) (1) It is the intent of the Legislature in enacting the act adding this section to create and fund a program to assist residential property owners and small business owners in seismically retrofitting residences and small businesses with a priority on soft-story buildings and unreinforced brick and concrete buildings. It is not the intent of the Legislature to assist the physical expansion of small businesses and residences.

(2) The Legislature hereby establishes the California Seismic Safety Capital Access Loan Program. The program shall cover losses on qualified loans by participating lenders to qualified residential property owners or qualified small businesses for eligible projects, as specified under this section. The program shall be administered by the California Pollution Control Financing Authority and follow the terms and conditions for the Capital Access Loan Program in this article with the additional program requirements specified under this section.

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

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

(A) Anchoring the structure to the foundation.

(B) Bracing cripple walls.

(C) Bracing hot water heaters.

(D) Installing automatic gas shutoff valves.

(E) Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic

damage.

(F) Anchoring fuel storage.

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

(H) Strengthening a building's lateral load resisting system.

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

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

(B) Repair, including repair of earthquake damage.

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

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

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

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

(G) Bracing or securing nonpermanent building contents.

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

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

(4) "Qualified building" means a residential or commercial building that is identified by the local building code official for the jurisdiction in which the building is located as a building in need of seismic retrofitting and is either a building of a type that is potentially vulnerable in the event of a catastrophic earthquake or a building constructed before 1981.

(5) "Qualified loan" means a loan or portion of a loan as defined in subdivision (j) of Section 44559.1, where

the proceeds of the loan or portion of the loan are limited to the eligible costs for an eligible project under this program, and where the loan or portion of the loan does not exceed two hundred fifty thousand dollars (\$250,000).

(6) “Qualified small business” means a business referred to in subdivisions (i) and (m) of Section 44559.1 that owns a qualified building regardless of owner occupancy, notwithstanding the restriction on passive real estate ownership in subparagraph (B) of paragraph (2) of subdivision (j) of Section 44559.1.

(7) “Qualified residential property owner” means either an owner of a residential building that is a qualified building or a qualified small business that owns one or more residential buildings, including a multiunit housing building, that is a qualified building, notwithstanding the restriction on passive real estate ownership in subparagraph (B) of paragraph (2) of subdivision (j) of Section 44559.1.

(c) (1) The California Seismic Safety Capital Access Loan Program Fund is established in the State Treasury and shall be administered by the authority pursuant to Sections 44548 and 44549 for this program. For purposes of this section, the references in Sections 44548 and 44549 to “small business” shall include “qualified residential property owner,” as defined in this section. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are continuously appropriated to the authority for carrying out this section. The authority may divide the fund into separate accounts. All moneys accruing to the authority pursuant to this section from any source shall be deposited into the fund.

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

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

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

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

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

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

(i) Personnel costs.

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

(iii) Other reasonable direct and indirect administrative costs.

(3) The authority may direct the Treasurer to invest moneys in the fund that are not required for its current needs in the eligible securities specified in Section 16430 of the Government Code as the authority shall designate. The authority may direct the Treasurer to deposit moneys in interest-bearing accounts in state or

national banks or other financial institutions having principal offices located in the state. The authority may alternatively require the transfer of moneys in the fund to the Surplus Money Investment Fund for investment pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from an investment or deposit shall be deposited into the fund, notwithstanding Section 16305.7 of the Government Code. Moneys in the fund shall not be subject to transfer to any other fund pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, excepting the Surplus Money Investment Fund.

(d) The authority shall adopt regulations pursuant to Section 44520 to implement the program, including, but not limited to, provisions to:

- (1) Establish a new loss reserve account for each participating lender enrolling loans in this program.
- (2) Obtain a certification from each participating lender and qualified small business or qualified residential property owner upon enrollment of a qualified loan that the proceeds of the loan will be used for the eligible costs of an eligible project.
- (3) Contribute an additional incentive from the fund for each loan enrolled for a qualified small business or qualified residential property owner located in a severely affected community.
- (4) Restrict the enrollment of a qualified loan in any other Capital Access Loan Program for a qualified small business or qualified residential property owner offered by the authority as long as funds are available for this program.
- (5) Limit the term of loss coverage for each qualified loan to no more than 10 years.
- (6) Recapture from the loss reserve account the authority's contribution for each enrolled loan upon the maturation of that loan or after 10 years from the date of enrollment, whichever happens first, to be deposited in the fund and applied to future program and administrative expenditures.

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

(Amended by Stats. 2018, Ch. 645, Sec. 14. (AB 1547) Effective September 21, 2018.)