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AB-2562 Department of Housing and Community Development loans. (2017-2018)

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Assembly Bill No. 2562

CHAPTER 765

An act to amend Sections 50406.7 and 50560 of the Health and Safety Code, relating to housing.

[Approved by Governor September 26, 2018. Filed with Secretary of State September 26, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2562, Mullin. Department of Housing and Community Development loans.

Existing law, the Multifamily Housing Program, is administered by the Department of Housing and Community Development to address renter housing needs through an omnibus multifamily housing program. Under the program, assistance provided to a project is required to be provided in the form of a deferred payment loan to pay for the eligible costs of development. Existing law, subject to specified terms, authorizes the department to approve an extension of an existing loan, the subordination of an existing loan to new debt, or an investment of tax credit equity if the rental housing development is being operated in a manner consistent with the regulatory agreement and the development requires an extension in order to continue to operate in that manner. Existing law also authorizes the department to reduce the interest rate on any loan issued by the department to a rental housing development to as low as 0.42% per annum, or a rate determined by the department that is sufficient to cover the costs of project monitoring, whichever is greater, if the development meets specified requirements regarding, among other things, debt and household income.

Existing law also 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 other than the Multifamily Housing Program, subject to specified conditions.

This bill would include loans made under the Multifamily Housing Program and any and all other multifamily housing loans funded or monitored by the department within these latter provisions authorizing the extension of an existing loan, subordination of an existing loan to new debt, or an investment of tax credit equity. The bill would require the department to reduce the interest rate on any loan issued by the department to a rental housing development if the development will utilize low-income housing tax credits, the department makes a specified determination regarding the loan or the ability of the development to syndicate, and the rate change will materially increase the feasibility of the proposed project and ensure long-term affordability for the residents.

Existing law also authorizes the department to change the current interest rate for any loan for which it receives a loan extension request, associated with an award of federal or state low income housing tax credits made on or after January 1, 2014, to the applicable federal rate most recently published by the Internal Revenue Service.

This bill instead would provide that the department is authorized to change the current interest rate for any loan issued by the department for which it receives a loan extension request, associated with an award of federal or state low-income housing tax credits made on or after January 1, 2014, to the applicable federal rate published by the Internal Revenue Service and in effect at the time of the project closing.

Existing law requires the department to charge a fee in an amount sufficient to cover administrative costs associated with a loan modification requested by a borrower pursuant to these provisions.

This bill would instead authorize the department to charge the fee.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 50406.7 of the Health and Safety Code is amended to read:

50406.7. (a) Notwithstanding any other law, the department shall reduce the interest rate on any loan issued by the department to a rental housing development to as low as forty-two hundredths of 1 percent per annum, or a rate determined by the department that is sufficient to cover the costs of project monitoring described in subdivision (c) of Section 50675.6, whichever is greater, if the following conditions are met:

(1) The development will utilize low-income housing tax credits.

(2) The department determines either one of the following:

(A) The loan issued by the department is not eligible to be treated as debt for federal or state low-income housing tax credit purposes without a reduction in the interest rate of the loan.

(B) The department determines that the rental housing development is not able to syndicate due to projected negative capital account balances.

(3) The change in the interest rate will materially increase the feasibility of the proposed project and will ensure long-term affordability for the residents.

(b) The department is authorized to change the current interest rate for any loan issued by the department for which it receives a loan extension request associated with an award of federal or state low-income housing tax credits made on or after January 1, 2014, to the applicable federal rate published by the United States Internal Revenue Service and in effect at the time of the project closing. The additional tax credit equity generated by the change in interest rate shall be used for rehabilitation of the development. If the total amount of debt and accrued interest at the end of the loan term would be greater after making this change than it would have been under the original interest rate, the department may forgive an amount of accrued interest equal to the lesser of either the amount necessary to make the expected principal and accrued interest the same as it would have been using the original interest rate, or the total amount of interest accrued at the time of the sponsor's request.

(c) The department may charge a fee in an amount sufficient to cover administrative costs associated with a loan modification requested by a borrower pursuant to this section.

(d) For purposes of a determination made under paragraph (2) of subdivision (a), the department may require a third-party tax professional to verify the determination, the cost of which shall be borne by the sponsor.

(e) The amendments made to this section by Assembly Bill 2562 of the 2017–18 Regular Session shall not be construed to affect any interest rate reduction authorized by the department pursuant to this section as it read prior to the effective date of these amendments.

SEC. 2. Section 50560 of the Health and Safety Code is amended to read:

50560. (a) Subject to the requirements of this chapter, the department may approve an extension of a department loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity under one or more of the following rental housing finance programs: the original Rental Housing Construction Program established by Chapter 9 (commencing with Section 50735), the Special User Housing Rehabilitation Program established by Section 50670, the Deferred Payment Rehabilitation Loan Program established by Chapter 6.5 (commencing with Section 50660), the rental component of the California Natural Disaster Assistance Program established by Chapter 6.5 (commencing with Section 50671), the State Earthquake Rehabilitation Assistance Program established by Chapter 6.5 (commencing with Section 50671), the rental component of the California Housing Rehabilitation Program established by Section 50668.5, the component of the Rental Housing Construction Program funded with bond proceeds governed by Section 50771.1, the Family Housing Demonstration Program established by Chapter 15 (commencing with Section 50880), the Families Moving to Work Program established by Chapter 15 (commencing with Section 50880), the Multifamily Housing Program established by Chapter 6.7 (commencing with Section 50675), and any and all other multifamily housing loans funded or monitored by the department.

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

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

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

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

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

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

(h) It is the intent of the Legislature in enacting this chapter to provide to the department the flexibility necessary to maintain the quality of the affordable rental housing units for which the state has already made a significant public investment. The department may implement this chapter through guidelines that shall not be subject to Chapter 2.5 (commencing with Section 11340) of Part 1 of Title 2 of the Government Code. These guidelines shall be developed through the following process:

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

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

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

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

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