



Two Bills Amend Capital Access Loan Program

By [Keith Paul Bishop](#) on October 14, 2011

With political controversy swirling around the federal government's energy loan guaranty program, many may not realize that California has its own loan guaranty program. The [California Pollution Control Financing Authority](#) administers the California program. If you've never heard of the CPCFA, it happens to be a political subdivision of the State of California that consists of the State [Treasurer](#), [Controller](#), and the [Director of the Department of Finance](#) (or a designated deputy). Health & Safety Code § 44515.

Despite Its Name, The Capital Access Loan Program Doesn't Make Loans

The CPCFA administers the Capital Access Loan Program. The CalCAP program does not lend money directly. Rather, it provides loan insurance to lenders to small businesses. [Here](#) is a list of participating lending institutions. In the first six months of this year, 593 loans were enrolled in the program, with enrolled loans totalling \$55.5 million.

Bills In Conflict

This year, two different Assemblymembers (V. Manuel Perez and Ben Hueso) introduced bills (AB [901](#) and [981](#), respectively) to amend the statutes governing the CalCAP program. Governor Jerry Brown signed both bills.

Chaptering Out And Contingent Effect

When two bills are enacted in the same session amending the same statute, what happens? In the absence of any express provision to the contrary in the statute which is enacted last, it is conclusively presumed that the statute which is enacted last is intended to prevail over statutes which are enacted earlier at the same session. But how do you determine which bill was enacted last? Strangely, the order of enactment isn't necessarily determined by when the legislature acted or the Governor signed the bills. After the Governor signs a bill, he must deliver it to the [Secretary of State](#) who is responsible for assigning a chapter number to each bill. Government Code § 9510. The Secretary of State assigns chapter numbers to bills in the order that she receives them. In the absence of any express provision to the contrary in the statute which has a higher chapter number, it is presumed that a statute that has a higher chapter number was intended by the legislature to prevail over a

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statute which is enacted at the same session but has a lower chapter number. Government Code § 9605. This is known as “chaptering out”. AB 981 has a higher chapter number (484) than AB 901 (483).

It turns out that AB 981 took into account the possibility that AB 901 would also be enacted as well. Thus, Section 4 of AB 981 in effect provides that in the event both bills become law, Section 1 of AB 981 (amending Health & Safety Code § 44559.1) will not be operative but Section 1.5 of AB 981 (also amending § 44559.1) will be. This is known as “contingent effect”.

Confused? Here is my table showing which bill effectively amended which statutes:

AB 901	AB 981
§ 44559.1 (Chaptered Out)	§ 44559.1 (Section 1.5 of the Bill)
§ 44559.2	
	§ 44559.3
	§ 44559.4
§ 44559.6	

Microbusiness Lenders

AB 901 also amended Section 13997.2 of the Government Code to define “microbusiness lender” as follows:

[A] nonprofit or nonbank lender that serves very small businesses in low- and moderate-income communities that experience barriers in accessing capital. These businesses are often owned by minorities, immigrants, women, and persons with disabilities. Microbusiness lenders generally provide loans under fifty thousand (\$50,000) and offer business technical assistance, both preloan and postloan.

AB 981 expands the definition of “financial institution” to include microbusiness lenders as defined in Section 13997.2 that meet the standards established by the CPCFA. One issue for prospective microbusiness lenders may be the need to obtain a lenders license under the California Finance Lenders Law.

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