

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 390

Introduced by Senator Kehoe

February 26, 2009

An act to amend Sections 42023.1, 42023.2, ~~42023.4~~ 42023.3, 42023.5, and 42023.6 of, and to ~~repeal Section 42023.3~~ *amend, add, and repeal Section 42023.4* of, the Public Resources Code, relating to solid waste, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 390, as amended, Kehoe. Solid waste: recycling market development.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated waste management program. The act creates the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account and continuously appropriates the funds deposited in the subaccount to the board for making loans for the purposes of the Recycling Market Development Revolving Loan Program (program). Existing law makes the provisions regarding the loan program, the creation of the subaccount, and expenditures therefrom inoperative on July 1, 2011, and repeals them as of January 1, 2012, and provides for disposition of funds remaining after inoperation and repeal.

This bill would ~~delete the inoperative and repeal dates, thereby indefinitely continuing~~ *extend* the program and the continuous appropriation *to July 1, 2021 and the repeal date to January 1, 2022,* and thereby making an appropriation, ~~and would delete the provisions providing for disposition of funds remaining after inoperation and repeal.~~

(2) The act requires, upon authorization by the Legislature in the annual Budget Act, the Controller to transfer a sum that does not exceed \$5,000,000 from the account to the subaccount as necessary to meet anticipated loan demand under the program. The act provides that the transferred amount is a loan to the subaccount, repayable with interest to the account.

This bill would delete the limitation of the transfer to \$5,000,000 and the requirement that the amount transferred be a loan to the subaccount, repayable with interest.

(3) The act requires the board under the program to finance by a recycling market development loan not more than $\frac{3}{4}$ of the cost of each project, or not more than \$2,000,000 for each project, whichever is less.

This bill, ~~instead,~~ would authorize the board, *until July 1, 2016, and if the money in the subaccount is in excess of \$5,000,000,* to ~~expend not more than 50% of the amount available in the subaccount at the beginning of each fiscal year for~~ *provide* loans that do not exceed the lesser of ~~\$2,000,000~~ \$5,000,000 or $\frac{3}{4}$ of the cost of the project ~~to be funded by the loan, and to expend not more than 50% of the amount available in the subaccount at the beginning of each fiscal year for loans that are greater than \$2,000,000, but do not exceed \$5,000,000, and do not exceed $\frac{3}{4}$ of the cost of the project to be funded by the loan.~~

(4) *The act requires the board to give highest priority for funding to certain projects and to approve only those loan applications demonstrating loan repayment ability. This bill would delete this requirement.*

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 42023.1 of the Public Resources Code
- 2 is amended to read:
- 3 42023.1. (a) The Recycling Market Development Revolving
- 4 Loan Subaccount is hereby created in the account for the purpose
- 5 of providing loans for purposes of the Recycling Market
- 6 Development Revolving Loan Program established pursuant to
- 7 this article.
- 8 (b) Notwithstanding Section 13340 of the Government Code,
- 9 the funds deposited in the subaccount are hereby continuously

1 appropriated to the board without regard to fiscal year for making
2 loans pursuant to this article.

3 (c) The board may expend interest earnings on funds in the
4 subaccount for administrative expenses incurred in carrying out
5 the Recycling Market Development Revolving Loan Program,
6 upon the appropriation of funds in the subaccount for that purpose
7 in the annual Budget Act.

8 (d) The money from loan repayments and fees, including, but
9 not limited to, principal and interest repayments, fees and points,
10 recovery of collection costs, income earned on an asset recovered
11 pursuant to a loan default, and funds collected through foreclosure
12 actions, shall be deposited in the subaccount.

13 (e) All interest accruing on interest payments from loan
14 applicants shall be deposited in the subaccount.

15 (f) The board may expend the money in the subaccount to make
16 loans to local governing bodies, private businesses, and nonprofit
17 entities within recycling market development zones, or in areas
18 outside zones where partnerships exist with other public entities
19 to assist local jurisdictions to comply with Section 40051.

20 (g) The board shall establish and collect fees for applications
21 for loans authorized by this section. The application fee shall be
22 set at a level that is sufficient to fund the board's cost of processing
23 applications for loans. In addition, the board shall establish a
24 schedule of fees, or points, for loans that are entered into by the
25 board, to fund the board's administration of the revolving loan
26 program.

27 (h) The board may expend money in the subaccount for the
28 administration of the Recycling Market Development Revolving
29 Loan Program, upon the appropriation of funds in the subaccount
30 for that purpose in the annual Budget Act. In addition, the board
31 may expend money in the account to administer the revolving loan
32 program, upon the appropriation of funds in the subaccount for
33 that purpose in the annual Budget Act. However, funding for the
34 administration of the revolving loan program from the account
35 shall be provided only if there are not sufficient funds in the
36 subaccount to fully fund the administration of the program.

37 (i) The board, pursuant to subdivision (a) of Section 47901, may
38 set aside funds for the purposes of paying costs necessary to protect
39 the state's position as a lender-creditor. These costs shall be broadly
40 construed to include, but not be limited to, foreclosure expenses,

1 auction fees, title searches, appraisals, real estate brokerage fees,
2 attorney fees, mortgage payments, insurance payments, utility
3 costs, repair costs, removal and storage costs for repossessed
4 equipment and inventory, and additional expenditures to purchase
5 a senior lien in foreclosure or bankruptcy proceedings.

6 *(j) (1) Except as provided in paragraph (2), this section shall*
7 *become inoperative on July 1, 2021, and as of January 1, 2022,*
8 *is repealed, unless a later enacted statute, which becomes effective*
9 *on or before January 1, 2022, deletes or extends the date on which*
10 *it becomes inoperative and is repealed.*

11 *(2) The repeal of this section pursuant to paragraph (1) shall*
12 *not extinguish any loan obligation or the authority of the state to*
13 *pursue appropriate actions for the collection of a loan.*

14 SEC. 2. Section 42023.2 of the Public Resources Code is
15 amended to read:

16 42023.2. (a) Upon authorization by the Legislature in the
17 annual Budget Act, the Controller shall transfer a sum, as available,
18 from the account to the subaccount as necessary to meet anticipated
19 loan demand under the program.

20 *(b) (1) Except as provided in paragraph (2), this section shall*
21 *become inoperative on July 1, 2021, and as of January 1, 2022,*
22 *is repealed, unless a later enacted statute, which becomes effective*
23 *on or before January 1, 2022, deletes or extends the date on which*
24 *it becomes inoperative and is repealed.*

25 *(2) The repeal of this section pursuant to paragraph (1) shall*
26 *not extinguish any loan obligation or the authority of the state to*
27 *pursue appropriate actions for the collection of a loan.*

28 ~~SEC. 3. Section 42023.3 of the Public Resources Code is~~
29 ~~repealed.~~

30 *SEC. 3. Section 42023.3 of the Public Resources Code is*
31 *amended to read:*

32 42023.3. (a) All money remaining in the subaccount on July
33 1, ~~2011~~, 2021, and all money received as repayment and interest
34 on loans shall, as of July 1, ~~2011~~, 2021, be transferred to the
35 account and any money due and outstanding on loans as of July
36 1, ~~2011~~, 2021, shall be repaid to the board and deposited by the
37 board in the account until paid in full, except that, upon
38 authorization by the Legislature in the annual Budget Act, interest
39 earnings may be expended for administrative costs associated with
40 the collection of outstanding loan accounts.

1 (b) (1) Except as provided in paragraph (2), this section shall
2 become inoperative on July 1, ~~2011~~, 2021, and as of January 1,
3 ~~2012~~, 2022, is repealed, unless a later enacted statute, which
4 becomes effective on or before January 1, ~~2012~~, 2022, deletes or
5 extends the dates on which it becomes inoperative and is repealed.

6 (2) The repeal of this section pursuant to paragraph (1) shall
7 not extinguish any loan obligation or the authority of the state to
8 pursue appropriate actions for the collection of a loan.

9 SEC. 4. Section 42023.4 of the Public Resources Code is
10 amended to read:

11 42023.4. (a) A loan made pursuant to Section 42023.1 shall
12 be subject to all of the following requirements:

13 (1) The terms of an approved loan shall be specified in a loan
14 agreement between the borrower and the board. The loan agreement
15 shall include a requirement that the failure to comply with the
16 agreement shall result in any remaining unpaid amount of the loan,
17 with accrued interest, being immediately due and payable.
18 Notwithstanding any term of the agreement, a recipient of a loan
19 that the board approves shall repay the principal amount, plus
20 interest on the basis of the rate of return for money in the Surplus
21 Money Investment Fund at the time of the loan commitment. ~~All~~
22 *Except as provided in subdivision (a) of Section 42032.3, all* money
23 received as repayment and interest on loans made pursuant to this
24 section shall be deposited in the subaccount.

25 (2) The term of a loan made pursuant to this section shall be
26 not more than 10 years when collateralized by assets other than
27 real estate, or not more than 15 years when partially or wholly
28 collateralized by real estate.

29 ~~(3) The board shall approve only those loan applications that~~
30 ~~demonstrate the applicant's ability to repay the loan. The highest~~
31 ~~priority for funding shall be given to projects that demonstrate that~~
32 ~~the project will increase market demand for recycling the project's~~
33 ~~type of postconsumer waste material.~~

34 ~~(b) (1) The board may expend not more than 50 percent of the~~
35 ~~amount available in the subaccount as of the beginning of each~~
36 ~~fiscal year for loans that do not exceed the lesser of two million~~
37 ~~dollars (\$2,000,000) or three-fourths of the cost of the project to~~
38 ~~be funded by the loan.~~

39 ~~(2) The board may expend not more than 50 percent of the~~
40 ~~amount available in the subaccount as of the beginning of each~~

1 fiscal year for loans that are greater than two million dollars
2 (\$2,000,000), but do not exceed five million dollars (\$5,000,000);
3 and do not exceed three-fourths of the cost of the project to be
4 funded by the loan.

5 ~~(3) A loan made pursuant to paragraph (1) or (2) shall promote~~
6 ~~market demand for priority materials, as determined by the board.~~

7 (3) (A) *Except as provided in subparagraph (B), the board shall*
8 *not finance more than three-fourths of the cost of a project or two*
9 *million dollars (\$2,000,000), whichever is less.*

10 (B) *Notwithstanding subparagraph (A), if there is money in the*
11 *subaccount in excess of five million dollars (\$5,000,000), the board*
12 *may provide loans in an amount greater than two million dollars*
13 *(\$2,000,000), but not to exceed five million dollars (\$5,000,000)*
14 *and in an amount not to exceed three-fourths of the project cost.*
15 *The loan amount in excess of two million dollars (\$2,000,000)*
16 *shall be funded by the excess amount in the subaccount.*

17 (e)

18 (b) The Department of Finance may audit the expenditure of
19 the proceeds of a loan made pursuant to Section 42023.1 and this
20 section.

21 (c) *This section shall become inoperative on July 1, 2016, and*
22 *as of January 1, 2017, is repealed, unless a later enacted statute,*
23 *which becomes effective on or before January 1, 2017, deletes or*
24 *extends the date on which it becomes inoperative and is repealed.*

25 SEC. 5. Section 42023.4 is added to the Public Resources Code,
26 to read:

27 42023.4. (a) A loan made pursuant to Section 42023.1 shall
28 be subject to all of the following requirements:

29 (1) *The terms of an approved loan shall be specified in a loan*
30 *agreement between the borrower and the board. The loan*
31 *agreement shall include a requirement that the failure to comply*
32 *with the agreement shall result in any remaining unpaid amount*
33 *of the loan, with accrued interest, being immediately due and*
34 *payable. Notwithstanding any term of the agreement, a recipient*
35 *of a loan that the board approves shall repay the principal amount,*
36 *plus interest on the basis of the rate of return for money in the*
37 *Surplus Money Investment Fund at the time of the loan*
38 *commitment. Except as provided in subdivision (a) of Section*
39 *42032.3, all money received as repayment and interest on loans*
40 *made pursuant to this section shall be deposited in the subaccount.*

1 (2) *The term of a loan made pursuant to this section shall be*
2 *not more than 10 years when collateralized by assets other than*
3 *real estate, or not more than 15 years when partially or wholly*
4 *collateralized by real estate.*

5 (3) *The board shall not finance more than three-fourths of the*
6 *cost of a project or two million dollars (\$2,000,000), whichever*
7 *is less.*

8 (b) *The Department of Finance may audit the expenditure of*
9 *the proceeds of a loan made pursuant to Section 42023.1 and this*
10 *section.*

11 (c) *This section shall become operative on July 1, 2016.*

12 (d) (1) *Except as provided in paragraph (2), this section shall*
13 *become inoperative on July 1, 2021, and as of January 1, 2022,*
14 *is repealed, unless a later enacted statute, which becomes effective*
15 *on or before January 1, 2022, deletes or extends the date on which*
16 *it becomes inoperative and is repealed.*

17 (2) *The repeal of this section pursuant to paragraph (1) shall*
18 *not extinguish any loan obligation or the authority of the state to*
19 *pursue appropriate actions for the collection of a loan.*

20 ~~SEC. 5:~~

21 *SEC. 6.* Section 42023.5 of the Public Resources Code is
22 amended to read:

23 42023.5. (a) *The board shall, as part of the annual report to*
24 *the Legislature, pursuant to Section 40507, include a report on the*
25 *performance of the Recycling Market Development Revolving*
26 *Loan Program, including the number and size of loans made,*
27 *characteristics of loan recipients, projected loan demand, and the*
28 *cost of administering the program.*

29 (b) *This section shall become inoperative on July 1, 2021, and*
30 *as of January 1, 2022, is repealed, unless a later enacted statute,*
31 *which becomes effective on or before January 1, 2022, deletes or*
32 *extends the date on which it becomes inoperative and is repealed.*

33 ~~SEC. 6:~~

34 *SEC. 7.* Section 42023.6 of the Public Resources Code is
35 amended to read:

36 42023.6. (a) *The board shall encourage applicants to seek*
37 *participation from private financial institutions or other public*
38 *agencies. For purposes of enabling the board and local agencies*
39 *to comply with Sections 40051 and 41780, the board may*
40 *participate, in an amount not to exceed five hundred thousand*

1 dollars (\$500,000), in the Capital Access Loan Program as provided
2 in Article 8 (commencing with Section 44559) of Chapter 1 of
3 Division 27 of the Health and Safety Code.

4 (b) For purposes of participating in the Capital Access Loan
5 Program, as specified in subdivision (a), or in a program that
6 leverages subaccount funds, the board may operate both inside
7 and outside the recycling market development zones.

8 (c) (1) *Except as provided in paragraph (2), this section shall*
9 *become inoperative on July 1, 2021, and as of January 1, 2022,*
10 *is repealed, unless a later enacted statute, which becomes effective*
11 *on or before January 1, 2022, deletes or extends the date on which*
12 *it becomes inoperative and is repealed.*

13 (2) *The repeal of this section pursuant to paragraph (1) shall*
14 *not extinguish any loan obligation or the authority of the state to*
15 *pursue appropriate actions for the collection of a loan.*