

AMENDED IN SENATE APRIL 22, 2009

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, 42023.3, 42023.5, and 42023.6 of, and to 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 *prohibit the board from funding a loan under the program until it determines that the applicant has obtained all applicable federal, state, and local permits and would extend the*

program and the continuous appropriation to July 1, 2021, and the repeal date to January 1, 2022, thereby making an appropriation.

(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 would authorize the board, until July 1, 2016, and if the money in the subaccount is in excess of \$5,000,000, to provide loans that do not exceed the lesser of \$5,000,000 or $\frac{3}{4}$ of the cost of the project.

(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.~~

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
- 10 appropriated to the board without regard to fiscal year for making
- 11 loans pursuant to this article.

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

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

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

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

18 (g) *The board shall not fund a loan until it determines that the*
19 *applicant has obtained all applicable federal, state, and local*
20 *permits.*

21 ~~(g)~~

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

29 ~~(h)~~

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

40 ~~(i)~~

1 (j) The board, pursuant to subdivision (a) of Section 47901, may
2 set aside funds for the purposes of paying costs necessary to protect
3 the state's position as a lender-creditor. These costs shall be broadly
4 construed to include, but not be limited to, foreclosure expenses,
5 auction fees, title searches, appraisals, real estate brokerage fees,
6 attorney fees, mortgage payments, insurance payments, utility
7 costs, repair costs, removal and storage costs for repossessed
8 equipment and inventory, and additional expenditures to purchase
9 a senior lien in foreclosure or bankruptcy proceedings.

10 (j)

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

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

19 SEC. 2. Section 42023.2 of the Public Resources Code is
20 amended to read:

21 42023.2. (a) Upon authorization by the Legislature in the
22 annual Budget Act, the Controller shall transfer a sum, as available,
23 from the account to the subaccount as necessary to meet anticipated
24 loan demand under the program.

25 (b) (1) Except as provided in paragraph (2), this section shall
26 become inoperative on July 1, 2021, and as of January 1, 2022, is
27 repealed, unless a later enacted statute, which becomes effective
28 on or before January 1, 2022, deletes or extends the date on which
29 it becomes inoperative and is repealed.

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

33 SEC. 3. Section 42023.3 of the Public Resources Code is
34 amended to read:

35 42023.3. (a) All money remaining in the subaccount on July
36 1, 2021, and all money received as repayment and interest on loans
37 shall, as of July 1, 2021, be transferred to the account and any
38 money due and outstanding on loans as of July 1, 2021, shall be
39 repaid to the board and deposited by the board in the account until
40 paid in full, except that, upon authorization by the Legislature in

1 the annual Budget Act, interest earnings may be expended for
2 administrative costs associated with the collection of outstanding
3 loan accounts.

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

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

12 SEC. 4. Section 42023.4 of the Public Resources Code is
13 amended to read:

14 42023.4. (a) A loan made pursuant to Section 42023.1 shall
15 be subject to all of the following requirements:

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

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

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

35 (B) Notwithstanding subparagraph (A), if there is money in the
36 subaccount in excess of five million dollars (\$5,000,000), the board
37 may provide loans in an amount greater than two million dollars
38 (\$2,000,000), but not to exceed five million dollars (\$5,000,000)
39 and in an amount not to exceed three-fourths of the project cost.

1 The loan amount in excess of two million dollars (\$2,000,000)
2 shall be funded by the excess amount in the subaccount.

3 (b) The Department of Finance may audit the expenditure of
4 the proceeds of a loan made pursuant to Section 42023.1 and this
5 section.

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

10 SEC. 5. Section 42023.4 is added to the Public Resources Code,
11 to read:

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

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

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

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

33 (b) The Department of Finance may audit the expenditure of
34 the proceeds of a loan made pursuant to Section 42023.1 and this
35 section.

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

37 (d) (1) Except as provided in paragraph (2), this section shall
38 become inoperative on July 1, 2021, and as of January 1, 2022, is
39 repealed, unless a later enacted statute, which becomes effective

1 on or before January 1, 2022, deletes or extends the date on which
2 it becomes inoperative and is repealed.

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

6 SEC. 6. Section 42023.5 of the Public Resources Code is
7 amended to read:

8 42023.5. (a) The board shall, as part of the annual report to
9 the Legislature, pursuant to Section 40507, include a report on the
10 performance of the Recycling Market Development Revolving
11 Loan Program, including the number and size of loans made,
12 characteristics of loan recipients, projected loan demand, and the
13 cost of administering the program.

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

18 SEC. 7. Section 42023.6 of the Public Resources Code is
19 amended to read:

20 42023.6. (a) The board shall encourage applicants to seek
21 participation from private financial institutions or other public
22 agencies. For purposes of enabling the board and local agencies
23 to comply with Sections 40051 and 41780, the board may
24 participate, in an amount not to exceed five hundred thousand
25 dollars (\$500,000), in the Capital Access Loan Program as provided
26 in Article 8 (commencing with Section 44559) of Chapter 1 of
27 Division 27 of the Health and Safety Code.

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

32 (c) (1) Except as provided in paragraph (2), this section shall
33 become inoperative on July 1, 2021, and as of January 1, 2022, is
34 repealed, unless a later enacted statute, which becomes effective
35 on or before January 1, 2022, deletes or extends the date on which
36 it becomes inoperative and is repealed.

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

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