

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE MAY 5, 2009

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 *significantly, as determined by the board*, 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. The bill would retroactively delete the requirement that the amount transferred from the account to the subaccount be repaid 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.

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.

1 (b) Notwithstanding Section 13340 of the Government Code,
2 the funds deposited in the subaccount are hereby continuously
3 appropriated to the board without regard to fiscal year for making
4 loans pursuant to this article.

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

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

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

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

22 (g) The board shall not fund a loan until it determines that the
23 applicant has obtained all *significantly* applicable federal, state,
24 and local permits. *The board shall determine which applicable*
25 *federal, state, and local permits are significant.*

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

33 (i) The board may expend money in the subaccount for the
34 administration of the Recycling Market Development Revolving
35 Loan Program, upon the appropriation of funds in the subaccount
36 for that purpose in the annual Budget Act. In addition, the board
37 may expend money in the account to administer the revolving loan
38 program, upon the appropriation of funds in the subaccount for
39 that purpose in the annual Budget Act. However, funding for the
40 administration of the revolving loan program from the account

1 shall be provided only if there are not sufficient funds in the
2 subaccount to fully fund the administration of the program.

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

12 (k) (1) Except as provided in paragraph (2), this section shall
13 become inoperative on July 1, 2021, and as of January 1, 2022, is
14 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. 2. Section 42023.2 of the Public Resources Code is
21 amended to read:

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

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

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

34 (B) The board shall not be obligated to pay interest on the
35 amount appropriated from the account to the subaccount pursuant
36 to subdivision (a). This subparagraph shall apply retroactively
37 from January 1, 1992.

38 SEC. 3. Section 42023.3 of the Public Resources Code is
39 amended to read:

1 42023.3. (a) All money remaining in the subaccount on July
2 1, 2021, and all money received as repayment and interest on loans
3 shall, as of July 1, 2021, be transferred to the account and any
4 money due and outstanding on loans as of July 1, 2021, shall be
5 repaid to the board and deposited by the board in the account until
6 paid in full, except that, upon authorization by the Legislature in
7 the annual Budget Act, interest earnings may be expended for
8 administrative costs associated with the collection of outstanding
9 loan accounts.

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

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

18 SEC. 4. Section 42023.4 of the Public Resources Code is
19 amended to read:

20 42023.4. (a) A loan made pursuant to Section 42023.1 shall
21 be subject to all of the following requirements:

22 (1) The terms of an approved loan shall be specified in a loan
23 agreement between the borrower and the board. The loan agreement
24 shall include a requirement that the failure to comply with the
25 agreement shall result in any remaining unpaid amount of the loan,
26 with accrued interest, being immediately due and payable.
27 Notwithstanding any term of the agreement, a recipient of a loan
28 that the board approves shall repay the principal amount, plus
29 interest on the basis of the rate of return for money in the Surplus
30 Money Investment Fund at the time of the loan commitment.
31 Except as provided in subdivision (a) of Section 42023.3, all money
32 received as repayment and interest on loans made pursuant to this
33 section shall be deposited in the subaccount.

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

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

1 (B) Notwithstanding subparagraph (A), if the board determines
2 that there is money in the subaccount in excess of five million
3 dollars (\$5,000,000), then the board may finance a loan or loans
4 in an amount that is greater than two million dollars (\$2,000,000),
5 but does not exceed five million dollars (\$5,000,000) and does not
6 exceed three-fourths of the project cost from that excess amount.

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

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

14 SEC. 5. Section 42023.4 is added to the Public Resources Code,
15 to read:

16 42023.4. (a) A loan made pursuant to Section 42023.1 shall
17 be subject to all of the following requirements:

18 (1) The terms of an approved loan shall be specified in a loan
19 agreement between the borrower and the board. The loan agreement
20 shall include a requirement that the failure to comply with the
21 agreement shall result in any remaining unpaid amount of the loan,
22 with accrued interest, being immediately due and payable.
23 Notwithstanding any term of the agreement, a recipient of a loan
24 that the board approves shall repay the principal amount, plus
25 interest on the basis of the rate of return for money in the Surplus
26 Money Investment Fund at the time of the loan commitment.
27 Except as provided in subdivision (a) of Section 42023.3, all money
28 received as repayment and interest on loans made pursuant to this
29 section shall be deposited in the subaccount.

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

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

37 (b) The Department of Finance may audit the expenditure of
38 the proceeds of a loan made pursuant to Section 42023.1 and this
39 section.

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

1 (d) (1) Except as provided in paragraph (2), this section shall
2 become inoperative on July 1, 2021, and as of January 1, 2022, is
3 repealed, unless a later enacted statute, which becomes effective
4 on or before January 1, 2022, deletes or extends the date on which
5 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. 6. Section 42023.5 of the Public Resources Code is
10 amended to read:

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

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

21 SEC. 7. Section 42023.6 of the Public Resources Code is
22 amended to read:

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

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

35 (c) (1) Except as provided in paragraph (2), this section shall
36 become inoperative on July 1, 2021, and as of January 1, 2022, is
37 repealed, unless a later enacted statute, which becomes effective
38 on or before January 1, 2022, deletes or extends the date on which
39 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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