

AMENDED IN SENATE JANUARY 25, 2010

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~~ *to amend, add, and repeal Section 42023.4 of*, and to add Section 40118 to, 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, Department of Resources Recycling and Recovery~~ 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~~ *department* 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 *define the term “department” for purposes of the act.*
~~prohibit~~

~~The bill would prohibit the board department from funding a loan under the program until it determines that the applicant has obtained all significantly significant, as determined by the board department, 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 department~~ 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 department~~, 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 40118 is added to the Public Resources
2 Code, to read:

3 40118. “Department” means the Department of Resources
4 Recycling and Recovery.

5 SECTION 1.

6 SEC. 2. Section 42023.1 of the Public Resources Code is
7 amended to read:

8 42023.1. (a) The Recycling Market Development Revolving
9 Loan Subaccount is hereby created in the account for the purpose
10 of providing loans for purposes of the Recycling Market
11 Development Revolving Loan Program established pursuant to
12 this article.

13 (b) Notwithstanding Section 13340 of the Government Code,
14 the funds deposited in the subaccount are hereby continuously
15 appropriated to the ~~board~~ department without regard to fiscal year
16 for making loans pursuant to this article.

17 (c) The ~~board~~ department may expend interest earnings on funds
18 in the subaccount for administrative expenses incurred in carrying
19 out the Recycling Market Development Revolving Loan Program,
20 upon the appropriation of funds in the subaccount for that purpose
21 in the annual Budget Act.

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

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

29 (f) The ~~board~~ department may expend the money in the
30 subaccount to make loans to local governing bodies, private
31 businesses, and nonprofit entities within recycling market
32 development zones, or in areas outside zones where partnerships
33 exist with other public entities to assist local jurisdictions to comply
34 with Section 40051.

35 (g) The ~~board~~ department shall not fund a loan until it
36 determines that the applicant has obtained all ~~significantly~~
37 *significant* applicable federal, state, and local permits. The ~~board~~

1 *department* shall determine which applicable federal, state, and
2 local permits are significant.

3 (h) ~~The board~~ *department* shall establish and collect fees for
4 applications for loans authorized by this section. The application
5 fee shall be set at a level that is sufficient to fund the ~~board's~~
6 *department's* cost of processing applications for loans. In addition,
7 ~~the board~~ *department* shall establish a schedule of fees, or points,
8 for loans that are entered into by the ~~board~~, to fund the ~~board's~~
9 *department* administration of the revolving loan program.

10 (i) ~~The board~~ *department* may expend money in the subaccount
11 for the administration of the Recycling Market Development
12 Revolving Loan Program, upon the appropriation of funds in the
13 subaccount for that purpose in the annual Budget Act. In addition,
14 ~~the board~~ *department* may expend money in the account to
15 administer the revolving loan program, upon the appropriation of
16 funds in the subaccount for that purpose in the annual Budget Act.
17 However, funding for the administration of the revolving loan
18 program from the account shall be provided only if there are not
19 sufficient funds in the subaccount to fully fund the administration
20 of the program.

21 (j) ~~The board~~ *department*, pursuant to subdivision (a) of Section
22 47901, may set aside funds for the purposes of paying costs
23 necessary to protect the state's position as a lender-creditor. These
24 costs shall be broadly construed to include, but not be limited to,
25 foreclosure expenses, auction fees, title searches, appraisals, real
26 estate brokerage fees, attorney fees, mortgage payments, insurance
27 payments, utility costs, repair costs, removal and storage costs for
28 repossessed equipment and inventory, and additional expenditures
29 to purchase a senior lien in foreclosure or bankruptcy proceedings.

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

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

38 ~~SEC. 2.~~

39 *SEC. 3.* Section 42023.2 of the Public Resources Code is
40 amended to read:

1 42023.2. (a) Upon authorization by the Legislature in the
2 annual Budget Act, the Controller shall transfer a sum, as available,
3 from the account to the subaccount as necessary to meet anticipated
4 loan demand under the program.

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

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

13 (B) ~~The board department~~ shall not be obligated to pay interest
14 on the amount appropriated from the account to the subaccount
15 pursuant to subdivision (a). This subparagraph shall apply
16 retroactively from January 1, 1992.

17 ~~SEC. 3.~~

18 *SEC. 4.* Section 42023.3 of the Public Resources Code is
19 amended to read:

20 42023.3. (a) All money remaining in the subaccount on July
21 1, 2021, and all money received as repayment and interest on loans
22 shall, as of July 1, 2021, be transferred to the account and any
23 money due and outstanding on loans as of July 1, 2021, shall be
24 repaid to the ~~board and deposited by the board department and~~
25 *deposited by the department* in the account until paid in full, except
26 that, upon authorization by the Legislature in the annual Budget
27 Act, interest earnings may be expended for administrative costs
28 associated with the collection of outstanding loan accounts.

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

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

37 ~~SEC. 4.~~

38 *SEC. 5.* Section 42023.4 of the Public Resources Code is
39 amended to read:

1 42023.4. (a) A loan made pursuant to Section 42023.1 shall
2 be subject to all of the following requirements:

3 (1) The terms of an approved loan shall be specified in a loan
4 agreement between the borrower and the ~~board~~ department. The
5 loan agreement shall include a requirement that the failure to
6 comply with the agreement shall result in any remaining unpaid
7 amount of the loan, with accrued interest, being immediately due
8 and payable. Notwithstanding any term of the agreement, a
9 recipient of a loan that the ~~board~~ department approves shall repay
10 the principal amount, plus interest on the basis of the rate of return
11 for money in the Surplus Money Investment Fund at the time of
12 the loan commitment. Except as provided in subdivision (a) of
13 Section 42023.3, all money received as repayment and interest on
14 loans made pursuant to this section shall be deposited in the
15 subaccount.

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

20 (3) *The department shall approve only those loan applications*
21 *that demonstrate the applicant's ability to repay the loan. The*
22 *highest priority for funding shall be given to projects that*
23 *demonstrate that the project will increase market demand for*
24 *recycling the project's type of postconsumer waste material.*

25 (3)

26 (4) (A) Except as provided in subparagraph (B), the ~~board~~
27 department shall not finance more than three-fourths of the cost
28 of a project or two million dollars (\$2,000,000), whichever is less.

29 (B) Notwithstanding subparagraph (A), if the ~~board~~ department
30 determines that there is money in the subaccount in excess of five
31 million dollars (\$5,000,000), then the ~~board~~ department may
32 finance a loan or loans in an amount that is greater than two million
33 dollars (\$2,000,000), but does not exceed five million dollars
34 (\$5,000,000) and does not exceed three-fourths of the project cost,
35 from that excess amount.

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

39 (c) This section shall become inoperative on July 1, 2016, and
40 as of January 1, 2017, is repealed, unless a later enacted statute,

1 which becomes effective on or before January 1, 2017, deletes or
2 extends the date on which it becomes inoperative and is repealed.

3 ~~SEC. 5.~~

4 *SEC. 6.* Section 42023.4 is added to the Public Resources Code,
5 to read:

6 42023.4. (a) A loan made pursuant to Section 42023.1 shall
7 be subject to all of the following requirements:

8 (1) The terms of an approved loan shall be specified in a loan
9 agreement between the borrower and the ~~board~~ department. The
10 loan agreement shall include a requirement that the failure to
11 comply with the agreement shall result in any remaining unpaid
12 amount of the loan, with accrued interest, being immediately due
13 and payable. Notwithstanding any term of the agreement, a
14 recipient of a loan that the ~~board~~ department approves shall repay
15 the principal amount, plus interest on the basis of the rate of return
16 for money in the Surplus Money Investment Fund at the time of
17 the loan commitment. Except as provided in subdivision (a) of
18 Section 42023.3, all money received as repayment and interest on
19 loans made pursuant to this section shall be deposited in the
20 subaccount.

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

25 (3) *The department shall approve only those loan applications*
26 *that demonstrate the applicant's ability to repay the loan. The*
27 *highest priority for funding shall be given to projects that*
28 *demonstrate that the project will increase market demand for*
29 *recycling the project's type of postconsumer waste material.*

30 ~~(3) The board~~

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

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

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

38 (d) (1) Except as provided in paragraph (2), this section shall
39 become inoperative on July 1, 2021, and as of January 1, 2022, is
40 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.~~

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

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

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

19 ~~SEC. 7.~~

20 *SEC. 8.* Section 42023.6 of the Public Resources Code is
21 amended to read:

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

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

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