

AMENDED IN ASSEMBLY APRIL 26, 2010

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, ~~42023.4~~, 42023.5, and 42023.6 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 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 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.

The bill would prohibit the department from funding a loan under the program until it determines that the applicant has obtained all significant, as determined by the 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 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 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.~~

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

1 42023.1. (a) The Recycling Market Development Revolving
2 Loan Subaccount is hereby created in the account for the purpose
3 of providing loans for purposes of the Recycling Market
4 Development Revolving Loan Program established pursuant to
5 this article.

6 (b) Notwithstanding Section 13340 of the Government Code,
7 the funds deposited in the subaccount are hereby continuously
8 appropriated to the department without regard to fiscal year for
9 making loans pursuant to this article.

10 (c) The department may expend interest earnings on funds in
11 the subaccount for administrative expenses incurred in carrying
12 out the Recycling Market Development Revolving Loan Program,
13 upon the appropriation of funds in the subaccount for that purpose
14 in the annual Budget Act.

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

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

22 (f) The department may expend the money in the subaccount
23 to make loans to local governing bodies, private businesses, and
24 nonprofit entities within recycling market development zones, or
25 in areas outside zones where partnerships exist with other public
26 entities to assist local jurisdictions to comply with Section 40051.

27 (g) The department shall not fund a loan until it determines that
28 the applicant has obtained all significant applicable federal, state,
29 and local permits. The department shall determine which applicable
30 federal, state, and local permits are significant.

31 (h) The department shall establish and collect fees for
32 applications for loans authorized by this section. The application
33 fee shall be set at a level that is sufficient to fund the department's
34 cost of processing applications for loans. In addition, the
35 department shall establish a schedule of fees, or points, for loans
36 that are entered into by the department, *to fund the department's*
37 administration of the revolving loan program.

38 (i) The department may expend money in the subaccount for
39 the administration of the Recycling Market Development
40 Revolving Loan Program, upon the appropriation of funds in the

1 subaccount for that purpose in the annual Budget Act. In addition,
2 the department may expend money in the account to administer
3 the revolving loan program, upon the appropriation of funds in the
4 subaccount for that purpose in the annual Budget Act. However,
5 funding for the administration of the revolving loan program from
6 the account shall be provided only if there are not sufficient funds
7 in the subaccount to fully fund the administration of the program.

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

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

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

25 SEC. 3. Section 42023.2 of the Public Resources Code is
26 amended to read:

27 42023.2. (a) Upon authorization by the Legislature in the
28 annual Budget Act, the Controller shall transfer a sum, as available,
29 from the account to the subaccount as necessary to meet anticipated
30 loan demand under the program.

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

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

39 (B) The department shall not be obligated to pay interest on the
40 amount appropriated from the account to the subaccount pursuant

1 to subdivision (a). This subparagraph shall apply retroactively
2 from January 1, 1992.

3 SEC. 4. Section 42023.3 of the Public Resources Code is
4 amended to read:

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

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

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

22 SEC. 5. Section 42023.4 of the Public Resources Code is
23 amended to read:

24 42023.4. (a) A loan made pursuant to Section 42023.1 shall
25 be subject to all of the following requirements:

26 (1) The terms of an approved loan shall be specified in a loan
27 agreement between the borrower and the department. The loan
28 agreement shall include a requirement that the failure to comply
29 with the agreement shall result in any remaining unpaid amount
30 of the loan, with accrued interest, being immediately due and
31 payable. Notwithstanding any term of the agreement, a recipient
32 of a loan that the department approves shall repay the principal
33 amount, plus interest on the basis of the rate of return for money
34 in the Surplus Money Investment Fund at the time of the loan
35 commitment. ~~Except as provided in subdivision (a) of Section~~
36 ~~42023.3, all~~ All money received as repayment and interest on
37 loans made pursuant to this section shall be deposited in the
38 subaccount.

39 (2) The term of a loan made pursuant to this section shall be
40 not more than 10 years when collateralized by assets other than

1 real estate, or not more than 15 years when partially or wholly
2 collateralized by real estate.

3 (3) The department shall approve only those loan applications
4 that demonstrate the applicant’s ability to repay the loan. The
5 highest priority for funding shall be given to projects that
6 demonstrate that the project will increase market demand for
7 recycling the project’s type of postconsumer waste material.

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

12 ~~(B) Notwithstanding subparagraph (A), if the department~~
13 ~~determines that there is money in the subaccount in excess of five~~
14 ~~million dollars (\$5,000,000), then the department may finance a~~
15 ~~loan or loans in an amount that is greater than two million dollars~~
16 ~~(\$2,000,000), but does not exceed five million dollars (\$5,000,000)~~
17 ~~and does not exceed three-fourths of the project cost, from that~~
18 ~~excess amount.~~

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

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

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

31 ~~(e) This section shall become inoperative on July 1, 2016, and~~
32 ~~as of January 1, 2017, is repealed, unless a later enacted statute,~~
33 ~~which becomes effective on or before January 1, 2017, deletes or~~
34 ~~extends the date on which it becomes inoperative and is repealed.~~

35 SEC. 6. Section 42023.4 is added to the Public Resources Code,
36 to read:

37 42023.4. (a) A loan made pursuant to Section 42023.1 shall
38 be subject to all of the following requirements:

39 (1) ~~The terms of an approved loan shall be specified in a loan~~
40 ~~agreement between the borrower and the department. The loan~~

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

11 ~~(2) The term of a loan made pursuant to this section shall be~~
12 ~~not more than 10 years when collateralized by assets other than~~
13 ~~real estate, or not more than 15 years when partially or wholly~~
14 ~~collateralized by real estate.~~

15 ~~(3) The department shall approve only those loan applications~~
16 ~~that demonstrate the applicant's ability to repay the loan. The~~
17 ~~highest priority for funding shall be given to projects that~~
18 ~~demonstrate that the project will increase market demand for~~
19 ~~recycling the project's type of postconsumer waste material.~~

20 ~~(4) The department shall not finance more than three-fourths~~
21 ~~of the cost of a project or two million dollars (\$2,000,000),~~
22 ~~whichever is less.~~

23 ~~(b) The Department of Finance may audit the expenditure of~~
24 ~~the proceeds of a loan made pursuant to Section 42023.1 and this~~
25 ~~section.~~

26 ~~(e) This section shall become operative on July 1, 2016.~~

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

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

35 ~~SEC. 7.~~

36 ~~SEC. 6. Section 42023.5 of the Public Resources Code is~~
37 ~~amended to read:~~

38 ~~42023.5. (a) The department shall, as part of the annual report~~
39 ~~to the Legislature, pursuant to Section 40507, include a report on~~
40 ~~the performance of the Recycling Market Development Revolving~~

1 Loan Program, including the number and size of loans made,
2 characteristics of loan recipients, projected loan demand, and the
3 cost of administering the program.

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

8 ~~SEC. 8:~~

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

11 42023.6. (a) The department shall encourage applicants to
12 seek participation from private financial institutions or other public
13 agencies. For purposes of enabling the department and local
14 agencies to comply with Sections 40051 and 41780, the department
15 may participate, in an amount not to exceed five hundred thousand
16 dollars (\$500,000), in the Capital Access Loan Program as provided
17 in Article 8 (commencing with Section 44559) of Chapter 1 of
18 Division 27 of the Health and Safety Code.

19 (b) For purposes of participating in the Capital Access Loan
20 Program, as specified in subdivision (a), or in a program that
21 leverages subaccount funds, the department may operate both
22 inside and outside the recycling market development zones.

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

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