

AMENDED IN ASSEMBLY AUGUST 20, 2010

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
(Coauthor: Assembly Member Chesbro)

February 26, 2009

An act to amend Sections 42023.1, 42023.2, 42023.3, 42023.4, 42023.5, and 42023.6 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.

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:
 7 42023.1. (a) The Recycling Market Development Revolving
 8 Loan Subaccount is hereby created in the account for the purpose
 9 of providing loans for purposes of the Recycling Market
 10 Development Revolving Loan Program established pursuant to
 11 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 department without regard to fiscal year for
4 making loans pursuant to this article.

5 (c) The department may expend interest earnings on funds in
6 the subaccount for administrative expenses incurred in carrying
7 out 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 department may expend the money in the subaccount
18 to make loans to local governing bodies, private businesses, and
19 nonprofit entities within recycling market development zones, or
20 in areas outside zones where partnerships exist with other public
21 entities to assist local jurisdictions to comply with Section 40051.

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

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

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

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

3 (j) The department, pursuant to subdivision (a) of Section 47901,
4 may set aside funds for the purposes of paying costs necessary to
5 protect the state’s position as a lender-creditor. These costs shall
6 be broadly construed to include, but not be limited to, foreclosure
7 expenses, auction fees, title searches, appraisals, real estate
8 brokerage fees, attorney fees, mortgage payments, insurance
9 payments, utility costs, repair costs, removal and storage costs for
10 repossessed equipment and inventory, and additional expenditures
11 to purchase 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. 3. 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 department 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. 4. 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 department and deposited by the department in the
6 account until paid in full, except that, upon authorization by the
7 Legislature in the annual Budget Act, interest earnings may be
8 expended for administrative costs associated with the collection
9 of outstanding 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. 5. 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 department. The loan
24 agreement shall include a requirement that the failure to comply
25 with the agreement shall result in any remaining unpaid amount
26 of the loan, with accrued interest, being immediately due and
27 payable. Notwithstanding any term of the agreement, a recipient
28 of a loan that the department approves shall repay the principal
29 amount, plus interest on the basis of the rate of return for money
30 in the Surplus Money Investment Fund at the time of the loan
31 commitment. All money received as repayment and interest on
32 loans made pursuant to this section shall be deposited in the
33 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) The department shall approve only those loan applications
39 that demonstrate the applicant's ability to repay the loan. The
40 highest priority for funding shall be given to projects that

1 demonstrate that the project will increase market demand for
2 recycling the project’s type of postconsumer waste material.

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

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

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

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

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

19 42023.5. (a) The department shall, as part of the annual report
20 to the Legislature, pursuant to Section 40507, include a report on
21 the performance of the Recycling Market Development Revolving
22 Loan Program, including the number and size of loans made,
23 characteristics of loan recipients, projected loan demand, and the
24 cost of administering the program.

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

29 SEC. 7. Section 42023.6 of the Public Resources Code is
30 amended to read:

31 42023.6. (a) The department shall encourage applicants to
32 seek participation from private financial institutions or other public
33 agencies. For purposes of enabling the department and local
34 agencies to comply with Sections 40051 and 41780, the department
35 may participate, in an amount not to exceed five hundred thousand
36 dollars (\$500,000), in the Capital Access Loan Program as provided
37 in Article 8 (commencing with Section 44559) of Chapter 1 of
38 Division 27 of the Health and Safety Code.

39 (b) For purposes of participating in the Capital Access Loan
40 Program, as specified in subdivision (a), or in a program that

1 leverages subaccount funds, the department may operate both
2 inside and outside the recycling market development zones.

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

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