

Senate Bill No. 390

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 40118 is added to the Public Resources Code, to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The terms of an approved loan shall be specified in a loan agreement between the borrower and the department. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, a recipient of a loan that the department approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. All money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2010

Governor