

AMENDED IN SENATE APRIL 16, 2002

**SENATE BILL**

**No. 1374**

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**Introduced by Senator Kuehl**

February 8, 2002

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An act to ~~add Sections 42912 and 42913 to~~ amend Sections 41821 and 41850 of, and to add Section 42912 the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1374, as amended, Kuehl. Solid waste: construction and demolition waste materials: diversion requirements: model ordinance.

(1) Existing law, the California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated waste management program. Existing law requires a city, county, or regional agency to submit an annual report to the board summarizing its progress in diverting solid waste from disposal. The report is required to include, among other things, specified information relevant to compliance with the solid waste diversion requirements.

This bill would additionally require that the report include a summary of progress made in diversion of construction and demolition waste materials, including information on programs and ordinances implemented by the local government and quantitative data, where available. By imposing new requirements on local agencies with respect to reporting requirements under the act, the bill would impose a state-mandated local program.

(2) Existing law requires the ~~California Integrated Waste Management Board~~ board to adopt a model ordinance for adoption by any local agency relating to adequate areas for collecting and loading

recyclable materials in development projects. The board is required to develop the model ordinance in consultation with the League of California Cities, the County Supervisors Association of California, and certain other interested parties and to distribute the draft model ordinance to all local agencies and other interested parties for review. Local agencies are required to adopt an ordinance, not later than a specified date, relating to adequate areas for collecting and loading recyclable materials in development projects. If a local agency has not adopted that ordinance by the specified date, the model ordinance adopted by the board is required to take effect on that date and be enforced by the local agency and have the same force and effect as if adopted by the local agency as an ordinance.

~~This bill would require the board, not later than March 1, 2004, after holding a public hearing, to adopt a model ordinance suitable for adoption by any local agency to require not less than a 75% diversion of construction and demolition waste materials from landfills. The bill would require the board to develop the model ordinance in consultation with the League of California Cities, the County Supervisors Association of California, and certain other interested parties and to distribute the draft model ordinance to all local agencies and other interested parties for review.~~

~~The bill would require local agencies to adopt an ordinance, not later than September 1, 2005, requiring not less than a 75% diversion of construction and demolition waste materials from landfills. If a local agency has not adopted that ordinance by the specified date, the bill would require the model ordinance adopted by the board to take effect on that date and be enforced by the local agency and have the same force and effect as if adopted by the local agency as an ordinance. The bill would create a state-mandated local program by imposing these requirements upon local agencies.~~

~~The bill would authorize the board to modify the diversion requirement and the date for local adoption of the ordinance, as specified:~~

~~(2)~~

~~*This bill would require the board, not later than March 1, 2004, after holding a public hearing, to adopt one or more model ordinances suitable for modification by any local agency, that the agency may adopt that will require a range of diversion rates of construction and demolition waste materials from landfills from 50 to 75%, as determined by the board. The bill would also require the board on or*~~



*before that date to consult with representatives of the League of California Cities, the California State Automobile Association, private and public waste services, and building construction and management personnel in developing the model ordinance, and to fulfill various other requirements relating to reporting and posting information on the board's Internet Web site.*

*(3) Existing law requires the board, in determining whether or not to impose any penalties on a city, county, or city and county for violations of specified solid waste reduction and recycling requirements imposed by the act, to consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.*

*This bill would also require the board, in determining those penalties, to consider whether a local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.*

*(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

*Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.*

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

1 SECTION 1. *Section 41821 of the Public Resources Code is*  
2 *amended to read:*  
3 41821. (a) (1) Each year following the board's approval of  
4 a city, county, or regional agency's source reduction and recycling



1 element, household hazardous waste element, and nondisposal  
2 facility element, the city, county, or regional agency shall submit  
3 a report to the board summarizing its progress in reducing solid  
4 waste as required by Section 41780.

5 (2) The annual report shall be due on or before August 1 of the  
6 year following board approval of the source reduction and  
7 recycling element, the household hazardous waste element, and  
8 the nondisposal facility element, and on or before August 1 in each  
9 subsequent year. The information in this report shall encompass  
10 the previous calendar year, January 1 to December 31, inclusive.

11 (b) Each jurisdiction's annual report to the board shall, at a  
12 minimum, include the following:

13 (1) Calculations of annual disposal reduction.

14 (2) Information on the changes in waste generated or disposed  
15 of due to increases or decreases in population, economics, or other  
16 factors in complying with subdivision (c) of Section 41780.1.

17 (3) A summary of progress made in implementing the source  
18 reduction and recycling element and the household hazardous  
19 waste element. The city, county, or regional agency may also  
20 include information about existing and new programs it is  
21 implementing that are not part of the original or modified source  
22 reduction and recycling element adopted by the jurisdiction and  
23 approved by the board to achieve the diversion requirements of  
24 Section 41780.

25 (4) *A summary of progress made in diversion of construction*  
26 *and demolition of waste materials, including information on*  
27 *programs and ordinances implemented by the local government*  
28 *and quantitative data, where available.*

29 (5) If the jurisdiction has been granted a time extension by the  
30 board pursuant to Section 41820, the jurisdiction shall include a  
31 summary of progress made in meeting the source reduction and  
32 recycling element implementation schedule pursuant to paragraph  
33 (2) of subdivision (a) of Section 41780 and complying with the  
34 jurisdiction's plan of correction, prior to the expiration of the time  
35 extension.

36 ~~(5)~~

37 (6) If the jurisdiction has been granted an alternative source  
38 reduction, recycling, and composting requirement pursuant to  
39 Section 41785, the jurisdiction shall include a summary of  
40 progress made towards meeting the alternative requirement as



1 well as an explanation of current circumstances that support the  
2 continuation of the alternative requirement.

3 ~~(6)~~

4 (7) Other information relevant to compliance with Section  
5 41780.

6 (c) A jurisdiction may also include, in the report required by  
7 this section, all of the following:

8 (1) Any factor that the jurisdiction believes would affect the  
9 accuracy of the estimated waste disposal reduction calculation  
10 provided in the report pursuant to paragraph (1) of subdivision (b)  
11 to accurately reflect the changes in the amount of solid waste that  
12 is actually disposed. The jurisdiction may include, but is not  
13 limited to including, all of the following factors:

14 (A) Whether the jurisdiction hosts a solid waste facility.

15 (B) The effects of self-hauled waste and construction and  
16 demolition waste.

17 (C) The original or subsequent base year calculation, the  
18 amount of orphan waste, and the waste disposal reduction  
19 adjustment methodology.

20 (2) Information regarding the programs the jurisdiction is  
21 undertaking to respond to the factors specified in paragraph (1),  
22 and why it is not feasible to implement programs to respond to  
23 other factors that affect the amount of waste that is disposed.

24 (3) An estimate that the jurisdiction believes reflects that  
25 jurisdiction's annual reduction or increase in the disposal of solid  
26 waste.

27 (d) The board shall use, but is not limited to the use of, the  
28 annual report in the determination of whether the jurisdiction's  
29 source reduction and recycling element needs to be revised.

30 (e) (1) The board shall adopt procedures for requiring  
31 additional information in a jurisdiction's annual report. The  
32 procedures shall require the board to notify a jurisdiction of any  
33 additional required information no later than 120 days after the  
34 board receives the report from the jurisdiction.

35 (2) Paragraph (1) does not prohibit the board from making  
36 additional requests for information in a timely manner. A  
37 jurisdiction receiving such a request for information shall respond  
38 in a timely manner.

39 (f) The board shall adopt procedures for conferring with a  
40 jurisdiction regarding the implementation of a diversion program



1 or changes to a jurisdiction’s calculation of its annual disposal  
2 reduction.

3 *SEC. 2. Section 41850 of the Public Resources Code is*  
4 *amended to read:*

5 41850. (a) Except as specifically provided in Section 41813,  
6 if, after holding the public hearing and issuing an order of  
7 compliance pursuant to Section 41825, the board finds that the  
8 city, county, or regional agency has failed to make a good faith  
9 effort to implement its source reduction and recycling element or  
10 its household hazardous waste element, the board may impose  
11 administrative civil penalties upon the city or county or, pursuant  
12 to Section 40974, upon the city or county as a member of a regional  
13 agency, of up to ten thousand dollars (\$10,000) per day until the  
14 city, county, or regional agency implements the element.

15 (b) In determining whether or not to impose any penalties, or  
16 in determining the amount of any penalties imposed under this  
17 section, including any penalties imposed due to the exclusion of  
18 solid waste pursuant to Section 41781.2 that results in a reduction  
19 in the quantity of solid waste diverted by a city, county, or regional  
20 agency, the board shall consider whether the jurisdiction has made  
21 a good faith effort to implement its source reduction and recycling  
22 element or its household hazardous waste element. In addition, the  
23 board shall consider only those relevant circumstances that have  
24 prevented a city, county, or regional agency from meeting the  
25 requirements of this division, including the diversion  
26 requirements of paragraphs (1) and (2) of subdivision (a) of  
27 Section 41780, including, but not limited to, all of the following:

28 (1) Natural disasters.

29 (2) Budgetary conditions within a city, county, or regional  
30 agency that could not be remedied by the imposition or adjustment  
31 of solid waste fees.

32 (3) Work stoppages that directly prevent a city, county, or  
33 regional agency from implementing its source reduction and  
34 recycling element or household hazardous waste element.

35 (4) The impact of the failure of federal, state, and other local  
36 agencies located within the jurisdiction to implement source  
37 reduction and recycling programs in the jurisdiction on the host  
38 jurisdiction’s ability to meet the requirements of paragraph (2) of  
39 subdivision (a) of Section 41780.

1 (c) In addition to the factors specified in subdivision (b), the  
2 board shall consider all of the following:

3 (1) The extent to which a city, county, or regional agency has  
4 implemented additional source reduction, recycling, and  
5 composting activities to comply with the diversion requirements  
6 of paragraphs (1) and (2) of subdivision (a) of Section 41780.

7 (2) The extent to which a city, county, or regional agency is  
8 meeting the diversion requirements of paragraphs (1) and (2) of  
9 subdivision (a) of Section 41780.

10 (3) Whether the jurisdiction has requested and been granted an  
11 extension to the requirements of Section 41780, pursuant to  
12 Section 41820, or an alternative requirement to Section 41780,  
13 pursuant to Section 41785.

14 (4) *Whether a local jurisdiction has adopted an ordinance for*  
15 *diversion of construction and demolition waste materials from*  
16 *solid waste disposal facilities, has adopted a model ordinance*  
17 *pursuant to subdivision (a) of Section 42912 for diversion of*  
18 *construction and demolition waste materials from solid waste*  
19 *disposal facilities, or has implemented another program identified*  
20 *in the source reduction and recycling element to encourage or*  
21 *require diversion of construction and demolition waste materials*  
22 *from solid waste disposal facilities.*

23 (d) (1) For the purposes of this section, “good faith effort”  
24 means all reasonable and feasible efforts by a city, county, or  
25 regional agency to implement those programs or activities  
26 identified in its source reduction and recycling element or  
27 household hazardous waste element, or alternative programs or  
28 activities that achieve the same or similar results.

29 (2) For purposes of this section “good faith effort” may also  
30 include the evaluation by a city, county, or regional agency of  
31 improved technology for the handling and management of solid  
32 waste that would reduce costs, improve efficiency in the  
33 collection, processing, or marketing of recyclable materials or  
34 yard waste, and enhance the ability of the city, county, or regional  
35 agency to meet the diversion requirements of paragraphs (1) and  
36 (2) of subdivision (a) of Section 41780, provided that the city,  
37 county, or regional agency has submitted a compliance schedule  
38 pursuant to Section 41825, and has made all other reasonable and  
39 feasible efforts to implement the programs identified in its source



1 reduction and recycling element or household hazardous waste  
2 element.

3 (3) In determining whether a jurisdiction has made a good faith  
4 effort, the board shall consider the enforcement criteria included  
5 in its enforcement policy, as adopted on April 25, 1995, or as  
6 subsequently amended.

7 *SEC. 3.* Section 42912 is added to the Public Resources Code,  
8 to read:

9 42912. (a) Not later than March 1, 2004, after holding a  
10 public hearing, the board shall ~~adopt a model ordinance suitable~~  
11 ~~for adoption by any local agency to require not less than a~~  
12 ~~75 percent diversion of construction and demolition waste~~  
13 ~~materials from landfills.~~

14 ~~(b) The board shall consult with representatives of the League~~  
15 ~~of California Cities, the County Supervisors Association of~~  
16 ~~California, private and public waste services, and building~~  
17 ~~construction and management in developing the model ordinance.~~

18 ~~(c) do all of the following:~~

19 (1) *Adopt one or more model ordinances, suitable for*  
20 *modification by a local agency, that the local agency may adopt*  
21 *that will require a range of diversion rates of construction and*  
22 *demolition waste materials from 50 to 70 percent, as determined*  
23 *by the board.*

24 (2) *Consult with representatives of the League of California*  
25 *Cities, the California State Association of Counties, private and*  
26 *public waste services and building construction and management*  
27 *personnel in developing the model ordinances.*

28 (3) *Compile a report on programs, other than a model*  
29 *ordinance, that local governments and general contractors can*  
30 *implement to increase diversion of construction and demolition*  
31 *waste materials.*

32 (4) *Post on the board's Internet Website, a report for general*  
33 *contractors on methods by which contractors can increase*  
34 *diversion of construction and demolition waste materials.*

35 (5) *Post on the board's Internet Website, a report for local*  
36 *governments with suggestions of programs, in addition to*  
37 *adoption of the model ordinance, to increase diversion of*  
38 *construction and demolition waste materials.*

39 (b) Not later than January 1, 2004, the board shall distribute the  
40 draft model ordinance to all local agencies and other interested





1 parties for review. Any comments shall be submitted to the board  
2 by February 1, 2004, for consideration at the public hearing of the  
3 board to adopt the ordinance.

4 SEC. 2. Section 42913 is added to the Public Resources Code,  
5 to read:

6 42913. (a) By September 1, 2005, each local agency shall  
7 adopt an ordinance that requires not less than a 75-percent  
8 diversion of construction and demolition waste materials from  
9 landfills.

10 (b) If by September 1, 2005, a local agency has not adopted an  
11 ordinance that requires not less than a 75-percent diversion of  
12 construction and demolition waste materials from landfills, the  
13 model ordinance adopted pursuant to Section 42912 shall take  
14 effect on that date and shall be enforced by the local agency and  
15 have the same force and effect as if adopted by the local agency as  
16 an ordinance.

17 (c) The board may reduce the diversion requirement set forth  
18 in subdivision (a) or delay the date set forth in subdivision (b) for  
19 adoption of the ordinance, or both, in accordance with Article 1.5  
20 (commencing with Section 41787) of Chapter 6 of Part 2, for local  
21 agencies that are eligible for reduction of diversion requirements  
22 under that article.

23 SEC. 3. Notwithstanding Section 17610 of the Government  
24 Code, if the Commission on State Mandates determines that this  
25 act contains costs mandated by the state, reimbursement to local  
26 agencies and school districts for those costs shall be made pursuant  
27 to Part 7 (commencing with Section 17500) of Division 4 of Title  
28 2 of the Government Code. If the statewide cost of the claim for  
29 reimbursement does not exceed one million dollars (\$1,000,000),  
30 reimbursement shall be made from the State Mandates Claims  
31 Fund.

