

AMENDED IN SENATE APRIL 18, 2002

AMENDED IN SENATE APRIL 16, 2002

SENATE BILL

No. 1374

Introduced by Senator Kuehl

February 8, 2002

An act to amend Sections 41821 and 41850 of, and to add Section 42912 *to*, 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 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 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 of *Counties*, private and public waste services, and building construction and management personnel ~~in developing~~ *throughout the development of the model—ordinance ordinances*, 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
5 element, household hazardous waste element, and nondisposal
6 facility element, the city, county, or regional agency shall submit
7 a report to the board summarizing its progress in reducing solid
8 waste as required by Section 41780.

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

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

17 (1) Calculations of annual disposal reduction.

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

21 (3) A summary of progress made in implementing the source
22 reduction and recycling element and the household hazardous
23 waste element. The city, county, or regional agency may also
24 include information about existing and new programs it is



1 implementing that are not part of the original or modified source
2 reduction and recycling element adopted by the jurisdiction and
3 approved by the board to achieve the diversion requirements of
4 Section 41780.

5 (4) A summary of progress made in diversion of construction
6 and demolition of waste materials, including information on
7 programs and ordinances implemented by the local government
8 and quantitative data, where available.

9 (5) If the jurisdiction has been granted a time extension by the
10 board pursuant to Section 41820, the jurisdiction shall include a
11 summary of progress made in meeting the source reduction and
12 recycling element implementation schedule pursuant to paragraph
13 (2) of subdivision (a) of Section 41780 and complying with the
14 jurisdiction's plan of correction, prior to the expiration of the time
15 extension.

16 (6) If the jurisdiction has been granted an alternative source
17 reduction, recycling, and composting requirement pursuant to
18 Section 41785, the jurisdiction shall include a summary of
19 progress made towards meeting the alternative requirement as
20 well as an explanation of current circumstances that support the
21 continuation of the alternative requirement.

22 (7) Other information relevant to compliance with Section
23 41780.

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

26 (1) Any factor that the jurisdiction believes would affect the
27 accuracy of the estimated waste disposal reduction calculation
28 provided in the report pursuant to paragraph (1) of subdivision (b)
29 to accurately reflect the changes in the amount of solid waste that
30 is actually disposed. The jurisdiction may include, but is not
31 limited to including, all of the following factors:

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

33 (B) The effects of self-hauled waste and construction and
34 demolition waste.

35 (C) The original or subsequent base year calculation, the
36 amount of orphan waste, and the waste disposal reduction
37 adjustment methodology.

38 (2) Information regarding the programs the jurisdiction is
39 undertaking to respond to the factors specified in paragraph (1),



1 and why it is not feasible to implement programs to respond to
2 other factors that affect the amount of waste that is disposed.

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

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

9 (e) (1) The board shall adopt procedures for requiring
10 additional information in a jurisdiction's annual report. The
11 procedures shall require the board to notify a jurisdiction of any
12 additional required information no later than 120 days after the
13 board receives the report from the jurisdiction.

14 (2) Paragraph (1) does not prohibit the board from making
15 additional requests for information in a timely manner. A
16 jurisdiction receiving such a request for information shall respond
17 in a timely manner.

18 (f) The board shall adopt procedures for conferring with a
19 jurisdiction regarding the implementation of a diversion program
20 or changes to a jurisdiction's calculation of its annual disposal
21 reduction.

22 SEC. 2. Section 41850 of the Public Resources Code is
23 amended to read:

24 41850. (a) Except as specifically provided in Section 41813,
25 if, after holding the public hearing and issuing an order of
26 compliance pursuant to Section 41825, the board finds that the
27 city, county, or regional agency has failed to make a good faith
28 effort to implement its source reduction and recycling element or
29 its household hazardous waste element, the board may impose
30 administrative civil penalties upon the city or county or, pursuant
31 to Section 40974, upon the city or county as a member of a regional
32 agency, of up to ten thousand dollars (\$10,000) per day until the
33 city, county, or regional agency implements the element.

34 (b) In determining whether or not to impose any penalties, or
35 in determining the amount of any penalties imposed under this
36 section, including any penalties imposed due to the exclusion of
37 solid waste pursuant to Section 41781.2 that results in a reduction
38 in the quantity of solid waste diverted by a city, county, or regional
39 agency, the board shall consider whether the jurisdiction has made
40 a good faith effort to implement its source reduction and recycling



1 element or its household hazardous waste element. In addition, the
2 board shall consider only those relevant circumstances that have
3 prevented a city, county, or regional agency from meeting the
4 requirements of this division, including the diversion
5 requirements of paragraphs (1) and (2) of subdivision (a) of
6 Section 41780, including, but not limited to, all of the following:

7 (1) Natural disasters.

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

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

14 (4) The impact of the failure of federal, state, and other local
15 agencies located within the jurisdiction to implement source
16 reduction and recycling programs in the jurisdiction on the host
17 jurisdiction's ability to meet the requirements of paragraph (2) of
18 subdivision (a) of Section 41780.

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

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

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

28 (3) Whether the jurisdiction has requested and been granted an
29 extension to the requirements of Section 41780, pursuant to
30 Section 41820, or an alternative requirement to Section 41780,
31 pursuant to Section 41785.

32 (4) Whether a local jurisdiction has adopted an ordinance for
33 diversion of construction and demolition waste materials from
34 solid waste disposal facilities, has adopted a model ordinance
35 pursuant to subdivision (a) of Section 42912 for diversion of
36 construction and demolition waste materials from solid waste
37 disposal facilities, or has implemented another program identified
38 in the source reduction and recycling element to encourage or
39 require diversion of construction and demolition waste materials
40 from solid waste disposal facilities.



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

7 (2) For purposes of this section “good faith effort” may also
8 include the evaluation by a city, county, or regional agency of
9 improved technology for the handling and management of solid
10 waste that would reduce costs, improve efficiency in the
11 collection, processing, or marketing of recyclable materials or
12 yard waste, and enhance the ability of the city, county, or regional
13 agency to meet the diversion requirements of paragraphs (1) and
14 (2) of subdivision (a) of Section 41780, provided that the city,
15 county, or regional agency has submitted a compliance schedule
16 pursuant to Section 41825, and has made all other reasonable and
17 feasible efforts to implement the programs identified in its source
18 reduction and recycling element or household hazardous waste
19 element.

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

24 SEC. 3. Section 42912 is added to the Public Resources Code,
25 to read:

26 42912. (a) Not later than March 1, 2004, after holding a
27 public hearing, the board shall do all of the following:

28 (1) Adopt one or more model ordinances, suitable for
29 modification by a local agency, that the local agency may adopt
30 that will require a range of diversion rates of construction and
31 demolition waste materials from 50 to 70 percent, as determined
32 by the board.

33 (2) Consult with representatives of the League of California
34 Cities, the California State Association of Counties, private and
35 public waste services and building construction and management
36 personnel ~~in developing~~ *throughout the development of* the model
37 ordinances.

38 (3) Compile a report on programs, other than a model
39 ordinance, that local governments and general contractors can



1 implement to increase diversion of construction and demolition
2 waste materials.

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

6 (5) Post on the board's Internet Website, a report for local
7 governments with suggestions of programs, in addition to
8 adoption of the model ordinance, to increase diversion of
9 construction and demolition waste materials.

10 (b) Not later than January 1, 2004, the board shall distribute the
11 draft model ordinance to all local agencies and other interested
12 parties for review. Any comments shall be submitted to the board
13 by February 1, 2004, for consideration at the public hearing of the
14 board to adopt the ordinance.

15 ~~SEC. 2.—Section 42913 is added to the Public Resources Code,~~
16 ~~to read:~~

17 ~~42913.—(a) By September 1, 2005, each local agency shall~~
18 ~~adopt an ordinance that requires not less than a 75-percent~~
19 ~~diversion of construction and demolition waste materials from~~
20 ~~landfills.~~

21 ~~(b) If by September 1, 2005, a local agency has not adopted an~~
22 ~~ordinance that requires not less than a 75-percent diversion of~~
23 ~~construction and demolition waste materials from landfills, the~~
24 ~~model ordinance adopted pursuant to Section 42912 shall take~~
25 ~~effect on that date and shall be enforced by the local agency and~~
26 ~~have the same force and effect as if adopted by the local agency as~~
27 ~~an ordinance.~~

28 ~~(c) The board may reduce the diversion requirement set forth~~
29 ~~in subdivision (a) or delay the date set forth in subdivision (b) for~~
30 ~~adoption of the ordinance, or both, in accordance with Article 1.5~~
31 ~~(commencing with Section 41787) of Chapter 6 of Part 2, for local~~
32 ~~agencies that are eligible for reduction of diversion requirements~~
33 ~~under that article.~~

34 ~~SEC. 3.—~~

35 *SEC. 4.* Notwithstanding Section 17610 of the Government
36 Code, if the Commission on State Mandates determines that this
37 act contains costs mandated by the state, reimbursement to local
38 agencies and school districts for those costs shall be made pursuant
39 to Part 7 (commencing with Section 17500) of Division 4 of Title
40 2 of the Government Code. If the statewide cost of the claim for



- 1 reimbursement does not exceed one million dollars (\$1,000,000),
- 2 reimbursement shall be made from the State Mandates Claims
- 3 Fund.

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