

AMENDED IN ASSEMBLY JUNE 4, 2002

AMENDED IN SENATE APRIL 18, 2002

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 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 Association of Counties, private and public waste services, and building construction and management personnel throughout the development of the model 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 provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the 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.



1 (3) A summary of progress made in implementing the source  
2 reduction and recycling element and the household hazardous  
3 waste element. The city, county, or regional agency may also  
4 include information about existing and new programs it is  
5 implementing that are not part of the original or modified source  
6 reduction and recycling element adopted by the jurisdiction and  
7 approved by the board to achieve the diversion requirements of  
8 Section 41780.

9 (4) A summary of progress made in diversion of construction  
10 and demolition of waste materials, including information on  
11 programs and ordinances implemented by the local government  
12 and quantitative data, where available.

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

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

26 (7) Other information relevant to compliance with Section  
27 41780.

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

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

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

37 (B) The effects of self-hauled waste and construction and  
38 demolition waste.



1 (C) The original or subsequent base year calculation, the  
2 amount of orphan waste, and the waste disposal reduction  
3 adjustment methodology.

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

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

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

14 (e) (1) The board shall adopt procedures for requiring  
15 additional information in a jurisdiction's annual report. The  
16 procedures shall require the board to notify a jurisdiction of any  
17 additional required information no later than 120 days after the  
18 board receives the report from the jurisdiction.

19 (2) Paragraph (1) does not prohibit the board from making  
20 additional requests for information in a timely manner. A  
21 jurisdiction receiving such a request for information shall respond  
22 in a timely manner.

23 (f) The board shall adopt procedures for conferring with a  
24 jurisdiction regarding the implementation of a diversion program  
25 or changes to a jurisdiction's calculation of its annual disposal  
26 reduction.

27 SEC. 2. Section 41850 of the Public Resources Code is  
28 amended to read:

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

39 (b) In determining whether or not to impose any penalties, or  
40 in determining the amount of any penalties imposed under this



1 section, including any penalties imposed due to the exclusion of  
2 solid waste pursuant to Section 41781.2 that results in a reduction  
3 in the quantity of solid waste diverted by a city, county, or regional  
4 agency, the board shall consider whether the jurisdiction has made  
5 a good faith effort to implement its source reduction and recycling  
6 element or its household hazardous waste element. In addition, the  
7 board shall consider only those relevant circumstances that have  
8 prevented a city, county, or regional agency from meeting the  
9 requirements of this division, including the diversion  
10 requirements of paragraphs (1) and (2) of subdivision (a) of  
11 Section 41780, including, but not limited to, all of the following:

12 (1) Natural disasters.

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

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

19 (4) The impact of the failure of federal, state, and other local  
20 agencies located within the jurisdiction to implement source  
21 reduction and recycling programs in the jurisdiction on the host  
22 jurisdiction's ability to meet the requirements of paragraph (2) of  
23 subdivision (a) of Section 41780.

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

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

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

33 (3) Whether the jurisdiction has requested and been granted an  
34 extension to the requirements of Section 41780, pursuant to  
35 Section 41820, or an alternative requirement to Section 41780,  
36 pursuant to Section 41785.

37 (4) Whether a local jurisdiction has *provided information to the*  
38 *board concerning whether construction and demolition waste*  
39 *material is at least a moderately significant portion of the waste*  
40 *stream, and, if so, whether the local jurisdiction has adopted an*



1 ordinance for diversion of construction and demolition waste  
2 materials from solid waste disposal facilities, has adopted a model  
3 ordinance pursuant to subdivision (a) of Section 42912 for  
4 diversion of construction and demolition waste materials from  
5 solid waste disposal facilities, or has implemented another  
6 program ~~identified in the source reduction and recycling element~~  
7 to encourage or require diversion of construction and demolition  
8 waste materials from solid waste disposal facilities.

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

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

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

32 SEC. 3. Section 42912 is added to the Public Resources Code,  
33 to read:

34 42912. (a) Not later than March 1, 2004, after holding a  
35 public hearing, the board shall do all of the following:

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



1 (2) Consult with representatives of the League of California  
2 Cities, the California State Association of Counties, private and  
3 public waste services and building construction ~~and materials~~  
4 *industry and construction* management personnel throughout the  
5 development of the model ordinances.

6 (3) Compile a report on programs, other than a model  
7 ordinance, that local governments and general contractors can  
8 implement to increase diversion of construction and demolition  
9 waste materials.

10 (4) Post on the board’s Internet Web site, a report for general  
11 contractors on methods by which contractors can increase  
12 diversion of construction and demolition waste materials.

13 (5) Post on the board’s Internet Web site, a report for local  
14 governments with suggestions of programs, in addition to  
15 adoption of the model ordinance, to increase diversion of  
16 construction and demolition waste materials.

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

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

