

AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JULY 9, 2009

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 274

Introduced by Assembly Member Portantino

February 12, 2009

An act to ~~add Section 43501.2~~ *amend Sections 48000 and 48001 of, to add Section 48001.5 to, and to add Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of, the Public Resources Code, and to amend Section 45901 of the Revenue and Taxation Code, relating to solid waste.*

LEGISLATIVE COUNSEL'S DIGEST

AB 274, as amended, Portantino. Solid waste: landfills: closure plans.

~~(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board (board), requires the owner or operator of a solid waste landfill, among other things, to prepare an initial estimate of closure and postclosure maintenance costs and to submit to the regional water board, the local law enforcement agency, and the board, a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill. A violation of these provisions is a misdemeanor.~~

This bill would prohibit the owner or operator of a closed solid waste landfill that is subject to a closure or a postclosure maintenance plan from selling or offering for sale any portion of a closed waste management unit unless the intended purchaser provides evidence, to the satisfaction of the board, of his or her ability to meet the financial

assurance requirements of the act. By creating a new crime, the bill would impose a state-mandated local program.

~~(2) Existing~~

Existing law requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization based on the amount of solid waste disposed of at each disposal site. Commencing with the 1995–96 fiscal year, the act requires the ~~board~~ *California Integrated Waste Management Board* to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund, and the board is authorized to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill, on and after January 1, ~~2011~~, *2012*, would; authorize an operator of a solid waste disposal facility that is required to meet financial assurance requirements and is in operation on ~~September 1, 2010~~, *July 1, 2011*, to elect to participate in the State Solid Waste Postclosure *and Corrective Action* Trust Fund created by this bill.

The bill would require that a participating operator pay a fee of \$0.12 per ton per disposal site. *The bill would require the fee to be collected in the same manner as the solid waste disposal fee described above, and require the board to fulfill certain administrative reporting requirements to the state board. The bill would also require that ~~would~~ the fee be deposited in the fund and made available to the board for expenditure, upon appropriation by the Legislature, for postclosure activities and corrective actions not performed by ~~the~~ any owner or operator of a solid waste landfill when a participating the owner or operator fails to comply with the board's final order, the financial assurance mechanisms are inadequate to fund necessary compliance activities, the solid waste landfill was operating pursuant to a valid solid waste facilities permit on or after January 1, 1988, and the board has first used and exhausted ~~the~~ all immediately available financial assurance mechanism provided by the ~~public~~ operator.*

The bill would require that the fee and this act would not be operative *on and after July 1, 2010* *January 1, 2012*, unless the board ~~receives,~~ *received*, on or before July 1, ~~2010~~, *2011*, letters of participation in the State Solid Waste Postclosure *and Corrective Action* Trust Fund from landfill operators representing at least 50% of the total annual waste disposal ~~volume~~ *tonnage* in ~~2009~~ *2010*, as determined by the board. *The bill would make conforming changes.*

~~(3) 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.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: *yes-no*.

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

1 ~~SECTION 1. Section 43501.2 is added to the Public Resources~~
2 ~~Code, to read:~~

3 ~~43501.2. The owner or operator of a closed solid waste landfill~~
4 ~~that is subject to a closure or a postclosure maintenance plan may~~
5 ~~not sell or offer for sale any portion of a closed waste management~~
6 ~~unit unless the intended purchaser provides evidence, to the~~
7 ~~satisfaction of the board, of his or her ability to meet the financial~~
8 ~~assurance requirements of Article 4 (commencing with Section~~
9 ~~43600) of Chapter 2 of Part 4 of this division.~~

10 *SECTION 1. Section 48000 of the Public Resources Code is*
11 *amended to read:*

12 48000. (a) Each operator of a disposal facility shall pay a fee
13 quarterly to the State Board of Equalization which is based on the
14 amount, by weight or volumetric equivalent, as determined by the
15 board, of all solid waste disposed of at each disposal site.

16 (b) (1) The fee for solid waste disposed of shall be one dollar
17 and thirty-four cents (\$1.34) per ton. Commencing with the
18 1995–96 fiscal year, the amount of the fee shall be established by
19 the board at an amount that is sufficient to generate revenues
20 equivalent to the approved budget for that fiscal year, including a
21 prudent reserve, but shall not exceed one dollar and forty cents
22 (\$1.40) per ton.

23 (2) *On and after January 1, 2012, the amount of the fee*
24 *established by the board pursuant to paragraph (1) shall be*
25 *increased by twelve cents (\$0.12) per ton for each operator of a*
26 *solid waste landfill that notifies the board that it elects to*
27 *participate in the State Solid Waste Postclosure and Corrective*
28 *Action Trust Fund pursuant to Article 2.1.*

29 (c) The board shall notify the ~~State Board of Equalization~~ *state*
30 *board* on the first day of the period in which the rate shall take

1 effect of any rate change adopted pursuant to ~~this section~~
 2 *paragraphs (1) and (2) of subdivision (b).*

3 (d) ~~The board and the State Board of Equalization~~ *state board*
 4 shall ensure that all of the fees for solid waste imposed pursuant
 5 to this section that are collected at a transfer station are paid to the
 6 ~~State Board of Equalization~~ *state board* in accordance with this
 7 article.

8 (e) (1) *The fee imposed by paragraph (2) of subdivision (b)*
 9 *shall not be operative after January 1, 2012, unless the board*
 10 *receives, on or before January 1, 2012, letters of participation in*
 11 *the State Solid Waste Postclosure and Corrective Action Trust*
 12 *Fund from landfill operators representing at least 50 percent of*
 13 *the total volume of waste disposed of in 2010.*

14 (2) *The board shall notify the state board, on or before January*
 15 *30, 2012, if the fee imposed by paragraph (2) of subdivision (b)*
 16 *shall become operative, pursuant to paragraph (1).*

17 SEC. 2. *Section 48001 of the Public Resources Code is*
 18 *amended to read:*

19 48001. The revenue from the fees paid pursuant to *paragraph*
 20 *(1) of subdivision (b) of Section 48000* shall, after payment of
 21 refunds and administrative costs of collection, be deposited in the
 22 Integrated Waste Management Account, which is hereby created
 23 in the fund.

24 SEC. 3. *Section 48001.5 is added to the Public Resources Code,*
 25 *to read:*

26 48001.5. (a) *The revenue from the fees paid pursuant to*
 27 *paragraph (2) of subdivision (b) of Section 48000* shall, after
 28 *payment of refunds and administrative costs of collection, be*
 29 *deposited in the State Solid Waste Postclosure and Corrective*
 30 *Action Trust Fund, which is hereby created in the State Treasury.*

31 (b) *Fees, revenues, and all interest earned shall be available*
 32 *to the board, upon appropriation by the Legislature, to carry out*
 33 *the purposes of Article 2.1, including all of the following:*

34 (1) *Corrective action and postclosure activities pursuant to*
 35 *subdivision (b) of Section 48011.*

36 (2) *Administrative costs incurred by the board in implementing*
 37 *Article 2.1.*

38 (3) *Any startup costs incurred by the board in implementing*
 39 *Article 2.1 that were incurred before fees were paid pursuant to*
 40 *paragraph (2) of subdivision (b) of Section 48000.*

1 ~~SEC. 2.~~

2 ~~SEC. 4.~~ Article 2.1 (commencing with Section 48010) is added
3 to Chapter 2 of Part 7 of Division 30 of the Public Resources Code,
4 to read:

5
6 Article 2.1. State Solid Waste Postclosure *and Corrective Action*
7 Trust Fund

8
9 ~~48010.~~ (a) ~~On and after January 1, 2011, each operator of a~~
10 ~~solid waste landfill that notifies the board that it elects to participate~~
11 ~~in the State Solid Waste Postclosure Trust Fund shall pay a fee~~
12 ~~quarterly to the State Board of Equalization that is based on the~~
13 ~~amount, by weight or volumetric equivalent, as determined by the~~
14 ~~board, of all solid waste disposed of at each disposal site.~~

15 ~~(b) The fee shall be twelve cents (\$0.12) per ton and shall be~~
16 ~~collected in the same manner as the solid waste disposal fee. The~~
17 ~~board shall deposit proceeds from this fee in the State Solid Waste~~
18 ~~Postclosure Trust Fund, which is hereby created in the State~~
19 ~~Treasury. Fee revenues and all interest earned shall be available~~
20 ~~to the board, upon appropriation by the Legislature, to carry out~~
21 ~~the purposes of this article.~~

22 ~~(c) The board shall notify the State Board of Equalization on~~
23 ~~the first day of the period in which the rate shall take effect and~~
24 ~~of any rate change adopted pursuant to this section.~~

25 ~~(d) The board and the State Board of Equalization shall ensure~~
26 ~~that all the fees for solid waste imposed pursuant to this section~~
27 ~~that are collected at a transfer station are paid to the State Board~~
28 ~~of Equalization in accordance with this article.~~

29 ~~48011.~~

30 ~~48010.~~ (a) (1) An operator of a landfill that is required to
31 ~~maintain evidence of financial ability pursuant to Article 4~~
32 ~~(commencing with Section 43600) of Chapter 2 of Part 4 and is~~
33 ~~operating on September 1, 2010, that is operating the landfill on~~
34 ~~July 1, 2011, and that elects to participate in the State Solid Waste~~
35 ~~Postclosure *and Corrective Action* Trust Fund pursuant to this~~
36 ~~article, shall submit written notice to the board on or before~~
37 ~~September 1, 2010 July 1, 2011.~~

38 (2) An operator of multiple landfills that elects to participate in
39 the State Solid Waste Postclosure *and Corrective Action* Trust
40 Fund is required to submit written notice that includes all of the

1 operator's operating landfills *and all other landfills in which that*
2 *operator has in common ownership.*

3 (3) *The board shall provide to the state board the name and*
4 *address, and any other information necessary to administer and*
5 *collect the fee imposed pursuant to paragraph (2) of subdivision*
6 *(b) of Section 48000, of every operator of a landfill electing to*
7 *participate in the State Solid Waste Postclosure and Corrective*
8 *Action Trust Fund on or before August 31, 2011.*

9 (b) *If an operator that is operating a landfill on July 1, 2011,*
10 *submits a written notification to the board that it elects to*
11 *participate after the trust fund fee goes into effect, the operator*
12 *shall pay all back fees and a 5 percent penalty. goes into effect,*
13 *the operator shall pay all trust fund fees applicable from January*
14 *1, 2012, and a 5 percent penalty before being allowed to*
15 *participate.*

16 (c) *For new landfills that receive a solid waste facility permit*
17 *after ~~September 1, 2010,~~ July 1, 2011, the operator's election to*
18 *participate in the State Solid Waste Postclosure and Corrective*
19 *Action Trust Fund shall be submitted in writing to the board before*
20 *the board concurs ~~on~~ in the issuance of the permit pursuant to*
21 *Section 44009.*

22 (d) *All elections to participate made by landfill operators*
23 *pursuant to this section are final, binding, and irrevocable for those*
24 *operators and their successors and assignees.*

25 ~~48012. (a) The board may only expend the~~

26 ~~48011. (a) For the purposes of this article, "solid waste~~
27 ~~landfill" means a disposal site that is required to maintain evidence~~
28 ~~of financial ability pursuant to Part 4 (commencing with Section~~
29 ~~43600) of Chapter 2 of Part 4.~~

30 (b) *The board may expend money in the State Solid Waste*
31 *Postclosure and Corrective Action Trust Fund to pay for corrective*
32 *action and postclosure activities that have not been performed by*
33 *the owner or operator of a solid waste landfill participating in the*
34 *State Solid Waste Postclosure Trust Fund, and only, upon a*
35 *determination by the board that all of the following conditions are*
36 *met:*

37 (1) *The solid waste landfill owner or operator has failed to*
38 *comply with a final enforcement order issued by the enforcement*
39 *agency, the regional water board, or the board.*

1 (2) The financial assurance mechanisms are inadequate to fund
2 ~~necessary compliance activities~~ *pay for the required corrective*
3 *action or postclosure maintenance activities or both that action*
4 *and those activities.*

5 (3) The solid waste landfill was operating pursuant to a valid
6 solid waste facilities permit on or after January 1, 1988, when the
7 state's requirements for solid waste landfill financial assurances
8 went into effect as a result of Assembly Bill 2448 of the 1987-88
9 Regular Session, and is required to have financial assurances
10 pursuant to ~~Sections 43600 to 43610.1, inclusive~~ *Article 4*
11 *(commencing with Section 43600) of Chapter 2 of Part 4.*

12 (4) The board has first used and exhausted ~~the~~ *all immediately*
13 *available* financial assurance mechanisms provided by the public
14 operator.

15 (5) *The solid waste landfill owner and operator are otherwise*
16 *unable or unwilling to pay, in a timely manner, for the required*
17 *corrective action or postclosure maintenance activities or both*
18 *that action and those activities.*

19 ~~(b)~~

20 (c) The board may adopt regulations, if necessary, setting forth
21 additional criteria for making expenditures from the State Solid
22 Waste Postclosure *and Corrective Action* Trust Fund.

23 ~~(e)~~

24 (d) Notwithstanding Section 10295 of the Public Contract Code,
25 a contract entered into by the board for the purposes of this ~~section~~
26 *article* is not subject to approval by the Department of General
27 Services.

28 ~~(d)~~

29 (e) No liability or obligation is imposed on the state under this
30 ~~subdivision~~ *article*, and the board shall not incur any obligation
31 beyond the extent to which money is expended from the State
32 Solid Waste Postclosure *and Corrective Action* Trust Fund pursuant
33 to this ~~section~~ *article*.

34 ~~(e)~~

35 (f) The board shall, to the maximum extent feasible, recover
36 from the landfill *owner or operator* the amount of money expended
37 from the State Solid Waste Postclosure *and Corrective Action*
38 Trust Fund, including a reasonable amount for any ~~contract~~
39 ~~administration costs of the board~~ *board contract administration*
40 *costs* and an amount equal to the interest that would have been

1 earned on the expended funds as the result of the operator's failure
 2 to comply with the final order issued by the board. The board shall
 3 deposit all funds recovered pursuant to an action authorized by
 4 this section into the State Solid Waste Postclosure *and Corrective*
 5 *Action* Trust Fund.

6 ~~(f)~~

7 (g) The amount of any cost incurred by the board pursuant to
 8 this section is recoverable from the landfill *owner or* operator in
 9 a civil action brought by the Attorney General pursuant to Section
 10 40432.

11 ~~(g) The board may impose a lien on the~~

12 (h) *The board may, consistent with Section 48023.5, impose a*
 13 *lien on the owner's or operator's assets or real property as an*
 14 *additional remedy to recover funds from the operator for*
 15 *expenditures from the State Solid Waste Postclosure and Corrective*
 16 *Action Trust Fund.*

17 ~~48013. On or before January 1, 2014, and every two years~~
 18 ~~thereafter~~

19 48012. *After January 1, 2015, as part of the annual report*
 20 *required pursuant to Section 40507, the board shall report to the*
 21 *Legislature on expenditures from the State Solid Waste Postclosure*
 22 *and Corrective Action Trust Fund, the status of cost recovery*
 23 *actions, and any recommended statutory changes that are required*
 24 *necessary to ensure adequate resources are available to carry out*
 25 *the purposes of the State Solid Waste Postclosure and Corrective*
 26 *Action Trust Fund.*

27 ~~48014. (a) The fee imposed by Section 48010 and this article~~
 28 ~~shall not be operative after July 1, 2010 unless the board receives~~
 29 ~~on or before July 1, 2010, letters of participation in the State Solid~~
 30 ~~Waste Postclosure Trust Fund from landfill operators representing~~
 31 ~~at least 50 percent of the total annual waste disposal volume in~~
 32 ~~2009.~~

33 ~~(b)~~

34 48013. An operator of multiple landfills ~~that~~ *who* is required
 35 to maintain evidence of financial ability pursuant to Article 4
 36 (commencing with Section 43600) of Chapter 2 of Part 4 ~~and that~~
 37 ~~are operating on July 1, 2010, is required to include all of the~~
 38 ~~operator's operating landfills in the letter of participation. whose~~
 39 ~~landfills are operating on July 1, 2010, shall include all other~~

1 *landfills in which that operator has in common ownership in the*
2 *letter of participation.*

3 *SEC. 5. Section 45901 of the Revenue and Taxation Code is*
4 *amended to read:*

5 45901. All fees, interest, and penalties imposed and all amounts
6 of fee required to be paid to the state pursuant to Section 45051
7 shall be paid to the board in the form of remittances payable to the
8 State Board of Equalization of the State of California. The board
9 shall transmit the payments ~~to the Treasurer for deposit in the~~
10 ~~Integrated Waste Management Account in the Integrated Waste~~
11 ~~Management Fund.~~ *in the following manner:*

12 (a) *The payments from the fees paid pursuant to paragraph (1)*
13 *of subdivision (b) of Section 48000 of the Public Resources Code*
14 *and related interest and penalties shall be transmitted to the*
15 *Treasurer for deposit in the Integrated Waste Management Account*
16 *in the Integrated Waste Management Fund.*

17 (b) *The payments from the fees paid pursuant to paragraph (2)*
18 *of subdivision (b) of Section 48000 of the Public Resources Code*
19 *and related interest and penalties shall be transmitted to the State*
20 *Solid Waste Postclosure and Corrective Action Trust Fund.*

21 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
22 ~~Section 6 of Article XIII B of the California Constitution because~~
23 ~~the only costs that may be incurred by a local agency or school~~
24 ~~district will be incurred because this act creates a new crime or~~
25 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
26 ~~for a crime or infraction, within the meaning of Section 17556 of~~
27 ~~the Government Code, or changes the definition of a crime within~~
28 ~~the meaning of Section 6 of Article XIII B of the California~~
29 ~~Constitution.~~