

Assembly Bill No. 737

Passed the Assembly August 31, 2010

Chief Clerk of the Assembly

Passed the Senate August 30, 2010

Secretary of the Senate

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 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and to add Sections 40004, 40116.5, and 41734.5 to, to add Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and to add and repeal Section 41780.01 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 737, Chesbro. Solid waste: diversion.

(1) The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting component. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities.

Existing law requires the department to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The department is required to issue an order of compliance if the department finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the department finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the department is authorized to impose administrative civil penalties upon the city, county, or regional agency.

The bill would require the department, by January 1, 2013, to report to the Legislature on the current diversion rate in the state and provide strategies to increase the diversion rate to 75% by 2020. The bill would repeal this requirement on January 1, 2017.

(2) Existing law requires a local agency to impose certain requirements on an operator of a large venue or event to facilitate solid waste reduction, reuse, and recycling.

This bill would require the owner or operator of a business that contracts for solid waste services and generates more than 4 cubic yards of total solid waste and recyclable materials per week to take specified action.

The bill would require a jurisdiction to implement a commercial recycling program meeting specified elements but would not require the jurisdiction to revise its source reduction and recycling element if the jurisdiction adds or expands a commercial recycling program to meet this requirement. The bill would authorize a local agency to charge and collect a fee from a commercial waste generator to recover the local agency's estimated costs incurred in complying with the commercial recycling program requirements. By requiring a jurisdiction to implement a commercial recycling program, this bill would impose a state-mandated local program.

The bill would require the department to review a jurisdiction's compliance with the above requirement as a part of the department's review of a jurisdiction's compliance with the 50% solid waste diversion requirement.

(3) Existing law requires a city, county, and city and county to incorporate the nondisposal facility element and any amendment to the element into the revised source reduction and recycling element at the time of the 5-year revision of the source reduction and recycling element. Existing law requires the department to review an amendment to a nondisposal facility element. Existing law requires a local task force to review and comment on amendments to a nondisposal facility element.

This bill would repeal those requirements. The bill would instead require a city, county, city and county, or regional agency to update all information required to be included in the nondisposal facility element. The bill would provide that the update is not subject to approval by the department or comment and review by a local task force.

(4) Existing law requires each state agency to submit an annual report to the department summarizing its progress in reducing solid waste that is due on September 1 of each year starting in 2009.

This bill would change the due date to May 1 of each year.

(5) Existing law requires an operator of a solid waste facility that wants to change the design or operation of the solid waste facility in a manner not authorized by the current permit to apply for a revised permit. Within 60 days of receipt of the application for the revised permit, the enforcement agency is required to inform the operator, and in some circumstances the department, of its determination to allow the change without revision of the permit, disallow the change, require a revision of the permit to allow the change, or require review under the California Environmental Quality Act before a decision is made.

This bill would also require the enforcement agency to give notice of its determination to allow certain changes without a revision to the permit through a modification to the permit allowed by regulations developed by the department.

(6) 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.

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

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) Since the enactment of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), local governments and private industries have worked jointly to create an extensive material collection and recycling infrastructure and have implemented effective programs to achieve a statewide diversion rate above 50 percent.

(2) Although the state now leads the nation in solid waste reduction and recycling, the state continues to dispose of more than 40 million tons of solid waste each year, which is more than the national average on a per capita basis. Additional efforts must be undertaken to divert more solid waste from disposal in order to conserve scarce natural resources.

(b) The Legislature further finds and declares all of the following:

(1) Approximately 64 percent of the state’s solid waste disposal is from commercial sources, including commercial, industrial, construction, and demolition activities. In addition, 8 percent of the state’s solid waste disposal is from multifamily residential housing that is often collected along with the commercial waste stream.

(2) The state’s local governments have made significant progress in reducing the amount of solid waste disposal from single-family residential sources that make up 28 percent of the state’s disposal, but have faced more challenges in reducing disposal from the commercial and multifamily sources.

(3) The disposal of recyclable materials in the commercial solid waste stream prevents materials from circulating in the state economy to produce jobs and new products. Reducing the disposal of these materials will conserve landfill capacity and contribute to a reduction in greenhouse gas emissions and climate change.

(4) The state has long been a national and international leader in environmental stewardship efforts and mandating the diversion of solid waste away from disposal. Bold environmental leadership and a new approach are needed to divert commercial solid waste away from disposal.

(5) By exercising a leadership role, the state will lead the business community toward a future in which the environment and the economy both grow stronger together by recycling materials, which creates new jobs, instead of burying resources, which exit the economy forever.

(6) By requiring commercial recycling, the state will help businesses reduce costly disposal fees and reclaim valuable resources.

SEC. 2. Section 40004 is added to the Public Resources Code, to read:

40004. (a) The Legislature finds and declares all of the following:

(1) Solid waste diversion and disposal reduction require the availability of adequate solid waste processing and composting capacity.

(2) The existing network of public and private solid waste processing and composting facilities provides a net environmental benefit to the communities served, and represents a valuable asset and resource of this state, one that must be sustained and expanded

to provide the additional solid waste processing capacity that will be required to achieve the additional solid waste diversion targets expressed in Section 41780.01 and the commercial recycling requirement expressed in Section 42649.

(3) The provisions in existing law that confer broad discretion on local agencies to determine aspects of solid waste handling that are of local concern have significantly contributed to the statewide diversion rate exceeding 50 percent, and further progress toward decreasing solid waste disposal requires that this essential element of local control be preserved.

(b) It is the intent of the Legislature to encourage the development of the additional solid waste processing and composting capacity that is needed to meet state objectives for decreasing solid waste disposal by identifying incentives for local governments to locate and approve new or expanded facilities that meet and exceed their capacity needs, and to recognize local agencies that make significant contributions to the state's overall solid waste reduction and recycling objectives through the siting of facilities for the processing and composting of materials diverted from the solid waste stream.

(c) By setting new commercial waste recycling requirements in Section 42649, the Legislature does not intend to limit a right afforded to local governments pursuant to Section 40059, or to modify or abrogate in any manner the rights of a local government or solid waste enterprise with regard to a solid waste handling franchise or contract.

SEC. 3. Section 40116.5 is added to the Public Resources Code, to read:

40116.5. "Department" means the Department of Resources Recycling and Recovery.

SEC. 4. Section 41730 of the Public Resources Code is amended to read:

41730. Except as provided in Section 41750.1, each city shall prepare, adopt, and, except for a city and county, transmit to the county in which the city is located a nondisposal facility element that includes all of the information required by this chapter and that is consistent with the implementation of a city source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any updates to the element shall

not be subject to the approval of the county and the majority of cities with the majority of the population in the incorporated area.

SEC. 5. Section 41731 of the Public Resources Code is amended to read:

41731. Except as provided in Section 41750.1, each county shall prepare, adopt, and, except for a city and county, transmit to the cities located in the county a nondisposal facility element that includes all of the information required by this chapter and that is consistent with the implementation of a county source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any updates to the element shall not be subject to the approval of the majority of cities with the majority of the population in the incorporated area.

SEC. 6. Section 41734 of the Public Resources Code is amended to read:

41734. (a) (1) Prior to adopting a nondisposal facility element, the city, county, or regional agency shall submit the element to the task force created pursuant to Section 40950 for review and comment.

(2) Prior to adopting a regional agency nondisposal facility element, if the jurisdiction of the regional agency extends beyond the boundaries of a single county, the regional agency shall submit the element for review and comment to each task force created pursuant to Section 40950 of each county within the jurisdiction of the regional agency.

(b) Comments by the task force shall include an assessment of the regional impacts of potential diversion facilities and shall be submitted to the city, county, or regional agency and to the department within 90 days of the date of receipt of the nondisposal facility element for review and comment.

SEC. 7. Section 41734.5 is added to the Public Resources Code, to read:

41734.5. (a) Once a nondisposal facility element has been adopted, the city, county, or regional agency shall update all information required to be included in the nondisposal facility element, including, but not limited to, new information regarding existing and new, or proposed nondisposal facilities.

(b) Updates shall be provided to the department within 30 days of any change in information.

(c) Copies of the updated information shall also be provided to the local task force and shall be appended or otherwise added to the nondisposal facility element.

(d) The local task force shall not be required to review and comment on the updates to the nondisposal facility elements.

(e) Updates to the nondisposal facility elements are not subject to approval by the department.

SEC. 8. Section 41735 of the Public Resources Code is amended to read:

41735. (a) Notwithstanding Division 13 (commencing with Section 21000), the adoption or update of a nondisposal facility element shall not be subject to environmental review.

(b) Local agencies may impose a fee on project proponents to fund their necessary and actual costs of preparing and approving updates to nondisposal facility elements.

SEC. 9. Section 41736 of the Public Resources Code is amended to read:

41736. It is not the intent of the Legislature to require cities and counties to revise their source reduction and recycling elements to comply with the requirements of this chapter.

SEC. 10. Section 41780.01 is added to the Public Resources Code, to read:

41780.01. (a) On or before January 1, 2013, the department shall report to the Legislature on the current diversion rate in the state and provide the Legislature with strategies to increase the diversion rate to 75 percent by 2020. The report shall also include information on the costs of the strategies identified in the report.

(b) The report required under subdivision (a) may be included in the report required under Section 40507.

(c) (1) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2017.

(2) The report shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 11. Section 41800 of the Public Resources Code is amended to read:

41800. (a) Except as provided in subdivision (b), within 120 days from the date of receipt of a countywide or regional integrated waste management plan that the department has determined to be complete, or any element of the plan that the department has determined to be complete, the department shall determine whether

the plan or element is in compliance with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1, Chapter 2 (commencing with Section 41000), and Chapter 5 (commencing with Section 41750), and, based upon that determination, the department shall approve, conditionally approve, or disapprove the plan or element.

(b) (1) Within 120 days from the date of receipt of a city, county, or regional agency nondisposal facility element that the department has determined to be complete, the department shall determine whether the element that the department has determined to be complete is in compliance with Chapter 4.5 (commencing with Section 41730) and Article 1 (commencing with Section 41780) of Chapter 6, and, based upon that determination, the department shall approve, conditionally approve, or disapprove the element within that time period.

(2) In reviewing the element, the department shall:

(A) Not consider the estimated capacity of the facility or facilities in the element unless the department determines that this information is needed to determine whether the element meets the requirements of Article 1 (commencing with Section 41780) of Chapter 6.

(B) Recognize that individual facilities represent portions of local plans or programs that are designed to achieve the diversion requirements of Section 41780 and therefore may not arbitrarily require new or expanded diversion at proposed facilities.

(C) Not disapprove an element that includes a transfer station or other facility solely because the facility does not contribute towards the jurisdiction's efforts to comply with Section 41780.

(c) If the department does not act to approve, conditionally approve, or disapprove an element that the department has determined to be complete within 120 days, the department shall be deemed to have approved the element.

SEC. 12. Chapter 12.8 (commencing with Section 42649) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 12.8. COMMERCIAL RECYCLING

42649. (a) It is the intent of the Legislature to require businesses to recycle solid waste that they generate.

(b) It is the intent of the Legislature to allow jurisdictions flexibility in developing and maintaining commercial recycling programs.

42649.1. For purposes of this chapter, the following terms mean the following:

(a) “Business” means a commercial entity operated by a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity, or a multifamily residential dwelling of five units or more.

(b) “Commercial waste generator” means a business subject to subdivision (a) of Section 42649.2.

(c) “Self-hauler” means a business that hauls its own waste rather than contracting for that service.

42649.2. (a) The owner or operator of a business that contracts for solid waste services and generates more than four cubic yards of total solid waste and recyclable materials that are not solid waste per week shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

(b) A commercial waste generator shall take either of the following actions:

(1) Source separate specified recyclable materials from solid waste and subscribe to a basic level of recycling service that includes the collection of those recyclable materials or specific provisions for authorized self-hauling.

(2) Subscribe to an alternative type of recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

42649.3. (a) Each jurisdiction shall implement a commercial recycling program appropriate for that jurisdiction designed to divert solid waste from businesses whether or not the jurisdiction has met the requirements of Section 41780.

(b) If a jurisdiction already has a commercial recycling program as one of its diversion elements that meets the requirements of this section, it shall not be required to implement a new or expanded commercial recycling program.

(c) The commercial recycling program shall be directed at a business, as defined in subdivision (a) of Section 42649.1, and may include, but is not limited to, any of the following:

(1) Implementing a mandatory commercial recycling policy or ordinance.

(2) Requiring a mandatory commercial recycling program through a franchise contract or agreement.

(3) Requiring all commercial recycling material to go through a mixed processing system that diverts material from disposal.

(d) The commercial recycling program shall include education and outreach to businesses.

(e) The commercial recycling program may include enforcement and monitoring provisions.

(f) The commercial recycling program may include certification requirements for self-haulers.

(g) The department shall review a jurisdiction's compliance with this section as part of the department's review required by Section 41825.

42649.4. (a) If a jurisdiction adds or expands a commercial recycling program to meet the requirements of Section 42649.3, the jurisdiction shall not be required to revise its source reduction and recycling element, or obtain the department's approval pursuant to Article 1 (commencing with Section 41800) of Chapter 7 of Part 1.

(b) If an addition or expansion of a jurisdiction's commercial recycling program is necessary, the jurisdiction shall update in its annual report required pursuant to Section 41821.

42649.5. (a) This chapter does not limit the authority of a local agency to adopt, implement, or enforce a local commercial recycling requirement that is more stringent or comprehensive than the requirements of this section or limit the authority of a local agency in a county with a population of less than 200,000 to require commercial recycling.

(b) This chapter does not modify or abrogate in any manner any of the following:

(1) A franchise granted or extended by a city, county, or other local government agency.

(2) A contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency.

(3) The existing right of a business to sell or donate its recyclable materials.

42649.6. A local agency may charge and collect a fee from a commercial waste generator in order to recover the local agency's estimated costs incurred in complying with this chapter.

SEC. 13. Section 42926 of the Public Resources Code is amended to read:

42926. (a) In addition to the information provided to the department pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit an annual report to the department summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before May 1, 2011, and on or before May 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency's annual report to the department shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) Other information relevant to compliance with Section 42921.

(c) The department shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

SEC. 14. Section 44004 of the Public Resources Code is amended to read:

44004. (a) An operator of a solid waste facility shall not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, the change

conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 180 days in advance of the date when the proposed modification is to take place unless the 180-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within 60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the department, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Allow the following changes without a revision to the permit through a modification to the permit allowed pursuant to regulations developed by the department:

(A) The proposed change is to allow a nondisposal facility to increase the amount of solid waste that it may handle and that increased amount is within the existing design capacity as described in the facility's transfer processing report and review pursuant to Division 13 (commencing with Section 21000).

(B) The proposed change is to allow a disposal facility to add a nondisposal activity to the facility that will increase the amount of solid waste that may be handled as described in the facility's report of facility information and review pursuant to Division 13 (commencing with Section 21000).

(3) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(4) Require a revision of the solid waste facilities permit to allow the change.

(5) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the department.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The department may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making its determination pursuant to subdivision (d), the enforcement agency shall submit the proposed determination to the department for comment and hold at least one public hearing on the proposed determination. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided

to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the department pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the department when it submits the proposed determination to the department.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the department comments pursuant to paragraph (1), the department shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The department shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.”

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the department shall consider recommendations of the Working Group on Environmental Justice and the advisory group made pursuant to Sections 71113 and 71114 and the report required pursuant to Section 71115.

SEC. 15. Section 50001 of the Public Resources Code is amended to read:

50001. (a) Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the Department of Resources Recycling and Recovery pursuant to Division 30 (commencing with Section 40000), a person shall not establish or expand a solid waste facility, as defined in Section 40194, in the county unless the solid waste facility meets one of the following criteria:

(1) The solid waste facility is a disposal facility or a transformation facility, the location of which is identified in the countywide siting element or amendment thereto, which has been approved pursuant to Section 41721.

(2) The solid waste facility is a facility that is designed to recover for reuse or recycling at least 5 percent of the total volume of material received by the facility, and that is described in the nondisposal facility element that has been approved pursuant to Section 41800 or is included in an update to that element.

(b) Solid waste facilities other than those specified in paragraphs (1) and (2) of subdivision (a) shall not be required to comply with the requirements of this section.

(c) The person or agency proposing to establish a solid waste facility shall prepare and submit a site identification and description of the proposed facility to the task force established pursuant to Section 40950. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the proposed solid waste facility in writing. These comments shall include, but are not limited to, the relationship between the proposed solid waste facility and the implementation schedule requirements of Section 41780 and the regional impact of the facility. The task force shall transmit these comments to the person or public agency proposing establishment of the solid waste facility, to the county, and to all cities within the county. The comments shall become part of the official record of the proposed solid waste facility.

(d) The review and comment by the local task force shall not be required for an update to a nondisposal facility element.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2010

Governor