

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE JUNE 23, 2011

AMENDED IN SENATE JUNE 10, 2011

AMENDED IN SENATE JUNE 2, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 480**

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**Introduced by Assembly Member Solorio**

February 15, 2011

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An act to amend, *repeal, and add* Section 1760 of the Insurance Code, and to amend, *repeal, and add* Section 43601 of the *Public Resources Code*, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 480, as amended, Solorio. Insurance: solid waste facilities.

Existing law regulates solid waste facilities and requires that any person owning or operating a solid waste landfill submit evidence of financial ability to provide for the cost of closure and postclosure maintenance, except as specified. Existing law provides that if the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, either through an independent insurer or where the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, the insurance mechanism may be approved *by the Department of Resources Recycling and Recovery* if the insurance carrier meets specified requirements.

This bill would specify that, *until January 1, 2017*, an insurance carrier established by a solid waste facility operator to meet the financial

assurance obligations of that operator that meets all of those specified requirements shall be eligible to provide that insurance and shall not be required to be a California admitted insurer nor be required to provide the insurance through a surplus line broker. *The bill would add as a requirement for approval of a solid waste facility operator meeting its financial assurance obligations by establishing an insurance carrier that the insurance mechanism not provide in excess of 75% of the financial assurance obligation that the solid waste facility operator is required to meet in the state.*

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

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

1     SECTION 1. Section 1760 of the Insurance Code is amended  
 2 to read:

3     1760. (a) (1) A home state insured, as defined in subdivision  
 4 (f) of Section 1760.1, may negotiate and effect insurance to protect  
 5 himself, herself, or itself against loss, damage, or liability with any  
 6 nonadmitted insurer.

7     (2) *Notwithstanding any other law, an issuer of an insurance*  
 8 *policy that meets all of the requirements of paragraph (2) of*  
 9 *subdivision (e) of Section 43601 of the Public Resources Code*  
 10 *shall be eligible to provide the insurance described in that*  
 11 *subdivision. An issuer of an insurance policy pursuant to this*  
 12 *section shall not be required to be a California admitted insurer,*  
 13 *nor be required to provide the insurance through a surplus line*  
 14 *broker.*

15     (b) Every home state insured that effects insurance governed  
 16 by this chapter shall pay the tax imposed by Part 7.5 (commencing  
 17 with Section 13201) of Division 2 of the Revenue and Taxation  
 18 Code.

19     (c) *This section shall remain in effect only until January 1, 2017,*  
 20 *and as of that date is repealed, unless a later enacted statute, that*  
 21 *is enacted before January 1, 2017, deletes or extends that date.*

22     SEC. 2. Section 1760 is added to the Insurance Code, to read:

23     1760. (a) A home state insured, as defined in subdivision (f)  
 24 of Section 1760.1, may negotiate and effect insurance to protect  
 25 himself, herself, or itself against loss, damage, or liability with  
 26 any nonadmitted insurer.

1 (b) Every home state insured that effects insurance governed  
2 by this chapter shall pay the tax imposed by Part 7.5 (commencing  
3 with Section 13201) of Division 2 of the Revenue and Taxation  
4 Code.

5 (c) This section shall become operative on January 1, 2017.

6 SEC. 3. Section 43601 of the Public Resources Code is  
7 amended to read:

8 43601. (a) The evidence of financial ability shall be sufficient  
9 to meet the closure and postclosure maintenance costs when  
10 needed.

11 (b) The owner or operator of a solid waste landfill shall provide  
12 evidence of financial ability through the use of any of the  
13 mechanisms set forth in Part 258 (commencing with Section 258.1)  
14 of Title 40 of the Code of Federal Regulations or through the use  
15 of any other mechanisms approved by the ~~board~~ department.  
16 However, the ~~board~~ department may adopt regulations that  
17 reasonably condition the use of one or more of those mechanisms  
18 to ensure adequate protection of public health and safety and the  
19 environment, but shall not exclude the use of any mechanism  
20 permitted under federal law. In addition, the evidence of financial  
21 ability submitted pursuant to Section 43600 shall provide that  
22 funds shall be available to the regional water boards upon the  
23 issuance of any order under Chapter 5 (commencing with Section  
24 13300) of Division 7 of the Water Code to implement closure and  
25 postclosure activities.

26 (c) The state water board or the appropriate regional water board  
27 shall have access to the financial assurance funds for closure and  
28 postclosure activities, and to financial assurance funds for  
29 corrective action, as necessary, to address water quality problems,  
30 if the owner or operator of the solid waste landfill has failed to  
31 implement the required closure and postclosure activities or  
32 corrective action activities.

33 (d) The owner or operator may request disbursement for  
34 expenditures to conduct closure, postclosure maintenance, or  
35 corrective actions from the financial assurance mechanism  
36 established for that activity. Requests for disbursement shall be  
37 granted by the ~~board~~ department only if sufficient funds are  
38 remaining in the financial assurance mechanism to cover the  
39 remaining approved total costs of closure, postclosure maintenance,  
40 or corrective actions, as appropriate.

1 (e) If the evidence of financial ability for closure, postclosure,  
2 or corrective action is demonstrated by use of insurance, the ~~board~~  
3 *department* may approve the insurance mechanism if it is in  
4 compliance with either paragraph (1) or (2) as follows:

5 (1) The issuer of the insurance policy is either:

6 (A) Licensed by the Department of Insurance to transact the  
7 business of insurance in the State of California as an admitted  
8 carrier.

9 (B) Eligible to provide insurance as an excess and surplus lines  
10 insurer in California through a surplus lines broker currently  
11 licensed under the regulations of the Department of Insurance and  
12 upon the terms and conditions prescribed by the Department of  
13 Insurance.

14 (2) If the insurance carrier is established by a solid waste facility  
15 operator to meet the financial assurance obligations of that operator,  
16 insurance may be approved by the ~~board~~ *department* that meets  
17 all of the following requirements:

18 (A) The insurance mechanism is in full compliance with the  
19 requirements for insurance that are specified in subdivision (d) of  
20 Section 258.74 of Title 40 of the Code of Federal Regulations.

21 (B) The insurance carrier is an insurer domiciled in the United  
22 States and licensed in its state of domicile to write that insurance.

23 (C) The insurance carrier only provides financial assurance to  
24 the operator that has established the insurance carrier as a form of  
25 self-insurance and does not engage in the business of marketing,  
26 brokering, or providing insurance coverage to other parties.

27 (D) The insurance carrier shall maintain a rating of A- or better  
28 by A.M. Best, or other equivalent rating by any other agency  
29 acceptable to the ~~board~~ *department*.

30 (E) If requested by the ~~board~~ *department*, an independent  
31 financial audit report evaluating the assets and liabilities of the  
32 insurance carrier and confirming compliance with the statutory  
33 and regulatory requirements of the state of domicile and an  
34 independent actuarial opinion on the independence and financial  
35 soundness of the insurance carrier by an actuary in good standing  
36 with the Casualty Actuarial Society or the American Academy of  
37 Actuaries regarding the adequacy of the loss reserves maintained  
38 by the insurance carrier shall be submitted to the ~~board~~ *department*  
39 upon application and annually thereafter.

1 (F) *The insurance mechanism does not provide in excess of 75*  
2 *percent of the financial assurance obligation that the solid waste*  
3 *facility operator is required to meet in the state.*

4 (f) A solid waste facility operator using or proposing to use an  
5 insurance company to demonstrate financial assurance may be  
6 required by the ~~board~~ department to pay a fee for the actual and  
7 necessary cost of reviewing information submitted by the operator  
8 pursuant to paragraph (2) of subdivision (e) up to an amount not  
9 to exceed ten thousand dollars (\$10,000), unless a higher amount  
10 is mutually agreed to by the operator and the ~~board~~ department.

11 (g) The funds collected pursuant to subdivision (f) shall be  
12 deposited in the Integrated Waste Management Account and shall  
13 be available, upon appropriation by the Legislature, for expenditure  
14 by the ~~board~~ department to fund the review specified in subdivision  
15 (f).

16 (h) *This section shall remain in effect only until January 1, 2017,*  
17 *and as of that date is repealed, unless a later enacted statute, that*  
18 *is enacted before January 1, 2017, deletes or extends that date.*

19 SEC. 4. *Section 43601 is added to the Public Resources Code,*  
20 *to read:*

21 43601. (a) *The evidence of financial ability shall be sufficient*  
22 *to meet the closure and postclosure maintenance costs when*  
23 *needed.*

24 (b) *The owner or operator of a solid waste landfill shall provide*  
25 *evidence of financial ability through the use of any of the*  
26 *mechanisms set forth in Part 258 (commencing with Section 258.1)*  
27 *of Title 40 of the Code of Federal Regulations or through the use*  
28 *of any other mechanisms approved by the department. However,*  
29 *the department may adopt regulations that reasonably condition*  
30 *the use of one or more of those mechanisms to ensure adequate*  
31 *protection of public health and safety and the environment, but*  
32 *shall not exclude the use of any mechanism permitted under federal*  
33 *law. In addition, the evidence of financial ability submitted*  
34 *pursuant to Section 43600 shall provide that funds shall be*  
35 *available to the regional water boards upon the issuance of any*  
36 *order under Chapter 5 (commencing with Section 13300) of*  
37 *Division 7 of the Water Code to implement closure and postclosure*  
38 *activities.*

39 (c) *The state water board or the appropriate regional water*  
40 *board shall have access to the financial assurance funds for closure*

1 *and postclosure activities, and to financial assurance funds for*  
2 *corrective action, as necessary, to address water quality problems,*  
3 *if the owner or operator of the solid waste landfill has failed to*  
4 *implement the required closure and postclosure activities or*  
5 *corrective action activities.*

6 *(d) The owner or operator may request disbursement for*  
7 *expenditures to conduct closure, postclosure maintenance, or*  
8 *corrective actions from the financial assurance mechanism*  
9 *established for that activity. Requests for disbursement shall be*  
10 *granted by the department only if sufficient funds are remaining*  
11 *in the financial assurance mechanism to cover the remaining*  
12 *approved total costs of closure, postclosure maintenance, or*  
13 *corrective actions, as appropriate.*

14 *(e) If the evidence of financial ability for closure, postclosure,*  
15 *or corrective action is demonstrated by use of insurance, the*  
16 *department may approve the insurance mechanism if it is in*  
17 *compliance with either paragraph (1) or (2) as follows:*

18 *(1) The issuer of the insurance policy is either:*

19 *(A) Licensed by the Department of Insurance to transact the*  
20 *business of insurance in the State of California as an admitted*  
21 *carrier.*

22 *(B) Eligible to provide insurance as an excess and surplus lines*  
23 *insurer in California through a surplus lines broker currently*  
24 *licensed under the regulations of the Department of Insurance and*  
25 *upon the terms and conditions prescribed by the Department of*  
26 *Insurance.*

27 *(2) If the insurance carrier is established by a solid waste facility*  
28 *operator to meet the financial assurance obligations of that*  
29 *operator, insurance may be approved by the department that meets*  
30 *all of the following requirements:*

31 *(A) The insurance mechanism is in full compliance with the*  
32 *requirements for insurance that are specified in subdivision (d) of*  
33 *Section 258.74 of Title 40 of the Code of Federal Regulations.*

34 *(B) The insurance carrier is an insurer domiciled in the United*  
35 *States and licensed in its state of domicile to write that insurance.*

36 *(C) The insurance carrier only provides financial assurance to*  
37 *the operator that has established the insurance carrier as a form*  
38 *of self-insurance and does not engage in the business of marketing,*  
39 *brokering, or providing insurance coverage to other parties.*

1 (D) *The insurance carrier shall maintain a rating of A- or better*  
2 *by A.M. Best, or other equivalent rating by any other agency*  
3 *acceptable to the department.*

4 (E) *If requested by the department, an independent financial*  
5 *audit report evaluating the assets and liabilities of the insurance*  
6 *carrier and confirming compliance with the statutory and*  
7 *regulatory requirements of the state of domicile and an independent*  
8 *actuarial opinion on the independence and financial soundness of*  
9 *the insurance carrier by an actuary in good standing with the*  
10 *Casualty Actuarial Society or the American Academy of Actuaries*  
11 *regarding the adequacy of the loss reserves maintained by the*  
12 *insurance carrier shall be submitted to the department upon*  
13 *application and annually thereafter.*

14 (f) *A solid waste facility operator using or proposing to use an*  
15 *insurance company to demonstrate financial assurance may be*  
16 *required by the department to pay a fee for the actual and*  
17 *necessary cost of reviewing information submitted by the operator*  
18 *pursuant to paragraph (2) of subdivision (e) up to an amount not*  
19 *to exceed ten thousand dollars (\$10,000), unless a higher amount*  
20 *is mutually agreed to by the operator and the department.*

21 (g) *The funds collected pursuant to subdivision (f) shall be*  
22 *deposited in the Integrated Waste Management Account and shall*  
23 *be available, upon appropriation by the Legislature, for*  
24 *expenditure by the department to fund the review specified in*  
25 *subdivision (f).*

26 (h) *This section shall become operative on January 1, 2017.*

27 **SECTION 1.** ~~Section 1760 of the Insurance Code is amended~~  
28 ~~to read:~~

29 ~~1760. (a) (1) A home state insured, as defined in subdivision~~  
30 ~~(f) of Section 1760.1, may negotiate and effect insurance to protect~~  
31 ~~himself, herself, or itself against loss, damage, or liability with any~~  
32 ~~nonadmitted insurer.~~

33 ~~(2) Notwithstanding any other law, an issuer of an insurance~~  
34 ~~policy that meets all of the requirements of paragraph (2) of~~  
35 ~~subdivision (e) of Section 43601 of the Public Resources Code~~  
36 ~~shall be eligible to provide the insurance described in that~~  
37 ~~subdivision. An issuer of an insurance policy pursuant to this~~  
38 ~~section shall not be required to be a California admitted insurer,~~  
39 ~~nor be required to provide the insurance through a surplus line~~  
40 ~~broker.~~

1     ~~(b) Every home state insured that effects insurance governed~~  
2     ~~by this chapter shall pay the tax imposed by Part 7.5 (commencing~~  
3     ~~with Section 13201) of Division 2 of the Revenue and Taxation~~  
4     ~~Code.~~

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