

Introduced by Senator Wolk

February 18, 2011

An act to amend Section 40059.1 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 841, as introduced, Wolk. Solid waste: enterprises: contracts.

The existing California Integrated Waste Management Act of 1989 allows each county, city, or district to determine aspects of solid waste handling that are of local concern and the means by which the services are to be provided. Existing law imposes specified restrictions on the enforceability of certain indemnity obligations related to source reduction and diversion contained in a provision, term, condition, or requirement in an ordinance, contract, franchise, license, permit, or other entitlement or right adopted, entered into, issued, or granted by a local agency. Existing law prohibits a solid waste enterprise, as defined, from being liable for the indemnity obligation under certain circumstances.

This bill would make technical corrections to that provision, including with regard to the Department of Resources Recycling and Recovery.

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

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

- 1 SECTION 1. Section 40059.1 of the Public Resources Code
- 2 is amended to read:
- 3 40059.1. (a) The Legislature hereby finds and declares both
- 4 of the following:

1 (1) In 1989, the Legislature enacted this division as the
2 California Integrated Waste Management Act of 1989. One of the
3 key provisions of this division is that each local agency has the
4 responsibility for diverting 50 percent of all solid waste generated
5 within the local agency by January 1, 2000.

6 (2) The public policy objective of the Legislature in enacting
7 this section is to ensure that those local agencies that require an
8 indemnity obligation retain their responsibility for implementing
9 the diversion requirements of this division.

10 (b) For the purposes of this section, the following terms have
11 the following meanings:

12 (1) “Indemnity obligation” means any indemnity obligation
13 directly or indirectly related to the failure of a local agency to meet
14 the solid waste diversion requirements imposed by Chapter 6
15 (commencing with Section 41780) of Part 2, that is expressly
16 assumed by, or imposed upon, the solid waste enterprise, whether
17 pursuant to ordinance, contract, franchise, license, permit, or other
18 entitlement or right, for the benefit of the local agency.

19 (2) “Local agency” means any county, city, city and county,
20 district, regional agency as defined in Section 40181, or other local
21 government agency.

22 (c) ~~Any~~ A provision, term, condition, or requirement contained
23 in any ordinance, contract, franchise, license, permit, or other
24 entitlement or right adopted, entered into, issued, or granted, as
25 the case may be, by a local agency for solid waste collection and
26 handling, including the recycling, processing, or composting of
27 solid waste, or in any request for bids or proposals in connection
28 with ~~any such~~ a contract or franchise, that authorizes or requires
29 the imposition of an indemnity obligation, shall, notwithstanding
30 ~~any such~~ the provision, term, condition, or requirement, be subject
31 to all of the following restrictions:

32 (1) An indemnity obligation shall not be enforceable if the ~~board~~
33 ~~imposed~~ penalty *imposed by the department pursuant to Section*
34 *41850* is based solely upon the failure of the local agency to
35 establish and maintain a source reduction and recycling element
36 pursuant to Chapter 2 (commencing with Section 41000) of Part
37 2, Chapter 3 (commencing with Section 41300) of Part 2, or
38 Section 41750.1, ~~as the case may be applicable~~.

39 (2) ~~Any board imposed~~ A penalty *imposed by the department*
40 *pursuant to Section 41850* is based upon a local agency’s failure

1 to meet the solid waste diversion requirements imposed by Chapter
2 6 (commencing with Section 41780) of Part 2, resulting in whole
3 or in part from the solid waste enterprise's breach of contract or
4 noncompliance with any other authorization, shall be apportioned
5 in accordance with the percentage of fault of the local agency and
6 the solid waste enterprise.

7 (3) For purposes of this section, a solid waste enterprise is not
8 liable for the indemnity obligation to the extent that the solid waste
9 enterprise's breach or noncompliance resulted from the action or
10 failure to act of the local agency.

11 (4) No payment required or imposed pursuant to an indemnity
12 obligation, whether required or imposed by ordinance, contract,
13 franchise, license, permit, or other entitlement or right, may exceed
14 that portion of any penalty assessed by the ~~board~~ *department*
15 against the local agency that was caused by the solid waste
16 enterprise's breach or noncompliance of an express obligation or
17 requirement.

18 (5) ~~No~~ *An* indemnity obligation shall *not* be enforceable against
19 a solid waste enterprise until the local agency has affirmatively
20 sought, in good faith, all administrative relief available pursuant
21 to Chapter 6 (commencing with Section 41780) and Chapter 7
22 (commencing with Section 41800) of Part 2, unless the local
23 agency demonstrates good cause, based on substantial evidence
24 in the record, for not pursuing that administrative relief. The solid
25 waste enterprise shall cooperate, in good faith, with the local
26 agency seeking that administrative relief and shall provide in
27 writing to the local agency all known defenses to the imposition
28 of penalties.

29 (d) Nothing in this section shall be construed to preclude either
30 party from seeking any other remedy under law or equity.

31 (e) The provisions of this section are not subject to waiver, and
32 any attempted waiver shall be null and void as against public
33 policy.

34 (f) This section is not intended to do any of the following:

35 (1) Add to or expand the authority of local agencies to determine
36 aspects of solid waste collection and handling pursuant to Section
37 40059.

38 (2) Alter the authority of business entities to collect or process
39 materials that are not solid waste.

1 (3) Affect any contract right existing on ~~the effective date of~~
2 ~~this section~~ *January 1, 1999*.

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