

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 841

Introduced by Senator Wolk

February 18, 2011

An act to ~~amend Section 40059.1 of~~ *add Section 40059.2 to* the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 841, as amended, 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.~~

This bill would additionally prohibit the enforcement of an indemnity obligation that requires a solid waste enterprise to defend and hold harmless the local agency in connection with the local agency's imposition of fees, charges, levies, exactions, or assessments that are found by final judgment of a court to have been imposed in violation of Article XIII C or XIII D of the California Constitution or that require a solid waste enterprise to refund certain fees.

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 40059.2 is added to the Public Resources
2 Code, to read:

3 40059.2. (a) The Legislature hereby finds and declares both
4 of the following:

5 (1) In 1996, the voters of California adopted Proposition 218,
6 which among other things, limits the ability of local agencies to
7 impose certain property-related fees and assessments without prior
8 property owner consent. In 2010, California voters passed
9 Proposition 26, a further initiative that limits the ability of local
10 agencies to impose fees, levies, charges, or other exactions without
11 prior voter approval. These initiatives, among other things,
12 amended Article XIII C and Article XIII D of the California
13 Constitution.

14 (2) The public policy objective of the Legislature in enacting
15 this section is to ensure that those local agencies that require an
16 indemnity obligation from solid waste enterprises, as a condition
17 of providing solid waste handling services within the local agency's
18 jurisdiction, retain their responsibility for complying with Article
19 XIII C and Article XIII D of the California Constitution, by
20 obtaining any necessary voter or property owner approval before
21 adopting any fees, levies, charges, assessments, or other exactions
22 that are collected for the local agency by the solid waste enterprise.

23 (b) For the purposes of this section, the following terms have
24 the following meanings:

25 (1) "Indemnity obligation" means an indemnity obligation
26 directly or indirectly related to the failure of a local agency to
27 obtain voter or property owner approval of a fee, levy, charge,
28 assessment, or other exaction, as required by Article XIII C, or
29 Article XIII D of the California Constitution, if that indemnity
30 obligation is expressly assumed by, or imposed upon, the solid
31 waste enterprise, including pursuant to ordinance, contract,
32 franchise, license, permit, or other entitlement or right, for the
33 benefit of the local agency.

1 (2) “Local agency” means a county, city, city and county,
2 district, regional agency as defined in Section 40181, or other
3 local government agency.

4 (c) An indemnity obligation that meets either of the following
5 conditions is subject to subdivision (d):

6 (1) The indemnity obligation is authorized or required by a
7 provision, term, condition, or requirement contained in an
8 ordinance, contract, franchise, license, permit, or other entitlement
9 or right adopted, entered into, issued, or granted, as the case may
10 be, by a local agency for solid waste handling services, including
11 the recycling, processing, or composting of solid waste.

12 (2) The indemnity obligation is authorized or required in a
13 request for bids or proposals in connection with a contract or
14 franchise specified in paragraph (1).

15 (d) Notwithstanding any provision, term, condition, or
16 requirement, the indemnity obligation is null and void as against
17 public policy and is not enforceable if it does either of the
18 following:

19 (1) Requires a solid waste enterprise to defend and hold
20 harmless the local agency in connection with the local agency’s
21 imposition of fees, charges, levies, exactions, or assessments that
22 are found by final judgment of a court to have been imposed in
23 violation of Article XIII C, or Article XIII D of the California
24 Constitution.

25 (2) (A) Requires a solid waste enterprise to refund fees to its
26 customers, if the fees are collected on behalf of the local agency
27 by the solid waste enterprise and have been remitted by the solid
28 waste enterprise to the local agency.

29 (B) The obligation to refund the fees subject to this paragraph
30 that are remitted to the local agency shall remain with the local
31 agency, which shall be responsible for refunding the fees.

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

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

36 (1) Add to or expand the authority of local agencies to determine
37 aspects of solid waste collection and handling specified in Section
38 40059.

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

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

3 ~~SECTION 1. Section 40059.1 of the Public Resources Code~~
4 ~~is amended to read:~~

5 ~~40059.1. (a) The Legislature hereby finds and declares both~~
6 ~~of the following:~~

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

12 ~~(2) The public policy objective of the Legislature in enacting~~
13 ~~this section is to ensure that those local agencies that require an~~
14 ~~indemnity obligation retain their responsibility for implementing~~
15 ~~the diversion requirements of this division.~~

16 ~~(b) For the purposes of this section, the following terms have~~
17 ~~the following meanings:~~

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

25 ~~(2) “Local agency” means any county, city, city and county,~~
26 ~~district, regional agency as defined in Section 40181, or other local~~
27 ~~government agency.~~

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

38 ~~(1) An indemnity obligation shall not be enforceable if the~~
39 ~~penalty imposed by the department pursuant to Section 41850 is~~
40 ~~based solely upon the failure of the local agency to establish and~~

1 ~~maintain a source reduction and recycling element pursuant to~~
2 ~~Chapter 2 (commencing with Section 41000) of Part 2, Chapter 3~~
3 ~~(commencing with Section 41300) of Part 2, or Section 41750.1,~~
4 ~~as applicable.~~

5 ~~(2) A penalty imposed by the department pursuant to Section~~
6 ~~41850 is based upon a local agency's failure to meet the solid~~
7 ~~waste diversion requirements imposed by Chapter 6 (commencing~~
8 ~~with Section 41780) of Part 2, resulting in whole or in part from~~
9 ~~the solid waste enterprise's breach of contract or noncompliance~~
10 ~~with any other authorization, shall be apportioned in accordance~~
11 ~~with the percentage of fault of the local agency and the solid waste~~
12 ~~enterprise.~~

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

17 ~~(4) No payment required or imposed pursuant to an indemnity~~
18 ~~obligation, whether required or imposed by ordinance, contract,~~
19 ~~franchise, license, permit, or other entitlement or right, may exceed~~
20 ~~that portion of any penalty assessed by the department against the~~
21 ~~local agency that was caused by the solid waste enterprise's breach~~
22 ~~or noncompliance of an express obligation or requirement.~~

23 ~~(5) An indemnity obligation shall not be enforceable against a~~
24 ~~solid waste enterprise until the local agency has affirmatively~~
25 ~~sought, in good faith, all administrative relief available pursuant~~
26 ~~to Chapter 6 (commencing with Section 41780) and Chapter 7~~
27 ~~(commencing with Section 41800) of Part 2, unless the local~~
28 ~~agency demonstrates good cause, based on substantial evidence~~
29 ~~in the record, for not pursuing that administrative relief. The solid~~
30 ~~waste enterprise shall cooperate, in good faith, with the local~~
31 ~~agency seeking that administrative relief and shall provide in~~
32 ~~writing to the local agency all known defenses to the imposition~~
33 ~~of penalties.~~

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

36 ~~(e) The provisions of this section are not subject to waiver, and~~
37 ~~any attempted waiver shall be null and void as against public~~
38 ~~policy.~~

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

- 1 ~~(1) Add to or expand the authority of local agencies to determine~~
- 2 ~~aspects of solid waste collection and handling pursuant to Section~~
- 3 ~~40059.~~
- 4 ~~(2) Alter the authority of business entities to collect or process~~
- 5 ~~materials that are not solid waste.~~
- 6 ~~(3) Affect any contract right existing on January 1, 1999.~~