

AMENDED IN SENATE MAY 2, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 841

Introduced by Senator Wolk

February 18, 2011

An act to 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 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.

The bill would only apply to a provision, term, condition, or requirement contained in an ordinance, contract, franchise, license, permit, or other entitlement or right adopted, entered into, issued, or granted on or after January 1, 2012.

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 *all 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, *assessments*, or other
11 exactions without prior voter approval. These initiatives, among
12 other things, amended Article XIII C and Article XIII D of the
13 California 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 (3) *This section is not intended to address or to determine*
24 *whether fees for solid waste handling services are fees imposed*
25 *as an incident of property ownership or fees imposed for a*
26 *property-related service, within the meaning of Section 2 of Article*
27 *XIII D of the California Constitution.*
28 (b) For the purposes of this section, the following terms have
29 the following meanings:
30 (1) "Indemnity obligation" means an indemnity obligation
31 directly or indirectly related to the failure of a local agency to

1 obtain voter or property owner approval of a fee, levy, charge,
2 assessment, or other exaction, ~~as that may be~~ required by Article
3 XIII C; or Article XIII D of the California Constitution, if that
4 indemnity obligation is expressly assumed by, or imposed upon,
5 the solid waste enterprise, including pursuant to ordinance,
6 contract, franchise, license, permit, or other entitlement or right,
7 for the benefit of the local agency.

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

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

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

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

22 (d) Notwithstanding any provision, term, condition, or
23 ~~requirement, the indemnity obligation is null and void as against~~
24 ~~public policy requirement, an indemnity obligation is null and~~
25 ~~void~~ and is not enforceable if it does either of the following:

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

31 (2) ~~(A)~~ Requires a solid waste enterprise to refund fees to its
32 customers, if the fees are collected on behalf of the local agency
33 by the solid waste enterprise and have been remitted by the solid
34 waste enterprise to the local agency.

35 ~~(B)~~ ~~The obligation to refund the fees subject to this paragraph~~
36 ~~that are remitted to the local agency shall remain with the local~~
37 ~~agency, which shall be responsible for refunding the fees.~~

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

- 1 (f) This section is not intended to do any of the following:
- 2 (1) Add to or expand the authority of local agencies to determine
- 3 aspects of solid waste collection and handling specified in Section
- 4 40059.
- 5 (2) Alter the authority of business entities to collect or process
- 6 materials that are not solid waste.
- 7 ~~(3) Affect any contract right existing on the effective date of~~
- 8 ~~this section.~~
- 9 (3) *Determine whether or not a fee, levy, assessment, or exaction*
- 10 *requires voter or property owner approval by Article XIII C or*
- 11 *Article XIII D of the California Constitution.*
- 12 (g) *This section shall only apply to a provision, term, condition,*
- 13 *or requirement contained in an ordinance, contract, franchise,*
- 14 *license, permit, or other entitlement or right adopted, entered into,*
- 15 *issued, or granted on or after January 1, 2012.*