

AMENDED IN SENATE MAY 12, 2011
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 *Article* XIII D of the California Constitution or that

require a solid waste enterprise to refund certain fees *that are found by such a final judgment to have been imposed in violation of those provisions.*

The bill would *become operative on July 1, 2012, and 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~~ July 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 all of
4 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.

20 (3) This section is not intended to address or to determine
21 whether fees for solid waste handling services are fees imposed
22 as an incident of property ownership or fees imposed for a
23 property-related service, within the meaning of Section 2 of Article
24 XIII D of the California Constitution.

25 (b) For the purposes of this section, the following terms have
26 the following meanings:

1 (1) “Indemnity obligation” means an indemnity obligation
2 directly or indirectly related to the failure of a local agency to
3 obtain voter or property owner approval of a fee, levy, charge,
4 assessment, or other exaction, that may be required by Article
5 XIII C or Article XIII D of the California Constitution, if that
6 indemnity obligation is expressly assumed by, or imposed upon,
7 the solid waste enterprise, including pursuant to ordinance,
8 contract, franchise, license, permit, or other entitlement or right,
9 for the benefit of the local agency.

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

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

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

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

24 (d) Notwithstanding any provision, term, condition, or
25 requirement, an indemnity obligation is null and void and is not
26 enforceable if it does either of the following:

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

32 (2) Requires a solid waste enterprise to refund fees to its
33 customers, if the fees are collected on behalf of the local agency
34 by the solid waste enterprise and have been remitted by the solid
35 waste enterprise to the local agency *and if the fees are found by a*
36 *final judgment of a court to have been imposed in violation of*
37 *Article XIII C or Article XIII D of the California Constitution.*

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) Determine whether or not a fee, levy, assessment, or exaction
- 8 requires voter or property owner approval by Article XIII C or
- 9 Article XIII D of the California Constitution.
- 10 (g) This section shall only apply to a provision, term, condition,
- 11 or requirement contained in an ordinance, contract, franchise,
- 12 license, permit, or other entitlement or right adopted, entered into,
- 13 issued, or granted on or after ~~January~~ July 1, 2012.
- 14 (h) *This section shall become operative on July 1, 2012.*