

AMENDED IN ASSEMBLY JUNE 22, 2011

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 impose certain restrictions on an indemnity obligation related to the failure of a local agency to obtain voter or property owner approval of a fee, levy, charge, assessment, or other exaction, if that indemnity obligation is assumed by, or imposed upon, a solid waste enterprise. The bill would prohibit an indemnity obligation from being enforced, to the extent of certain claims related to the liability of the local agency, or if it requires a solid waste enterprise to refund certain fees that are found by such a final judgment of a court to have been imposed in violation of those provisions Article XIII C or Article XIII D of the California Constitution.~~

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 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.

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

6 (b) For the purposes of this section, the following terms have
7 the following meanings:

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

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

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

22 (1) The indemnity obligation is ~~authorized~~ *imposed* or required
23 by a provision, term, condition, or requirement contained in an
24 ordinance, contract, franchise, license, permit, or other entitlement
25 or right adopted, entered into, issued, or granted, as the case may
26 be, by a local agency for solid waste handling services, including
27 the recycling, processing, or composting of solid waste.

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

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

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

39 ~~(2) Requires a solid waste enterprise to refund fees to its~~
40 ~~customers, if the fees are collected on behalf of the local agency~~

1 requirement, an indemnity obligation, including the duty and the
2 cost of defense, shall be subject to the following restrictions:

3 (1) An indemnity obligation or other provision, clause, covenant,
4 or agreement that purports to obligate a solid waste enterprise to
5 indemnify a local agency against liability for claims by a third
6 party for failure to obtain voter or property owner approval of a
7 fee, levy, charge, assessment, or other exaction in violation of
8 Article XIII C or Article XIII D of the California Constitution is
9 not enforceable to the extent the claims arise out of, pertain to, or
10 relate to the liability of the local agency.

11 (2) An indemnity obligation is not enforceable if it requires a
12 solid waste enterprise to refund fees to its customers, if the fees
13 are collected and retained by the local agency, or are collected
14 on behalf of the local agency by the solid waste enterprise and
15 have been remitted by the solid waste enterprise to the local agency
16 ~~and if the fees are~~, and in either case have been found by a final
17 judgment of a court to have been imposed in violation of Article
18 XIII C or Article XIII D of the California Constitution.

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

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

23 (1) Add to or expand the authority of local agencies to determine
24 aspects of solid waste collection and handling specified in Section
25 40059.

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

28 (3) Determine whether or not a fee, levy, assessment, or exaction
29 requires voter or property owner approval by Article XIII C or
30 Article XIII D of the California Constitution.

31 (g) This section shall only apply to a provision, term, condition,
32 or requirement contained in an ordinance, contract, franchise,
33 license, permit, or other entitlement or right adopted, entered into,
34 issued, or granted on or after July 1, 2012.

35 (h) This section shall become operative on July 1, 2012.

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