

Senate Bill No. 841

Passed the Senate August 30, 2011

Secretary of the Senate

Passed the Assembly August 25, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 40059.2 to the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 841, 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 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 a final judgment of a court to have been imposed in violation of 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.

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

SECTION 1. Section 40059.2 is added to the Public Resources Code, to read:

40059.2. (a) The Legislature hereby finds and declares all of the following:

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

(2) The public policy objective of the Legislature in enacting this section is to ensure that those local agencies that require an indemnity obligation from solid waste enterprises, as a condition of providing solid waste handling services within the local agency's jurisdiction, retain their responsibility for complying with Article XIII C and Article XIII D of the California Constitution.

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

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

(1) "Indemnity obligation" means 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, that may be required by Article XIII C or Article XIII D of the California Constitution, if that indemnity obligation is expressly assumed by, or imposed upon, the solid waste enterprise, including pursuant to ordinance, contract, franchise, license, permit, or other entitlement or right, for the benefit of the local agency.

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

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

(1) The indemnity obligation is imposed or required by 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, as the case may be, by a local agency for solid waste handling services, including the recycling, processing, or composting of solid waste.

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

(d) Notwithstanding any provision, term, condition, or requirement, an indemnity obligation, including the duty and the cost of defense, shall be subject to the following restrictions:

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

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

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

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

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

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

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

(g) This section shall 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.

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

Approved _____, 2011

Governor