

Assembly Bill No. 1126

CHAPTER 411

An act to amend Sections 40121, 40180, 40192, 40194, 40200, 40201, 41700, 41721, 41780.05, 41781, and 50001 of, and to add Section 40131.2 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 28, 2013. Filed with Secretary of State September 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1126, Gordon. Solid waste: engineered municipal solid waste (EMSW) conversion.

(1) The California Integrated Waste Management Act of 1989 (act), which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste, through source reduction, recycling, and composting activities. Existing law allows the 50% diversion requirement to include, pursuant to specified conditions, not more than 10% through biomass conversion, which is defined as the controlled combustion of specific materials for use in producing electricity or heat. Existing law defines the term "transformation" and excludes from that definition composting, gasification, and biomass conversion.

This bill would define the terms "EMSW conversion" and "EMSW conversion facility," and would make conforming changes to existing definitions with regard to those operations and facilities. The bill would additionally exclude EMSW conversion from the definition of transformation, and would allow a transformation facility that meets specified requirements relating to EMSW conversion to elect to be considered an EMSW facility for purposes of the act, except as provided.

(2) The act requires the integrated waste management plan required to be adopted by a county to include a countywide siting element that provides a description of the areas to be used for the development of certain facilities. The act excludes certain solid wastes, for purposes of determining the base rate for the diversion of solid waste, and requires that the amount of solid waste diverted include solid waste diverted from a disposal facility or transformation facility. Existing law requires the department to determine compliance with the act's 50% diversion requirement, based on the jurisdiction's change in its per capita disposal rate and specifies the procedure for determining that rate.

This bill would require the countywide siting element to include a description of the areas to be used for the development of adequate EMSW

conversion, thereby imposing a state-mandated local program by imposing new duties upon local agencies.

This bill would additionally exclude certain used tires or waste tires or biomass materials that are converted at an EMSW conversion facility from the per capita disposal determination and would require, for purposes of the solid waste calculation used in the base rate determination, the amount of solid waste to include solid waste diverted from an EMSW conversion facility.

(3) Existing law prohibits a person from establishing or expanding a solid waste facility in a county, after a countywide or regional agency integrated waste management plan has been approved, unless the solid waste facility is, among other things, a disposal facility or a transformation facility that meets certain criteria.

This bill would additionally include, as one of those facilities, an EMSW conversion facility.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 40121 of the Public Resources Code is amended to read:

40121. “Disposal facility” or “facility” means a facility or location where disposal of solid waste occurs or an EMSW conversion facility.

SEC. 2. Section 40131.2 is added to the Public Resources Code, to read:

40131.2. (a) “Engineered municipal solid waste conversion” or “EMSW conversion” means the conversion of solid waste through a process that meets all of the following requirements:

(1) The waste to be converted is beneficial and effective in that it replaces or supplements the use of fossil fuels.

(2) The waste to be converted, the resulting ash, and any other products of conversion do not meet the criteria or guidelines for the identification of a hazardous waste adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code.

(3) The conversion is efficient and maximizes the net calorific value and burn rate of the waste.

(4) The waste to be converted contains less than 25 percent moisture and less than 25 percent noncombustible waste.

(5) The waste received at the facility for conversion is handled in compliance with the requirements for the handling of solid waste imposed pursuant to this division, and no more than a seven-day supply of that waste, based on the throughput capacity of the operation or facility, is stored at the facility at any one time.

(6) No more than 500 tons per day of waste is converted at the facility where the operation takes place.

(7) The waste has an energy content equal to, or greater than, 5,000 BTU per pound.

(8) The waste to be converted is mechanically processed at a transfer or processing station to reduce the fraction of chlorinated plastics and materials.

(b) “Engineered municipal solid waste conversion facility” or “EMSW facility” means a facility where municipal solid waste conversion that meets the requirements of subdivision (a) takes place.

(c) Notwithstanding Section 40201, a transformation facility where solid waste conversion takes place that meets all of the requirements of subdivision (a) may elect to be considered an EMSW facility for purposes of this division and Division 31 (commencing with Section 50000), except that if a portion of a transformation facility’s operations does not meet the requirements of subdivision (a), the facility shall be considered to be a transformation facility.

SEC. 3. Section 40180 of the Public Resources Code is amended to read:

40180. “Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. “Recycling” does not include transformation, as defined in Section 40201 or EMSW conversion.

SEC. 4. Section 40192 of the Public Resources Code is amended to read:

40192. (a) Except as provided in subdivisions (b) and (c), “solid waste disposal,” “disposal,” or “dispose” means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) For purposes of Part 2 (commencing with Section 40900), “solid waste disposal,” “dispose,” or “disposal” means the management of solid waste through landfill disposal, transformation, or EMSW conversion, at a permitted solid waste facility, unless the term is expressly defined otherwise.

(c) For purposes of Chapter 16 (commencing with Section 42800) and Chapter 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47901) of Part 7, “solid waste disposal,” “dispose,” or “disposal” means the final deposition of solid wastes onto land.

SEC. 5. Section 40194 of the Public Resources Code is amended to read:

40194. “Solid waste facility” includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, an EMSW conversion facility, and a disposal facility. For purposes of Part 5 (commencing with Section 45000), “solid waste facility” additionally includes a solid waste operation that may be carried out pursuant to an enforcement agency notification, as provided in regulations adopted by the department.

SEC. 6. Section 40200 of the Public Resources Code is amended to read:

40200. (a) “Transfer or processing station” or “station” includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

(b) “Transfer or processing station” or “station” does not include any of the following:

(1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure.

(2) A facility, whose principal function is to receive, store, convert, or otherwise process wastes that have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted pursuant to Section 43309.

(4) An EMSW conversion facility.

SEC. 7. Section 40201 of the Public Resources Code is amended to read:

40201. “Transformation” means incineration, pyrolysis, distillation, or biological conversion other than composting. “Transformation” does not include composting, gasification, EMSW conversion, or biomass conversion.

SEC. 8. Section 41700 of the Public Resources Code is amended to read:

41700. Each county shall prepare a countywide siting element that provides a description of the areas to be used for development of adequate transformation, EMSW conversion, or disposal capacity concurrent and consistent with the development and implementation of the county and city source reduction and recycling elements adopted pursuant to this part.

SEC. 9. Section 41721 of the Public Resources Code is amended to read:

41721. (a) The countywide siting element shall be approved by the county and by a majority of the cities within the county that contain a majority of the population of the incorporated area of the county except in those counties that have only two cities, in which case the element is subject to approval of the city that contains the majority of the population of the incorporated area of the county. Each city shall act upon the countywide siting element within 90 days after receipt of the siting element. If a city fails to act upon the siting element within 90 days after receiving the siting element, the city shall be deemed to have approved the siting element as submitted.

(b) Notwithstanding subdivision (a), a siting element providing for an EMSW conversion facility is only required to be approved by the city in which it is located, or if the EMSW is not located in a city, by the county.

SEC. 10. Section 41780.05 of the Public Resources Code is amended to read:

41780.05. (a) After January 1, 2009, pursuant to the review authorized by Section 41825, the department shall determine each jurisdiction’s compliance with Section 41780 for the years commencing with January 1,

2007, by comparing each jurisdiction's change in its per capita disposal rate in subsequent years with the equivalent per capita disposal rate that would have been necessary for the jurisdiction to meet the requirements of Section 41780 on January 1, 2007, as calculated pursuant to subdivisions (c) and (d).

(b) (1) For purposes of paragraph (5) of subdivision (e) of Section 41825, in making a determination whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider, but is not limited to the consideration of, the jurisdiction's per capita disposal rate and whether the jurisdiction adequately implemented its diversion programs.

(2) When determining whether a jurisdiction has made a good faith effort pursuant to Section 41825 to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider that an increase in the per capita disposal rate is the result of the amount of the jurisdiction's disposal increasing faster than the jurisdiction's growth. The department shall use this increase in the per capita disposal rate that is in excess of the equivalent per capita disposal rate as a factor in determining whether the department is required, pursuant to Section 41825, to more closely examine a jurisdiction's program implementation efforts. This examination may indicate that a jurisdiction is required to expand existing programs or implement new programs, in accordance with the procedures specified in Article 4 (commencing with Section 41825) and in Article 5 (commencing with Section 41850).

(3) When reviewing the level of program implementation pursuant to Sections 41825 and 41850, the department shall use, as a factor in determining compliance with Section 41780, the amount determined pursuant to subdivision (d) when comparing a jurisdiction's per capita disposal rate in subsequent years.

(c) (1) (A) Except as otherwise provided in this subdivision, for purposes of this section, "per capita disposal" or "per capita disposal rate" means the total annual disposal, in pounds, from a jurisdiction divided by the total population in a jurisdiction, as reported by the Department of Finance, divided by 365 days.

(B) "Per capita disposal" does not include used tires or waste tires, as defined in Article 1 (commencing with Section 42800) of Chapter 16 of Part 3, that are converted at an EMSW conversion facility.

(C) "Per capita disposal" does not include biomass material, as defined in subdivision (a) of Section 40106, that is converted at an EMSW conversion facility.

(2) (A) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the department may alternatively calculate per capita disposal to reflect those differing conditions.

(B) When making a calculation for a jurisdiction subject to this paragraph, "per capita disposal" or "per capita disposal rate" means the total annual disposal, in pounds, from a jurisdiction divided by total industry employment

in a jurisdiction, as reported by the Employment Development Department, divided by 365 days.

(C) The department shall calculate the per capita disposal rate for a jurisdiction subject to this paragraph using the level of industry employment in a jurisdiction instead of the level of population in a jurisdiction.

(3) If the department determines that the method for calculating the per capita disposal rate for a jurisdiction provided by paragraph (1) or (2) does not accurately reflect that jurisdiction's disposal reduction, the department may use an alternative per capita factor, other than population or industry employment, to calculate the per capita disposal rate that more accurately reflects the jurisdiction's efforts to divert solid waste.

(d) The department shall calculate the equivalent per capita disposal rate for each jurisdiction as follows:

(1) Except as otherwise provided in this subdivision, the equivalent per capita disposal rate for a jurisdiction shall be determined using the method specified in this paragraph.

(A) The calculated generation tonnage for each year from 2003 to 2006, inclusive, shall be multiplied by 0.5 to yield the 50 percent equivalent disposal total for each year.

(B) The 50 percent equivalent disposal total for each year shall be multiplied by 2,000, divided by the population of the jurisdiction in that year, and then divided by 365 to yield the 50 percent equivalent per capita disposal for each year.

(C) The four 50 percent equivalent per capita disposal amounts from the years 2003 to 2006, inclusive, shall be averaged to yield the equivalent per capita disposal rate.

(2) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the department may alternatively calculate the equivalent per capita disposal rate to reflect those conditions by using the level of industry employment in a jurisdiction instead of the level of population in that jurisdiction.

(3) If the department determines that the method for calculating the equivalent per capita disposal rate for a jurisdiction pursuant to this subdivision does not accurately reflect a jurisdiction's per capita disposal rate that would be equivalent to the amount required to meet the 50 percent diversion requirements of Section 41780, the department may use an alternative per capita factor, other than population or industry employment, to calculate the equivalent per capita disposal rate that more accurately reflects the jurisdiction's diversion efforts.

(4) The department shall modify the percentage used in paragraph (1) to maintain the diversion requirements approved by the department for a rural jurisdiction pursuant to Section 41787 or for a reduction granted pursuant to Section 41786.

(5) The department may modify the years included in making a calculation pursuant to this subdivision for an individual jurisdiction to eliminate years in which the calculated generation amount is shown not to be representative or accurate, based upon a generation study completed in

one of the five years 2003 to 2007, inclusive. In these cases, the department shall not allow the use of an additional year other than 2003, 2004, 2005, 2006, or 2007.

(6) The department may modify the method of calculating the equivalent per capita disposal rate for an individual jurisdiction to accommodate the incorporation of a new city, the formation of a new regional agency, or changes in membership of an existing regional agency. These modifications shall ensure that a new entity has a new equivalent per capita disposal rate and that the existing per capita disposal rate of an existing entity is adjusted to take into account the disposal amounts lost by the creation of the new entity.

(7) The department shall not incorporate generation studies or new base year calculations for a year commencing after 2006 into the equivalent per capita disposal rate, unless a generation study that included the year 2007 was commenced on or before June 30, 2008.

(8) If the department determines that the equivalent per capita disposal rate cannot accurately be determined for a jurisdiction, or that the rate is no longer representative of a jurisdiction's waste stream, the department shall evaluate trends in the jurisdiction's per capita disposal to establish a revised equivalent per capita disposal rate for that jurisdiction.

SEC. 11. Section 41781 of the Public Resources Code is amended to read:

41781. (a) Except as provided in Sections 41781.1, and 41781.2, for the purpose of determining the base rate of solid waste from which diversion requirements shall be calculated, "solid waste" includes only the following:

(1) The amount of solid waste generated within a local agency's jurisdiction, the types and quantities of which were disposed of at a permitted disposal facility as of January 1, 1990. Nothing in this section requires local agencies to perform waste characterization in addition to the waste characterization requirements established under Sections 41030, 41031, 41330, 41331, and 41332.

(2) The amount of solid waste diverted from a disposal facility, transformation facility, or EMSW facility, through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include solid waste that would not normally be disposed of at a disposal facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on January 1, 1990, with future adjustments for increases or decreases in the quantity of waste caused only by changes in population or changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

SEC. 12. Section 50001 of the Public Resources Code is amended to read:

50001. (a) Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the Department of Resources Recycling and Recovery pursuant to

Division 30 (commencing with Section 40000), a person shall not establish or expand a solid waste facility, as defined in Section 40194, in the county unless the solid waste facility meets one of the following criteria:

(1) The solid waste facility is a disposal facility, a transformation facility, or an EMSW conversion facility, the location of which is identified in the countywide siting element or amendment to that element, which has been approved pursuant to Section 41721.

(2) The solid waste facility is a facility that is designed to recover for reuse or recycling at least 5 percent of the total volume of material received by the facility, and that is identified in the nondisposal facility element that has been approved pursuant to Section 41800 or is included in an update to that element.

(b) Solid waste facilities other than those specified in paragraphs (1) and (2) of subdivision (a) shall not be required to comply with the requirements of this section.

(c) The person or agency proposing to establish a solid waste facility shall prepare and submit a site identification and description of the proposed facility to the task force established pursuant to Section 40950. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the proposed solid waste facility in writing. These comments shall include, but are not limited to, the relationship between the proposed solid waste facility and the implementation schedule requirements of Section 41780 and the regional impact of the facility. The task force shall transmit these comments to the person or public agency proposing establishment of the solid waste facility, to the county, and to all cities within the county. The comments shall become part of the official record of the proposed solid waste facility.

(d) The review and comment by the local task force shall not be required for an update to a nondisposal facility element.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.