

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 804

Introduced by Senator Lara

February 22, 2013

An act to amend ~~Section 25620.8~~ *Sections 25301, 25741, 40106, 40116.1, 40117, 40194, 40201, 44017, and 50001* of, and to add ~~Section~~ *Sections 40005, 40116.2, 40182.5, and 43036* to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 804, as amended, Lara. Solid waste: energy.

(1) Existing law requires the State Energy Resources Conservation and Development Commission ~~(Energy Commission)~~ to submit an annual report to the Legislature by March 31 of each year regarding awards made pursuant to the Public Interest Research, Development, and Demonstration Program. *at least every 2 years, to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices.*

This bill would require the energy commission to include in the annual report that is due by March 31, 2015, an analysis of the opportunities for utilizing waste conversion technologies.

(2) ~~The California Integrated Waste Management Act of 1989, 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.~~

This bill would make a statement of legislative intent regarding the development of waste conversion technology facilities.

This bill would require the commission, when developing that assessment and forecast, to investigate the potential for conversion technology facilities to assist the state in meeting specified environmental goals and to evaluate the anticipated greenhouse gas emission reductions by utilizing those facilities.

(2) The existing California Renewables Portfolio Standard Program requires the Public Utilities Commission to implement annual procurement targets for the procurement of eligible renewable energy resources, which includes a renewable electrical generation facility, applicable to all retail sellers of electricity. Existing law defines a renewable electrical generation facility as a facility that, among other things, uses biomass or municipal solid waste conversion.

This bill would revise the definition of renewable electrical generation facility by revising the definition of municipal solid waste conversion and defining the term “biomass” as the renewable portion of residual solid waste, as specified.

(3) The California Integrated Waste Management Act of 1989, 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 not more than 10% through transformation or “biomass conversion,” as defined, if specified conditions are met. The act defines various terms, including “biomass conversion,” “composting” “gasification” and “transformation,” for the purposes of the act.

Existing law defines “transformation” to include various activities and to exclude other activities.

This bill would define the terms “conversion technology” and “residual solid waste” for purposes of the act and would revise the definition of the term “biomass conversion” to include conversion technology. The bill would revise those other terms, including defining “transformation” to only include the incineration of solid waste, and to exclude conversion technology. The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the diversion of solid waste. The bill would also make conforming changes.

(4) The act requires the department to adopt regulations setting forth standards for solid waste handling. A violation of the provisions regulating solid waste facilities is a crime.

This bill would prohibit a solid waste facility from accepting recyclable or compostable materials, except for the purposes of beneficially using those materials, as approved by the local enforcement agency, or for the purposes of temporarily storing the materials for later transport to another facility. The bill would allow a solid waste disposal facility to only accept residual solid waste for disposal or processing. Since a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

(5) The act provides for the designation of an enforcement agency under specified procedures and requires enforcement agencies to perform specified functions with regard to solid waste handling and the issuance and enforcement of solid waste facilities permits. The enforcement agency is required to include, in the permit of a solid waste facility designed to convert solid waste into energy or synthetic fuels, a provision requiring operating procedures to prevent hazardous waste from entering the conversion process.

This bill would instead require the enforcement agency to include such a provision in the permit of a conversion technology facility processing residual solid waste, thereby imposing a state-mandated local program by imposing new duties upon a local agency.

(6) 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 meets certain criteria.

This bill would additionally include, as one of those criteria, a facility that is a conversion technology facility processing residual solid waste and that is identified and described in, or found to conform with, the countywide integrated waste management plan, as specified.

(7) 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 specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to establish clear definitions in statute that promote the highest and best use of resources while supporting the state's key environmental goals, including the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), the low-carbon fuel standards adopted by the State Air Resources Board in Subarticle 7 (commencing with Section 95480) of Title 17 of the California Code of Regulations, and greenhouse gas reduction goals, as provided in Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(b) The state's "Bioenergy Action Plan" has identified municipal solid waste as a ~~substantiality~~ *substantially* underutilized resource for biomass feedstock that could produce renewable fuels and energy.

(c) Around the world, advanced solid waste conversion technologies are being used to process postrecycled, residual waste to divert materials from landfills and recover a variety of marketable products from those residuals, including clean-burning fuels, chemicals, construction materials, soil amendments, and electricity.

~~SEC. 2. Section 25620.8 of the Public Resources Code is amended to read:~~

~~25620.8. (a) The commission shall prepare and submit to the Legislature an annual report, not later than March 31 of each year, on awards made pursuant to this chapter and progress toward achieving the goals set forth in Section 25620.1. The report shall include information on the names of award recipients, the amount of awards, and the types of projects funded, an evaluation of the success of funded projects, and recommendations for improvements in the program. The report shall set forth the actual costs of programs or projects funded by the commission, the results achieved, and how the actual costs and results compare to the expected costs and benefits. The commission shall establish procedures for protecting confidential or proprietary information~~

1 and shall consult with all interested parties in the preparation of
2 the annual report.

3 (b) ~~The commission shall include, in the annual report due not~~
4 ~~later than March 31, 2015, an analysis of the opportunities for~~
5 ~~utilizing waste conversion technologies, to achieve the goals set~~
6 ~~forth in Section 25620.1.~~

7 SEC. 3. ~~Section 40005 is added to the Public Resources Code,~~
8 ~~to read:~~

9 ~~40005. The Legislature finds and declares that, to spur~~
10 ~~economic development, promote environmental justice by~~
11 ~~managing residual waste near where it is generated, reduce~~
12 ~~greenhouse gas emissions, decrease pollution, groundwater~~
13 ~~contamination, and other environmental impacts associated with~~
14 ~~solid waste disposal, and reduce the state's dependence on landfill~~
15 ~~disposal, it is the intent of the Legislature to examine the~~
16 ~~development of solid waste conversion technology facilities to~~
17 ~~manage the residual solid waste that cannot feasibly be recycled~~
18 ~~or composted.~~

19 SEC. 2. *Section 25301 of the Public Resources Code is*
20 *amended to read:*

21 25301. (a) At least every two years, the commission shall
22 conduct assessments and forecasts of all aspects of energy industry
23 supply, production, transportation, delivery and distribution,
24 demand, and prices. The commission shall use these assessments
25 and forecasts to develop energy policies that conserve resources,
26 protect the environment, ensure energy reliability, enhance the
27 state's economy, and protect public health and safety. To perform
28 these assessments and forecasts, the commission may require
29 submission of demand forecasts, resource plans, market
30 assessments, and related outlooks from electric and natural gas
31 utilities, transportation fuel and technology suppliers, and other
32 market participants. These assessments and forecasts shall be done
33 in consultation with the appropriate state and federal agencies
34 including, but not limited to, the Public Utilities Commission, the
35 *Office Division* of Ratepayer Advocates, the *State* Air Resources
36 Board, ~~the Electricity Oversight Board~~, the Independent System
37 Operator, the Department of Water Resources, ~~the California~~
38 ~~Consumer Power and Conservation Financing Authority~~, the
39 Department of Transportation, and the Department of Motor
40 Vehicles.

(b) In developing the assessments and forecasts prepared pursuant to subdivision (a), the commission shall do all of the following:

(1) Provide information about the performance of energy industries.

(2) Develop and maintain the analytical capability sufficient to answer inquiries about energy issues from government, market participants, and the public.

(3) Analyze and develop energy policies.

(4) Provide an analytical foundation for regulatory and policy decisionmaking.

(5) Facilitate efficient and reliable energy markets.

(6) *In collaboration with the State Air Resources Board, do both of the following:*

(A) *Investigate the potential for conversion technology facilities, as defined in Section 40116.2, to assist the state in meeting key environmental goals, including, but not limited to, the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), and the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500)) of the Health and Safety Code.*

(B) *Evaluate the measurable net reductions in greenhouse gas emissions anticipated to be realized by utilizing conversion technology facilities to manage residual solid waste, based on the production of low carbon fuels, diversion of waste materials from landfill disposal, and the reduction in the transportation of waste to remote disposal facilities.*

SEC. 3. *Section 25741 of the Public Resources Code is amended to read:*

25741. As used in this chapter, the following terms have the following meaning:

(a) “Renewable electrical generation facility” means a facility that meets all of the following criteria:

(1) The facility uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

1 (2) The facility satisfies one of the following requirements:

2 (A) The facility is located in the state or near the border of the
3 state with the first point of connection to the transmission network
4 of a balancing authority area primarily located within the state.
5 For purposes of this subparagraph, “balancing authority area” has
6 the same meaning as defined in Section 399.12 of the Public
7 Utilities Code.

8 (B) The facility has its first point of interconnection to the
9 transmission network outside the state, within the Western
10 Electricity Coordinating Council (WECC) service area, and
11 satisfies all of the following requirements:

12 (i) It commences initial commercial operation after January 1,
13 2005.

14 (ii) It will not cause or contribute to any violation of a California
15 environmental quality standard or requirement.

16 (iii) It participates in the accounting system to verify compliance
17 with the renewables portfolio standard once established by the
18 commission pursuant to subdivision (b) of Section 399.25 of the
19 Public Utilities Code.

20 (C) The facility meets the requirements of clauses (ii) and (iii)
21 in subparagraph (B), but does not meet the requirements of clause
22 (i) of subparagraph (B) because it commenced initial operation
23 prior to January 1, 2005, if the facility satisfies either of the
24 following requirements:

25 (i) The electricity is from incremental generation resulting from
26 expansion or repowering of the facility.

27 (ii) Electricity generated by the facility was procured by a retail
28 seller or local publicly owned electric utility as of January 1, 2010.

29 (3) If the facility is outside the United States, it is developed
30 and operated in a manner that is as protective of the environment
31 as a similar facility located in the state.

32 (4) If eligibility of the facility is based on the use of landfill gas,
33 digester gas, or another renewable fuel delivered to the facility
34 through a common carrier pipeline, the transaction for the
35 procurement of that fuel, including the source of the fuel and
36 delivery method, satisfies the requirements of Section 399.12.6 of
37 the Public Utilities Code and is verified pursuant to the accounting
38 system established by the commission pursuant to 399.25 of the
39 Public Utilities Code, or a comparable system, as determined by
40 the commission.

(b) “Municipal solid waste conversion,” as used in subdivision (a), means a technology that uses a noncombustion thermal process to convert solid waste to a clean-burning fuel for the purpose of generating electricity, and that meets all of the following criteria:

~~(1) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.~~

~~(2)~~

(1) The technology produces no discharges of air contaminants or emissions, including greenhouse gases as defined in Section 38505 of the Health and Safety Code.

~~(3)~~

(2) The technology produces no discharges to surface or groundwaters of the state.

~~(4)~~

(3) The technology produces no hazardous wastes.

~~(5)~~

(4) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

~~(6)~~

(5) The facility at which the technology is used is in compliance with all applicable laws, regulations, and ordinances.

~~(7)~~

(6) The technology meets any other conditions established by the commission.

~~(8)~~

(7) The facility certifies that any local agency sending solid waste to the facility diverted at least 30 percent of all solid waste it collects through solid waste reduction, recycling, and composting. For purposes of this paragraph, “local agency” means any city, county, or special district, or subdivision thereof, which is authorized to provide solid waste handling services.

(c) “Renewable energy public goods charge” means that portion of the nonbypassable system benefits charge required to be collected to fund renewable energy pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(d) “Report” means the report entitled “Investing in Renewable Electricity Generation in California” (June 2001, Publication Number P500-00-022) submitted to the Governor and the Legislature by the commission.

(e) “Retail seller” means a “retail seller” as defined in Section 399.12 of the Public Utilities Code.

(f) (1) *For the purposes of complying with the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), “biomass,” as used in subdivision (a), means the renewable portion of residual solid waste, as defined in Section 40182.5, if the facility results in a net reduction of greenhouse gas emissions and other air emissions compared to the landfill disposal of the same feedstock.*

(2) *To quantify the proportion of gross energy produced by a facility subject to this subdivision that qualifies as a renewable electrical generation facility, the facility at which the technology is used shall do either of the following and provide the results to the commission:*

(A) *Analyze the age of the carbon emitted from the facility.*

(B) *Complete an annual waste characterization analysis for all materials processed through the conversion process.*

SEC. 4. *Section 40005 is added to the Public Resources Code, to read:*

40005. *The Legislature finds and declares that, to spur economic development, promote environmental justice by managing residual waste near where it is generated, reduce greenhouse gas emissions, decrease pollution, groundwater contamination, and other environmental impacts associated with solid waste disposal, and reduce the state’s dependence on landfill disposal, it is the intent of the Legislature to examine the development of solid waste conversion technology facilities to manage the residual solid waste that cannot feasibly be recycled or composted.*

SEC. 5. *Section 40106 of the Public Resources Code is amended to read:*

40106. (a) “Biomass conversion” means the controlled combustion, *or other conversion technology*, when separated from other solid waste and used for producing electricity or heat, of the following materials:

1 (1) Agricultural crop residues.

2 (2) Bark, lawn, yard, and garden clippings.

3 (3) Leaves, silvicultural residue, and tree and brush pruning.

4 (4) Wood, wood chips, and wood waste.

5 (5) Nonrecyclable pulp or nonrecyclable paper materials.

6 (b) “Biomass conversion” does not include the controlled
7 combustion of recyclable pulp or recyclable paper materials, or
8 materials that contain sewage sludge, industrial sludge, medical
9 waste, hazardous waste, or either high-level or low-level
10 radioactive waste.

11 (c) For purposes of this section, “nonrecyclable pulp or
12 nonrecyclable paper materials” means either of the following, as
13 determined by the ~~board~~ department:

14 (1) Paper products or fibrous materials that cannot be
15 technically, feasibly, or legally recycled because of the manner in
16 which the product or material has been manufactured, treated,
17 coated, or constructed.

18 (2) Paper products or fibrous materials that have become soiled
19 or contaminated and as a result cannot be technically, feasibly, or
20 legally recycled.

21 *SEC. 6. Section 40116.1 of the Public Resources Code is*
22 *amended to read:*

23 40116.1. (a) “Composting” means the controlled or
24 uncontrolled biological decomposition of organic wastes.

25 (b) “Composting” includes aerobic decomposition and
26 anaerobic decomposition of organic waste.

27 *SEC. 7. Section 40116.2 is added to the Public Resources Code,*
28 *to read:*

29 40116.2. “Conversion technology” means a technology that
30 uses noncombustion thermal, chemical, biological, or mechanical
31 conversion processes, or a combination thereof, to produce
32 marketable products, including, but not limited to, fuels, chemicals,
33 and electricity, from any carbonaceous material, including, but
34 not limited to, any of the following:

35 (a) Dedicated energy crops.

36 (b) Agricultural crop residues.

37 (c) Bark, lawn, yard, and garden clippings.

38 (d) Leaves, silvicultural residue, and tree and brush pruning.

39 (e) Wood, wood chips, and wood waste.

40 (f) Nonrecyclable pulp or nonrecyclable paper material.

1 (g) *Waste fats, oils, and greases.*

2 (h) *Residual solid waste.*

3 *SEC. 8. Section 40117 of the Public Resources Code is*
4 *amended to read:*

5 40117. “Gasification” means a technology that uses a
6 noncombustion thermal process to convert solid waste to a clean
7 burning fuel for the purpose of generating electricity, and that, at
8 minimum, meets all of the following criteria:

9 ~~(a) The technology does not use air or oxygen in the conversion~~
10 ~~process, except ambient air to maintain temperature control.~~

11 ~~(b)~~

12 (a) The technology produces no discharges of air contaminants
13 or emissions, including greenhouse gases, as defined in subdivision
14 (g) of Section 38505 of the Health and Safety Code.

15 ~~(e)~~

16 (b) The technology produces no discharges to surface or
17 groundwaters of the state.

18 ~~(d)~~

19 (c) The technology produces no hazardous waste.

20 ~~(e)~~

21 (d) To the maximum extent feasible, the technology removes
22 all recyclable materials and marketable green waste compostable
23 materials from the solid waste stream prior to the conversion
24 process and the owner or operator of the facility certifies that those
25 materials will be recycled or composted.

26 ~~(f)~~

27 (e) The facility where the technology is used is in compliance
28 with all applicable laws, regulations, and ordinances.

29 ~~(g)~~

30 (f) The facility certifies to the ~~board~~ department that any local
31 agency sending solid waste to the facility is in compliance with
32 this division and has reduced, recycled, or composted solid waste
33 to the maximum extent feasible, and the ~~board~~ department makes
34 a finding that the local agency has diverted at least 30 percent of
35 all solid waste through source reduction, recycling, and
36 composting.

37 *SEC. 9. Section 40182.5 is added to the Public Resources Code,*
38 *to read:*

39 40182.5. “Residual solid waste” means material that remains
40 after all marketable recyclable materials and compostable

1 *materials have been separated from a solid waste received by a*
2 *solid waste facility, to the maximum extent feasible, including, but*
3 *not limited to, by a curbside source separation program, a*
4 *materials recovery facility, or another process.*

5 *SEC. 10. Section 40194 of the Public Resources Code is*
6 *amended to read:*

7 40194. "Solid waste facility" includes a solid waste transfer
8 or processing station, a composting facility, *a conversion*
9 *technology facility that processes residual solid waste*, a
10 gasification facility, a transformation facility, and a disposal
11 facility. For purposes of Part 5 (commencing with Section 45000),
12 "solid waste facility" additionally includes a solid waste operation
13 that may be carried out pursuant to an enforcement agency
14 notification, as provided in regulations adopted by the ~~board~~
15 *department.*

16 *SEC. 11. Section 40201 of the Public Resources Code is*
17 *amended to read:*

18 40201. "Transformation" means *the incineration, pyrolysis,*
19 ~~distillation, or biological conversion other than composting of solid~~
20 *waste, with or without the recovery of energy.* "Transformation"
21 does not include composting, gasification, ~~or biomass conversion,~~
22 *or conversion technology.*

23 *SEC. 12. Section 43036 is added to the Public Resources Code,*
24 *to read:*

25 43036. (a) A solid waste facility shall not accept recyclable
26 or compostable materials, except for the purposes of beneficially
27 using those materials, as approved by the local enforcement
28 agency, or for the purposes of temporarily storing the materials
29 for later transport to another facility.

30 (b) A solid waste disposal facility shall only accept residual
31 solid waste for disposal or processing.

32 *SEC. 13. Section 44017 of the Public Resources Code is*
33 *amended to read:*

34 44017. The enforcement agency shall include, in the *solid*
35 *waste facilities* ~~permit of any solid waste facility designed to~~
36 ~~convert solid waste into energy or synthetic fuels for a conversion~~
37 *technology facility processing residual solid waste*, a provision
38 ~~which~~ that requires the use of operating procedures at the facility
39 to prevent hazardous waste from entering the conversion process.

1 *SEC. 14. Section 50001 of the Public Resources Code is*
2 *amended to read:*

3 50001. (a) Except as provided by subdivision (b), after a
4 countywide or regional agency integrated waste management plan
5 has been approved by the Department of Resources Recycling and
6 Recovery pursuant to Division 30 (commencing with Section
7 40000), a person shall not establish or expand a solid waste facility,
8 as defined in Section 40194, in the county unless the solid waste
9 facility meets one of the following criteria:

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

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

19 (3) *The facility is a conversion technology facility processing*
20 *residual solid waste and is identified and described in, or found*
21 *to conform with, the countywide integrated waste management*
22 *plan. The conformance finding shall be in accordance with a*
23 *procedure for a finding of conformance that is set forth in the*
24 *countywide integrated waste management plan, or that is formally*
25 *adopted on or before December 31, 2014, by the task force created*
26 *pursuant to Section 40950.*

27 (b) Solid waste facilities other than those specified in paragraphs
28 (1) ~~and~~, (2), *and* (3) of subdivision (a) shall not be required to
29 comply with the requirements of this section.

30 (c) The person or agency proposing to establish a solid waste
31 facility shall prepare and submit a site identification and description
32 of the proposed facility to the task force established pursuant to
33 Section 40950. Within 90 days after the site identification and
34 description is submitted to the task force, the task force shall meet
35 and comment on the proposed solid waste facility in writing. These
36 comments shall include, but are not limited to, the relationship
37 between the proposed solid waste facility and the implementation
38 schedule requirements of Section 41780 and the regional impact
39 of the facility. The task force shall transmit these comments to the
40 person or public agency proposing establishment of the solid waste

1 facility, to the county, and to all cities within the county. The
2 comments shall become part of the official record of the proposed
3 solid waste facility.

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

6 *SEC. 15. No reimbursement is required by this act pursuant*
7 *to Section 6 of Article XIII B of the California Constitution because*
8 *a local agency or school district has the authority to levy service*
9 *charges, fees, or assessments sufficient to pay for the program or*
10 *level of service mandated by this act or because costs that may be*
11 *incurred by a local agency or school district will be incurred*
12 *because this act creates a new crime or infraction, eliminates a*
13 *crime or infraction, or changes the penalty for a crime or*
14 *infraction, within the meaning of Section 17556 of the Government*
15 *Code, or changes the definition of a crime within the meaning of*
16 *Section 6 of Article XIII B of the California Constitution.*