

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 804

Introduced by Senator Lara

February 22, 2013

An act to amend Sections ~~25301, 25741, 40106, and 40116.1, 40117, 40194, 40201, 44017, and 50001~~ of, and to add 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 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 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)~~

~~(1) 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,” *conversion* and “*composting*,” 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 *in addition to controlled combustion, any other conversion technology, as specified*. The bill would revise those other terms, including defining “transformation” to only include the incineration of solid waste, and to exclude conversion technology *define “composting” for purposes of implementing certain solid waste management practices and reduction goals to include aerobic and anaerobic decomposition of organic wastes*. 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)~~

~~(2) 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: yes.

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

- 1 SECTION 1. ~~The Legislature finds and declares all of the~~
- 2 ~~following:~~
- 3 ~~(a) It is the intent of the Legislature to establish clear definitions~~
- 4 ~~in statute that promote the highest and best use of resources while~~
- 5 ~~supporting the state's key environmental goals, including the~~
- 6 ~~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 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 25301 of the Public Resources Code is amended to read:~~

~~25301. (a) At least every two years, the commission shall conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The commission shall use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the state's economy, and protect public health and safety. To perform these assessments and forecasts, the commission may require submission of demand forecasts, resource plans, market assessments, and related outlooks from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants. These assessments and forecasts shall be done in consultation with the appropriate state and federal agencies including, but not limited to, the Public Utilities Commission, the Division of Ratepayer Advocates, the State Air Resources Board, the Independent System Operator, the Department of Water Resources, the Department of Transportation, and the Department of Motor Vehicles.~~

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

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

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

6 ~~(3) Analyze and develop energy policies.~~

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

9 ~~(5) Facilitate efficient and reliable energy markets.~~

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

12 ~~(A) Investigate the potential for conversion technology facilities,~~
13 ~~as defined in Section 40116.2, to assist the state in meeting key~~
14 ~~environmental goals, including, but not limited to, the California~~
15 ~~Renewables Portfolio Standard Program (Article 16 (commencing~~
16 ~~with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the~~
17 ~~Public Utilities Code), and the California Global Warming~~
18 ~~Solutions Act of 2006 (Division 25.5 (commencing with Section~~
19 ~~38500)) of the Health and Safety Code.~~

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

26 ~~SEC. 3.—Section 25741 of the Public Resources Code is~~
27 ~~amended to read:~~

28 ~~25741. As used in this chapter, the following terms have the~~
29 ~~following meaning:~~

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

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

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

39 ~~(A) The facility is located in the state or near the border of the~~
40 ~~state with the first point of connection to the transmission network~~

1 of a balancing authority area primarily located within the state.
2 For purposes of this subparagraph, “balancing authority area” has
3 the same meaning as defined in Section 399.12 of the Public
4 Utilities Code.

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

9 (i) It commences initial commercial operation after January 1,
10 2005.

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

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

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

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

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

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

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

38 (b) “Municipal solid waste conversion,” as used in subdivision
39 (a), means a technology that uses a noncombustion thermal process

1 to convert solid waste to a clean-burning fuel for the purpose of
2 generating electricity, and that meets all of the following criteria:

3 (1) ~~The technology produces no discharges of air contaminants~~
4 ~~or emissions, including greenhouse gases as defined in Section~~
5 ~~38505 of the Health and Safety Code.~~

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

8 (3) ~~The technology produces no hazardous wastes.~~

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

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

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

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

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

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

34 (e) ~~“Retail seller” means a “retail seller” as defined in Section~~
35 ~~399.12 of the Public Utilities Code.~~

36 (f) (1) ~~For the purposes of complying with the California~~
37 ~~Renewables Portfolio Standard Program (Article 16 (commencing~~
38 ~~with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the~~
39 ~~Public Utilities Code), “biomass,” as used in subdivision (a), means~~
40 ~~the renewable portion of residual solid waste, as defined in Section~~

1 40182.5, if the facility results in a net reduction of greenhouse gas
2 emissions and other air emissions compared to the landfill disposal
3 of the same feedstock.

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

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

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

12 SEC. 4. ~~Section 40005 is added to the Public Resources Code,~~
13 ~~to read:~~

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

24 SEC. 5.

25 SECTION 1. Section 40106 of the Public Resources Code is
26 amended to read:

27 40106. (a) "Biomass conversion" means the controlled
28 combustion, or other conversion technology, when separated from
29 other solid waste and used for producing electricity or heat, of the
30 following materials:

31 (1) Agricultural crop residues.

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

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

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

35 (5) Nonrecyclable pulp or nonrecyclable paper materials.

36 (b) "Biomass conversion" does not include the controlled
37 combustion of recyclable pulp or recyclable paper materials, or
38 materials that contain sewage sludge, industrial sludge, medical
39 waste, hazardous waste, or either high-level or low-level
40 radioactive waste.

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

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

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

~~SEC. 6.~~

~~SEC. 2.~~ Section 40116.1 of the Public Resources Code is amended to read:

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

(b) ~~“Composting”~~ *For the purposes of Sections 40051, 41780.01, and 41200, and Article 5 (commencing with Section 41400) of Chapter 3, “composting”* includes aerobic decomposition and anaerobic decomposition of organic waste.

~~SEC. 7.~~ Section 40116.2 is added to the Public Resources Code, to read:

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

(a) ~~Dedicated energy crops.~~

(b) ~~Agricultural crop residues.~~

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

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

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

(f) ~~Nonrecyclable pulp or nonrecyclable paper material.~~

(g) ~~Waste fats, oils, and greases.~~

(h) ~~Residual solid waste.~~

~~SEC. 8.~~ Section 40117 of the Public Resources Code is amended to read:

40117. “Gasification” means a technology that uses a noncombustion thermal process to convert solid waste to a clean

1 burning fuel for the purpose of generating electricity, and that, at
2 minimum, meets all of the following criteria:

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

6 (b) ~~The technology produces no discharges to surface or~~
7 ~~groundwaters of the state.~~

8 (c) ~~The technology produces no hazardous waste.~~

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

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

16 (f) ~~The facility certifies to the department that any local agency~~
17 ~~sending solid waste to the facility is in compliance with this~~
18 ~~division and has reduced, recycled, or composted solid waste to~~
19 ~~the maximum extent feasible, and the department makes a finding~~
20 ~~that the local agency has diverted at least 30 percent of all solid~~
21 ~~waste through source reduction, recycling, and composting.~~

22 SEC. 9. ~~Section 40182.5 is added to the Public Resources Code,~~
23 ~~to read:~~

24 40182.5. “Residual solid waste” means material that remains
25 after all marketable recyclable materials and compostable materials
26 have been separated from a solid waste received by a solid waste
27 facility, to the maximum extent feasible, including, but not limited
28 to, by a curbside source separation program, a materials recovery
29 facility, or another process.

30 SEC. 10. ~~Section 40194 of the Public Resources Code is~~
31 ~~amended to read:~~

32 40194. “Solid waste facility” includes a solid waste transfer
33 or processing station, a composting facility, a conversion
34 technology facility that processes residual solid waste, a
35 gasification facility, a transformation facility, and a disposal
36 facility. For purposes of Part 5 (commencing with Section 45000),
37 “solid waste facility” additionally includes a solid waste operation
38 that may be carried out pursuant to an enforcement agency
39 notification, as provided in regulations adopted by the department.

1 SEC. 11. ~~Section 40201 of the Public Resources Code is amended~~
2 ~~to read:~~

3 40201. ~~“Transformation” means the incineration of solid waste,~~
4 ~~with or without the recovery of energy. “Transformation” does~~
5 ~~not include composting, gasification, biomass conversion, or~~
6 ~~conversion technology.~~

7 SEC. 12. ~~Section 43036 is added to the Public Resources Code,~~
8 ~~to read:~~

9 43036. ~~(a) A solid waste facility shall not accept recyclable~~
10 ~~or compostable materials, except for the purposes of beneficially~~
11 ~~using those materials, as approved by the local enforcement agency,~~
12 ~~or for the purposes of temporarily storing the materials for later~~
13 ~~transport to another facility.~~

14 ~~(b) A solid waste disposal facility shall only accept residual~~
15 ~~solid waste for disposal or processing.~~

16 SEC. 13. ~~Section 44017 of the Public Resources Code is~~
17 ~~amended to read:~~

18 44017. ~~The enforcement agency shall include, in the solid~~
19 ~~waste facilities permit for a conversion technology facility~~
20 ~~processing residual solid waste, a provision that requires the use~~
21 ~~of operating procedures at the facility to prevent hazardous waste~~
22 ~~from entering the conversion process.~~

23 SEC. 14. ~~Section 50001 of the Public Resources Code is~~
24 ~~amended to read:~~

25 50001. ~~(a) Except as provided by subdivision (b), after a~~
26 ~~countywide or regional agency integrated waste management plan~~
27 ~~has been approved by the Department of Resources Recycling and~~
28 ~~Recovery pursuant to Division 30 (commencing with Section~~
29 ~~40000), a person shall not establish or expand a solid waste facility,~~
30 ~~as defined in Section 40194, in the county unless the solid waste~~
31 ~~facility meets one of the following criteria:~~

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

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

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

~~(b) Solid waste facilities other than those specified in paragraphs (1), (2), and (3) 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. 15.~~

SEC. 3. 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 or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

- 1 changes the definition of a crime within the meaning of Section 6
- 2 of Article XIII B of the California Constitution.

O