

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 2, 2015

AMENDED IN ASSEMBLY APRIL 20, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 901

**Introduced by Assembly Member Gordon
(Coauthor: Assembly Member Williams)**

February 26, 2015

An act to amend Section 41821.5 of, to ~~amend and renumber~~ *amend, renumber, and add* Section 41821.6 of, and to add Sections ~~41821.6, 41821.7, 41821.7~~ and 41821.8 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 901, as amended, Gordon. Solid waste: reporting requirements: enforcement.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste. Existing law requires disposal facility operators to submit information to counties from periodic tracking surveys on the disposal tonnages that are disposed of at the disposal facility by jurisdiction or region of origin. Existing law requires solid waste handlers and transfer station operators to provide information to the disposal facility on the origin of the solid waste they deliver to the disposal facility. Existing law requires recycling and composting facilities to submit periodic

information to counties on the types and quantities of materials that are disposed of, sold to end users, or sold to exporters or transporters for sale outside of the state, by county of origin. Existing law requires counties to submit periodic reports to the cities within the county, to any regional agency of which the county is a member, and to the Department of Resources Recycling and Recovery on the amounts of solid waste disposed of by jurisdiction or region of origin, and on the categories and amounts of solid waste diverted to recycling and composting facilities within the county or region. Existing law authorizes the department to adopt regulations in this regard.

This bill would revise these provisions by, among other things, (1) requiring recycling and composting operations and facilities to submit specified information directly to the department, rather than to counties, (2) requiring disposal facility operators to submit tonnage information to the department, and to counties only on request, and (3) deleting the requirement for counties to submit that information to cities, regional agencies, and the department. The bill would delete references to periodic tracking surveys. The bill would require exporters, brokers, and transporters of recyclables or compost to submit periodic information to the department on the types, quantities, and destinations of materials that are disposed of, sold, or transferred inside or outside of the state, and would authorize the department to provide this information, on an aggregated basis, to jurisdictions, as specified. The bill would make other related changes to the various reporting requirements. The bill would provide for imposition of civil penalties on any person who refuses or fails to submit information required by the governing regulations, and on any person who knowingly or willfully files a false report, refuses to permit the department to inspect or examine associated records, or alters, cancels, or obliterates entries in the records, as specified. The bill would provide that the civil penalties may be imposed either in a civil action or administratively pursuant to procedures specified in the bill. The bill would specify the types of waste disposal records that are subject to inspection and copying by the department, and also by an employee of a government entity, as defined, with respect to tonnage received at a disposal facility *on or after July 1, 2015*, that originates within the government entity's geographic jurisdiction. The bill, with respect to those records, would prohibit a government entity from disclosing the name of a waste hauler using a specific landfill unless necessary as part of an administrative or judicial proceeding, as specified. The bill would also authorize a government

entity to petition the superior court for injunctive or declaratory relief to enforce these provisions. The bill would require recovered civil penalties to be deposited in the Integrated Waste Management Account.

~~Existing~~

The California Public Records Act provides that public records are open to inspection at all times during the office hours of the state or local agency that retains those records, and that every person has a right to inspect any public record, but exempts certain records from those requirements. Existing law, upon the request of any person furnishing any report, notice, application, plan, or other document required by the California Integrated Waste Management Act of 1989, provides that neither the department nor an enforcement agency shall make available for inspection by the public any portion of the report, notice, application, plan, or other document that contains a trade secret, as specified.

This bill would exempt certain waste disposal records subject to inspection and copying by the department or a government entity from disclosure under certain California Public Records Act provisions. The bill would also make certain waste disposal records subject to ~~this provision, including waste disposal records subject to inspection and copying by the department or a government entity.~~ nondisclosure under the trade secrets provisions.

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

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

- 1 SECTION 1. Section 41821.5 of the Public Resources Code
- 2 is amended to read:
- 3 41821.5. (a) Disposal facility operators shall submit
- 4 information on the disposal tonnages by jurisdiction or region of
- 5 origin that are disposed of at each disposal facility to the
- 6 department, and to counties that request the ~~information.~~
- 7 *information, in a form prescribed by the department.* To enable
- 8 disposal facility operators to provide that information, solid waste
- 9 handlers and transfer station operators shall provide information
- 10 to disposal facility operators on the origin of the solid waste that
- 11 they deliver to the disposal facility.
- 12 (b) Recycling and composting operations and facilities shall
- 13 submit periodic information to the department on the types and

1 quantities of materials that are disposed of, sold, or transferred to
2 other recycling or composting facilities, end users inside of the
3 state or outside of the state, or exporters, brokers, or transporters
4 for sale inside of the state or outside of the state. Exporters, brokers,
5 and transporters of recyclables or compost shall submit periodic
6 information to the department on the types, quantities, and
7 destinations of materials that are disposed of, sold, or transferred.
8 The information in these reports may be provided on an aggregated
9 facility-wide basis and ~~need not include~~ *may exclude* financial
10 data, *such as contract terms and conditions (including information*
11 *on pricing, credit terms, volume discounts and other proprietary*
12 *business terms)*, the jurisdiction of the origin of the materials, or
13 information on the entities from which the materials are received.
14 The department may provide this information to jurisdictions,
15 aggregated by company, upon request.

16 (c) The department ~~may~~ *shall* adopt regulations pursuant to this
17 section requiring practices and procedures that are reasonable and
18 necessary to implement this section, and that provide a
19 representative accounting of solid wastes and recyclable materials
20 that are handled, processed, or disposed. Those regulations
21 approved by the department shall not impose an unreasonable
22 burden on waste and recycling handling, processing, or disposal
23 operations or otherwise interfere with the safe handling, processing,
24 and disposal of solid waste and recyclables. ~~To the extent~~
25 ~~regulations are adopted, the~~ *The* department shall include in those
26 regulations both of the following:

27 (1) Procedures to ensure that an opportunity to comply is
28 provided prior to initiation of enforcement authorized by Section
29 41821.7.

30 (2) Factors to be considered in determining penalty amounts
31 that are similar to those provided in Section 45016.

32 (d) Any person who refuses or fails to submit information
33 required by regulations adopted pursuant to this section is liable
34 for a civil penalty of not less than five hundred dollars (\$500) and
35 not more than five thousand dollars (\$5,000) for each violation of
36 a separate provision or, for continuing violations, for each day that
37 the violation continues.

38 (e) Any person who knowingly or willfully files a false report,
39 or any person who refuses to permit the department or any of its
40 representatives to make inspection or examination of records, or

1 who fails to keep any records for the inspection of the department,
2 or who alters, cancels, or obliterates entries in the records for the
3 purpose of falsifying the records as required by regulations adopted
4 pursuant to this section, is liable for a civil penalty of not less than
5 five hundred dollars (\$500) and not more than ten thousand dollars
6 (\$10,000) for each violation of a separate provision or, for
7 continuing violations, for each day that the violation continues.

8 (f) Liability under this section may be imposed in a civil action,
9 or liability may be imposed administratively pursuant to this article.

10 (g) (1) Notwithstanding Title 5 (commencing with Section
11 3426) of Part 1 of Division 4 of the Civil Code and Article 11
12 (commencing with Section 1060) of Chapter 4 of Division 8 of
13 the Evidence Code, all records *reasonably* required to be kept
14 ~~pursuant to this section~~ *to allow for verification of the reports*
15 *required pursuant to subdivisions (a) and (b) and implementing*
16 *regulations shall be subject to inspection and copying by the*
17 ~~department.~~ *department, but shall be confidential and shall not be*
18 *subject to disclosure under the California Public Records Act*
19 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
20 *Title 1 of the Government Code).*

21 (2) ~~In addition,~~ *Notwithstanding Title 5 (commencing with*
22 *Section 3426) of Part 1 of Division 4 of the Civil Code and Article*
23 *11 (commencing with Section 1060) of Chapter 4 of Division 8 of*
24 *the Evidence Code, an employee of a government entity may, at*
25 *the disposal facility, inspect and copy records related to tonnage*
26 *received at the facility on or after July 1, 2015, and originating*
27 *within its the government entity's geographic jurisdiction. Those*
28 *records shall* ~~include~~ *be limited to weight tags that identify the*
29 *hauler, vehicle, quantity, date, type, and origin of waste disposed*
30 ~~of received at a landfill.~~ *disposal facility. Those records shall be*
31 *available to those government entities for the purposes of*
32 *subdivision (a) and as necessary to fund their local programs.*
33 *enforce the collection of local fees, but those records shall be*
34 *confidential and shall not be subject to disclosure under the*
35 *California Public Records Act (Chapter 3.5 (commencing with*
36 *Section 6250) of Division 7 of Title 1 of the Government Code).*
37 Names of haulers using specific landfills shall not be disclosed by
38 a government entity unless necessary as part of an administrative
39 or judicial enforcement proceeding to fund local programs or
40 enforce local franchises.

1 (3) A government entity may petition the superior court for
 2 injunctive or declaratory relief to enforce its authority under
 3 paragraph (2). The times for responsive pleadings and hearings in
 4 these proceedings shall be set by the judge of the court with the
 5 object of securing a decision as to these matters at the earliest
 6 possible time.

7 (4) For purposes of this section, a government entity is an entity
 8 identified in Section 40145 or an entity formed pursuant to Section
 9 40976.

10 (5) *For purposes of this subdivision, “disposal” and “disposal*
 11 *facility” have the same meanings as prescribed by Sections 40120.1*
 12 *and 40121, respectively.*

13 (6) *Nothing in this subdivision shall be construed to limit or*
 14 *expand the authority of a government entity that may have been*
 15 *provided by this section and implementing regulations as they read*
 16 *on December 31, 2015.*

17 (7) *The records subject to inspection and copying by the*
 18 *department pursuant to paragraph (1) or by an employee of a*
 19 *government entity pursuant to paragraph (2) may be redacted by*
 20 *the operator before inspection to exclude confidential pricing*
 21 *information contained in the records, such as contract terms and*
 22 *conditions (including information on pricing, credit terms, volume*
 23 *discounts, and other proprietary business terms), if the redacted*
 24 *information is not information that is otherwise required to be*
 25 *reported to the department.*

26 (h) Notwithstanding the Uniform Electronic Transactions Act
 27 (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division
 28 3 of the Civil Code), reports required by this section shall be
 29 submitted electronically, using an electronic reporting format
 30 system established by the department.

31 (i) All records provided in accordance with this section shall be
 32 subject to Section 40062.

33 SEC. 2. Section 41821.6 of the Public Resources Code is
 34 amended and renumbered to read:

35 41821.9. To assist market development efforts by the
 36 department, local agencies, and the private sector, the department
 37 shall use existing data resources.

38 SEC. 3. Section 41821.6 is added to the Public Resources Code,
 39 to read:

1 41821.6. In order to ensure that records required pursuant to
2 this article are properly maintained, in addition to inspecting all
3 *relevant* records, the department may conduct audits, perform site
4 inspections, observe facility operations, and otherwise investigate
5 the recordkeeping and reporting of persons subject to the
6 requirements of this article. *Any records, reports, notes, studies,*
7 *drawings, schematics, photographs, or trade secrets, as defined*
8 *in Section 3426.1 of the Civil Code, obtained, produced, or created*
9 *by the department in connection with or arising from such audits,*
10 *inspections, or observations are confidential and shall not be*
11 *subject to disclosure under the California Public Records Act*
12 *(Chapter 3.5 (commencing with Section 6250) of Division 7 of*
13 *Title 1 of the Government Code).*

14 SEC. 4. Section 41821.7 is added to the Public Resources Code,
15 to read:

16 41821.7. (a) The department may issue an administrative
17 complaint to any person on whom civil liability may be imposed
18 pursuant to this article. The complaint shall allege the acts or
19 failures to act that constitute the basis for liability and the amount
20 of the proposed civil liability. The complaint shall be served by
21 personal service or certified mail and shall inform the party so
22 served that a hearing shall be conducted within 60 days after the
23 party has been served, unless the party waives the right to a hearing.

24 (b) If the party waives the right to a hearing, the department
25 shall issue an order setting liability in the amount proposed in the
26 complaint unless the department and the party have entered into
27 a settlement agreement, in which case the department shall issue
28 an order setting liability in the amount specified in the settlement
29 agreement. If the party has waived the right to a hearing or if the
30 department and the party have entered into a settlement agreement,
31 the order shall not be subject to review by any court or agency.

32 (c) Any hearing required under this section shall be conducted
33 by an independent hearing officer according to the procedures
34 specified in Chapter 5 (commencing with Section 11500) of Part
35 1 of Division 3 of Title 2 of the Government Code, except as
36 otherwise specified in this section.

37 SEC. 5. Section 41821.8 is added to the Public Resources Code,
38 to read:

39 41821.8. (a) Orders setting civil liability issued under this
40 ~~section~~ *article* shall become effective and final upon issuance

1 thereof, and payment shall be made within 30 days of issuance.
2 Copies of these orders shall be served by personal service or by
3 certified mail upon the party served with the complaint and upon
4 other persons who appeared at the hearing and requested a copy.

5 (b) Within 30 days after service of a copy of a decision, any
6 person so served may file with the superior court a petition for
7 writ of mandate for review of the decision. Any person who fails
8 to file the petition within the 30-day period may not challenge the
9 reasonableness or validity of a decision or order of the hearing
10 officer in any judicial proceedings brought to enforce the decision
11 or order or for other remedies.

12 (c) Except as otherwise provided in this section, Section 1094.5
13 of the Code of Civil Procedure governs any proceedings conducted
14 pursuant to this subdivision.

15 (d) This section does not prohibit the court from granting any
16 appropriate relief within its jurisdiction.

17 (e) All penalties collected under this article shall be deposited
18 in the Integrated Waste Management Account created pursuant to
19 Section 48001.