

Introduced by Senator De LeónFebruary 27, 2015

An act to amend Section 25245 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 654, as introduced, De León. Hazardous waste: facility closure.

(1) Existing law, as part of the hazardous waste control law, requires the Department of Toxic Substances Control to adopt, and revise when appropriate, standards and regulations to, among other things, specify the financial assurances to be provided by an owner or operator of a hazardous waste facility that are necessary to provide for the cost of closure and subsequent maintenance of the facility. A violation of a regulation adopted pursuant to the hazardous waste control law is a crime.

This bill would additionally require the standards and regulations to specify the financial assurances to be provided to respond to the cost of closure, cleanup, and subsequent maintenance of the facility. Since a violation of a regulation adopted pursuant to the hazardous waste control law would be a crime, the bill would impose a state-mandated local program.

(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 a specified reason.

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. Section 25245 of the Health and Safety Code is
2 amended to read:

3 25245. (a) The department shall adopt, and revise when
4 appropriate, standards and regulations ~~which~~ *that* shall do both of
5 the following:

6 (1) Specify the financial assurances to be provided by the owner
7 or operator of a hazardous waste facility that are necessary to
8 respond adequately to damage claims arising out of the operation
9 of that type of facility and to provide for the cost of ~~closure~~ *closure*,
10 *cleanup*, and subsequent maintenance of the facility, including,
11 but not limited to, the monitoring of groundwater and other aspects
12 of the environment after closure. If the facility is required to obtain
13 a permit under the federal act, the financial assurance shall be a
14 trust fund, surety bond, letter of credit, insurance, or any other
15 mechanism authorized under the federal act and the regulations
16 adopted pursuant to the federal act. If the facility is not required
17 to obtain a permit under the federal act, the financial assurance
18 may include any other equivalent financial arrangement acceptable
19 to the department.

20 (2) Provide that every hazardous waste facility can be closed
21 and maintained for at least 30 years subsequent to its closure in a
22 manner that protects human health and the environment and
23 minimizes or eliminates the escape of hazardous waste constituents,
24 leachate, contaminated rainfall, and waste decomposition products
25 to ground and surface waters and to the atmosphere.

26 (b) In adopting regulations pursuant to subdivision (a), to carry
27 out the purposes of this chapter, the department may specify policy
28 or other contractual terms, conditions, or defenses ~~which~~ *that* are
29 necessary or are unacceptable in establishing evidence of financial
30 responsibility.

31 (1) If an owner or operator is in bankruptcy pursuant to Title
32 11 of the United States Code, or where, with reasonable diligence,
33 jurisdiction in any state or federal court cannot be obtained over
34 an owner or operator likely to be solvent at the time of judgment,
35 ~~any~~ *a* claim arising from conduct for which this section requires
36 evidence of financial responsibility may be asserted directly against
37 the guarantor who provided the evidence of financial responsibility.

1 (2) The total liability of any guarantor is limited to the aggregate
2 amount ~~which~~ *that* the guarantor has provided as evidence of
3 financial responsibility to the owner or operator under this chapter.

4 (3) This subdivision does not limit any other state or federal
5 statutory, contractual, or common law liability of a guarantor to
6 the owner or operator, including, but not limited to, the liability
7 of the guarantor for bad faith in either negotiating or in failing to
8 negotiate the settlement of ~~any~~ *a* claim.

9 (4) This subdivision does not diminish the liability of any person
10 under Section 107 or 111 of the *federal* Comprehensive
11 Environmental Response, Compensation, and Liability Act of 1980
12 (42 U.S.C. Secs. 9607 and 9611).

13 (5) For purposes of this subdivision, “guarantor” means ~~any~~ *a*
14 person, other than the owner or operator, who provides evidence
15 of financial responsibility for an owner or operator under this
16 section.

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.