

CITY OF OAKLAND
OFFICE OF THE CITY CLERK
BILL ANALYSIS



Date: 4/30/08
Bill Number: AB 2640
Bill Author: Assembly Member Jared Huffman

2008 MAY -1 PM 4:42

DEPARTMENT INFORMATION

Contact: Lupe Schoenberger
Department: City Council
Telephone: 238-7052 **FAX #** 238-2061 **E-mail:** lschoenberger

RECOMMENDED POSITION: SUPPORT

Summary of the Bill

AB 2640 will set up a "Compostable Organics Management Program" that will incentivize the development of environmentally superior alternatives to landfilling organic compostable materials. The bill would charge a fee of \$1.40 per ton of green materials used for "beneficial reuse" in landfills, including use as daily cover, and this money will be used to promote activities that divert these materials from landfills.

Positive Factors for Oakland

Organic material is the largest remaining recoverable material type in Oakland's waste stream. The diversion of these materials for recycling and composting is essential to Oakland's 75% waste diversion by 2010, and zero waste by 2020 goals. The practice of using organic material in landfills, for daily cover or other uses, has a detrimental impact on the development of the compost and organics recycling facilities needed to recover and recycle this material. Organic material in landfills contributes to landfill emissions of greenhouse gases. AB2640 represents the first step towards the elimination of placing organic material in landfills and supporting the market for the regional composting/recycling processing facilities Oakland needs to meet our environmental goals.

NOTE: Opposition is primarily Southern California cities and the landfill and garbage hauling companies that serve them. These cities rely on waste diversion credits currently allowed for putting organic material into landfills as daily cover (a practice that the original version of this bill sought to end). Both opponents and proponents are lobbying the League of California Cities. It is possible that the League may take a position on this bill other than the support position recommended above.

Negative Factors for Oakland

None identified.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

Critical (top priority for City lobbyist, city position required ASAP)

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- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or** **None** (do not review with City Council, position not required)

Known support:

Californians Against Waste
California Association of Professional Scientists
California Compost Coalition
California Refuse Removal Council
California Resource Recovery Association
GW Green Waste
Marin Sanitary Service
Norcal Waste Systems, Inc.
Sonoma Compost Co., LLC
StopWaste.Org
Waste Management
Z-Best Products
Zanker Road Resource Management

Known Opposition:

Athens Services
City of Alhambra
City of Artesia
City of Desert Hot Springs
City of El Segundo
City of Pomona
City of West Covina
Consolidated Disposal Services
County Sanitation Districts of Los Angeles County
CR&R Incorporated
Desert Valley Disposal, Inc.
Inland Empire Disposal Association
Palm Springs Disposal Services
Rainbow Disposal Co., Inc.
Regional Council of Rural Counties
Republic Services of Southern California
Richmond Sanitary Service
San Gabriel Valley County of Governments
Sanitation Districts of Los Angeles County
Solid Waste Association of Orange County
SWAOC
Taormina Industries
Varner Bros., Inc.

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,

Lupe Schoenberger

Prepared in consultation with:
Peter Slote
Environmental Services

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Date of Hearing: April 14, 2008

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Loni Hancock, Chair

AB 2640 (Huffman) - As Amended: April 7, 2008

SUBJECT : Solid waste: compostable organics management.

SUMMARY : Requires the California Integrated Waste Management Board (CIWMB) to develop a compostable organics (organics) management program and a grant and loan program for organics management projects. Additionally, this bill establishes a fee of \$1.40 per ton on organics used for beneficial reuse in the operations of a solid waste facility.

EXISTING LAW , under the California Integrated Waste Management Act of 1989:

- 1) Provides that the use of solid waste, for beneficial reuse, including green waste used as alternative daily cover (ADC), in the construction and operation of a solid waste landfill reduces or eliminates the amount of solid waste disposed and therefore constitutes diversion through recycling, and cannot be considered disposal for the purposes of the Act.
- 2) Requires the California Integrated Waste Management Board (CIWMB) to adopt regulations relating to the beneficial reuse of materials in the operations of a solid waste facility.
- 3) Requires the collection of a "tipping fee" on each ton of solid waste disposed at a solid waste facility in California. The fee is capped at \$1.40 per ton. (Materials used for "beneficial reuse" in the operation of the landfill are not subject to this fee.)

THIS BILL :

- 1) Requires CIWMB to adopt policies and to develop and implement programs to reduce the amount of organic materials that are disposed in a solid waste landfill by 50% before January 1, 2020.
- 2) Establishes a state fee of \$1.40 per ton for green material that is used for beneficial reuse.

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- 3) Requires the fee to be paid to the State Board of Equalization

(BOE) on a quarterly basis, unless BOE opts to implement a different payment schedule.

- 4) Requires revenues from the fee to be deposited in an Organics Management Account (Account) and establishes that Account in the Integrated Waste Management Fund.
- 5) Authorizes CIWMB to expend up to one-half of one percent of the Account for administering the Account.
- 6) Requires CIWMB to expend funds from the Account, upon appropriation by the Legislature, for the following:
 - a) CIWMB-developed grants and loans for organics management projects; and,
 - b) A CIWMB-developed program, to commence on July 1, 2010, for organics management.

FISCAL EFFECT : According to the author's office, this bill will generate approximately \$4 million annually to be used for organics management.

COMMENTS :

1) Purpose of Bill

This bill will require organic material used as ADC to be subject to a fee equal to the current tipping fee on solid waste (\$1.40 per ton). The author states that this fund will "incentivize the development of environmentally superior alternatives to landfilling organic compostable wastes, including composting, anaerobic digestion, biomass-to-energy, and other technologies that process organics." The author also notes that "alternatives, like composting, reduce [volatile organic compound] emissions anywhere from 60% to 92% below biogenic levels."

2) Background on ADC and organics management

The California Integrated Waste Management Act of 1989 requires each city or county source reduction and recycling element to include an implementation schedule that shows a city or county must divert 25% of solid waste from landfill disposal or

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transformation by January 1, 1995, and must divert 50% of solid waste on and after 2000.

Organic materials comprise approximately 25% of the state's disposed waste stream. Compostable organics include yard waste, lumber, manure, and food. ADC refers to the use of materials other than soil to provide daily cover at landfills. Green materials, which are suitable for use as ADC, make up about 6% of the waste stream. According to CIWMB, 2.8 million tons of

green waste was used as ADC in 2006.

In 1996, the Natural Resources Defense Council challenged regulations implementing CIWMB's policy allowing diversion credit for ADC and the Sacramento Superior Court held that the regulations were inconsistent with the Act. AB 1647 (Bustamante) Chapter 978, Statutes of 1996, amended the Act to allow ADC diversion credit and required CIWMB to adopt regulations establishing conditions for use of ADC.

ADC materials approved by the CIWMB that can be reported as diversion includes ash and cement kiln dust, treated auto shredder waste, construction and demolition waste, compost, green material, contaminated sediment, sludge, and shredded tires. This bill only applies the fee to organic material used as ADC.

At its December 2007 hearing CIWMB laid out an Organics Policy Roadmap, which included a directive to reduce organics in the waste stream by 50% by 2020. The Roadmap identified the need to develop infrastructure to divert an additional 15 million tons of organic material per year, plus an additional 3 million tons per year if the use of organics as ADC is eliminated. While CIWMB noted diversion credit for ADC as a potential deterrent to other forms of diversion, the most significant barrier is economic. Organics management is simply more expensive than landfill disposal or use as ADC. Air quality regulations, particularly in the South Coast region, have made composting prohibitively expensive; the Roadmap notes the need for financing mechanisms to encourage new facilities. It also identifies the need for research relating to organics, including emissions information for different processes (composting, anaerobic digestion, etc.). CIWMB scheduled future items for additional discussion of options for organics; in March, CIWMB heard alternatives relating to ADC and in May CIWMB plans to hear an agenda item relating to economic incentives and

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disincentives.

On March 18, 2008, CIWMB staff presented an Agenda Item to the Board's Strategic Planning Committee requesting direction on the management of organic material used as ADC. The Item identified three options to address the use of organic material as ADC: 1) Increase fees on green material used as ADC; 2) Define green material ADC use as disposal, not beneficial reuse; and, 3) Continuing to address ADC use by emphasizing inspection and enforcement to identify overuse and misreporting. The Board directed staff to convene an informal working group over the next couple of months to discuss options relating to the phase out of the use of organic material as ADC.

There has been a significant amount of discussion surrounding organics management, including green waste used as ADC, and greenhouse gas (GHG) emissions. Until a comprehensive

life-cycle analysis compares different management options for this material and the related GHG emissions, it is not known whether use of organic material as ADC reduces GHG emissions over other management options, such as composting.

3) Related legislation

AB 2866 (De Leon) increases the states solid waste tipping fee from \$1.40 per ton to \$2 per ton beginning July 1, 2009 and directs the additional funding into a new Solid Waste Mitigation Account (SWMA) to fund air emission reduction technologies for solid waste vehicles; diversion programs for compostable organics, including energy generation; and, to establish a trust fund to protect the state from liability associated with closed and abandoned solid waste disposal sites. This bill is also pending before this committee.

REGISTERED SUPPORT / OPPOSITION :

Support

Californians Against Waste
California Compost Coalition
California Refuse Removal Council
California Resource Recovery Association
Marin Sanitary Service
Norcal Waste Systems, Inc.
Sonoma Compost Co., LLC

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StopWaste.Org
Waste Management

Opposition

City of Alhambra
City of Artesia
City of Desert Hot Springs
City of El Segundo
City of Pomona
City of West Covina
Consolidated Disposal Services
County Sanitation Districts of Los Angeles County
CR&R Incorporated
Desert Valley Disposal, Inc.
Inland Empire Disposal Association
Palm Springs Disposal Services
Rainbow Disposal Co., Inc.
Regional County of Rural Counties
Republic Services of Southern California
Richmond Sanitary Service
San Gabriel Valley County of Governments
Sanitation Districts of Los Angeles County
Solid Waste Association of Orange County
SWAOC

Taormina Industries
Varner Bros., Inc.

Analysis Prepared by : Elizabeth MacMillan / NAT. RES. / (916)
319-2092

BILL NUMBER: AB 2640 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 7, 2008

INTRODUCED BY Assembly Member Huffman
(Coauthor: Assembly Member
Dymally)

FEBRUARY 22, 2008

An act to amend ~~Sections 41781.3 and~~
Section 48000 of, to add Section 41781.5 to, and to add Article
3 (commencing with Section 48030) to Chapter 2 of Part 7 of Division
30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2640, as amended, Huffman. Solid waste: compostable organics management.

(1) The California Integrated Waste Management Act of 1989 establishes an integrated waste management program administered by the California Integrated Waste Management Board. The act requires a city, county, city and county, or regional agency to develop a source reduction and recycling element of an integrated waste management plan containing specified components.

The act requires the source reduction and recycling element to divert 50% of all solid waste subject to the element from disposal through source reduction, recycling, and composting activities, with specified exceptions. Under the act, the use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including the use of alternative daily cover, constitutes diversion through recycling and is not considered disposal for purposes of the act. ~~The act requires the board, prior to December 31, 1997, to adopt rules and regulations establishing conditions for the use of alternative daily cover that are consistent with the act and requires, until the board adopts those regulations, that the use of alternative daily cover be governed by specified existing regulations.~~

This bill would require the board to adopt policies and to develop and implement programs — to ensure that

on and after January 1, 2020, the amount of compostable organics subject to landfill disposal or otherwise deposited in landfills is reduced as specified.

~~This bill would provide that, on and after January 1, 2015, the use of green material, as defined, for beneficial reuse in the construction and operation of a solid waste landfill, including the use of green material as alternative daily cover, would not constitute diversion and would require that green material be considered disposal for purposes of the act. The bill would require the board to notify operators of disposal facilities of this provision on or before July 1, 2009.~~

~~This bill would require the board, on or before July 1, 2010, to adopt or revise regulations that establish conditions for the use of alternative daily cover that are consistent with the act. The bill also would delete an obsolete reference to the board's existing regulations.~~

~~This bill would impose a state mandated local program by imposing new duties upon local agencies related to implementing those provisions.~~

(2) The act requires an operator of a solid waste disposal facility to pay a quarterly fee of up to \$1.40 per ton based on the

amount of all solid waste disposed of at each disposal site and requires the State Board of Equalization to collect the fees and deposit the fees in the Integrated Waste Management Account in the Integrated Waste Management Fund (fund) in the State Treasury. The act requires the Integrated Waste Management Board to use the moneys in the account, upon appropriation by the Legislature, for specified purposes.

This bill, with regard to green material used for beneficial reuse, including use as alternative daily cover, at a disposal site, would ~~instead~~, beginning January 1, 2010,

require an operator of a solid waste disposal facility to pay a quarterly fee of \$1.40 per ton, would establish the Organics Management Account in the fund, and would require the State Board of Equalization to collect and deposit the fees imposed on that green material in the account, as specified. The bill would require the California Integrated Waste Management Board to expend the moneys in the account, upon appropriation by the Legislature, for competitive grants and loans for compostable organics management projects and, commencing on July 1, 2010, for a program adopted by the board for compostable organics management.

~~(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~~ no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) With the enactment of the California Integrated Waste Management Act of 1989 (the act), the Legislature declared that the California Integrated Waste Management Board and local agencies shall promote recycling and composting over land disposal and transformation.

(b) Since the enactment of the act, local governments and private industries have worked jointly to create an extensive material collection infrastructure and have implemented effective programs to achieve a statewide diversion rate greater than 50 percent.

(c) Although California now leads the nation in waste reduction and recycling, the state continues to dispose of more than 10 million tons of compostable organics each year in solid waste landfills.

(d) The landfilling of compostable organics, including organic materials used as landfill cover, squanders dwindling disposal capacity, adds to landfill volatility, and results in the emission of greenhouse gases, volatile organic compounds, and ammonia.

(e) Composting organic materials results in substantial environmental and agricultural benefits, including the reduction of methane gas and naturally occurring volatile organic compounds and ammonia.

(f) The Economic and Technology Advancement Advisory Committee, formed pursuant to the California Global Warming Solutions Act of 2006 (A.B. 32, 2005-06 Reg. Sess.), has identified composting as a cost-effective technology for reducing greenhouse gas emissions and has recommended providing financial incentives to assist compost operators to offset the cost of complying with new and existing environmental regulations.

(g) The application of compost in agriculture and landscaping has been shown to offer significant water quality benefits, provide

erosion control, reduce the need for synthetic fertilizers and pesticides, and conserve water and irrigation-associated energy.

(h) The use of compostable organics as alternative daily cover in the construction and operation of solid waste landfills deprives California agriculture and the environment of compostable organic material for compost and other higher and better uses.

(i) The California Integrated Waste Management Board has adopted a Strategic Directive to reduce the amount of organics in the waste stream by 50 percent by the year 2020 and has identified the need for as many as 100 additional facilities in the state to process compostable organics.

(j) In order to reduce the landfilling of organics, increase composting, and meet the organics disposal reduction target adopted by the California Integrated Waste Management Board, the state should reduce barriers to, and provide incentives for, increasing processing capacity and end-use markets for compostable organics.

~~SEC. 2. Section 41781.2 of the Public Resources Code is amended to read:~~

~~41781.2. (a) (1) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including the use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.~~

~~(2) On and after January 1, 2015, the use of green material, as defined in regulations adopted by the board pursuant to Section 40502, for beneficial reuse in the construction and operation of a solid waste landfill, including the use of green material as alternative daily cover, shall not constitute diversion through recycling and shall be considered disposal for purposes of this division.~~

~~(3) On January 1, 2009, the board shall provide notice to all operators of disposal facilities of the requirements of paragraph (2).~~

~~(b) On or before July 1, 2010, pursuant to the board's authority to adopt rules and regulations pursuant to Section 40502, the board shall adopt or revise regulations that establish conditions for the use of alternative daily cover that are consistent with this division. In adopting the regulations, the board shall consider, but is not limited to, all of the following criteria:~~

~~(1) Those conditions established in past policies adopted by the board affecting the use of alternative daily cover.~~

~~(2) Those conditions necessary to provide for the continued economic development, economic viability, and employment opportunities provided by the composting industry in the state.~~

~~(3) Those performance standards and limitations on maximum functional thickness necessary to ensure protection of public health and safety consistent with state minimum standards.~~

~~(c) Until the adoption of additional regulations, the use of alternative daily cover shall be governed by the conditions established by the board in its existing regulations as those regulations read on the effective date of the amendments to this section, as enacted by the Statutes of 2008.~~

~~(d) In adopting rules and regulations pursuant to this section, Section 40124, and this division, including, but not limited to, Part 2 (commencing with Section 40900), the board shall provide guidance to local enforcement agencies on any conditions and restrictions on the utilization of alternative daily cover so as to ensure proper enforcement of those rules and regulations.~~

~~SEC. 2. SEC. 2. Section 41781.5 is added to the Public Resources Code, to read:~~

~~41781.5. The board shall adopt policies and develop and implement programs to ensure that, on and after January 1, 2020, the amount of~~

compostable organics subject to landfill disposal or otherwise deposited in landfills in the state annually is 50 percent or less of the amount of compostable organics disposed or otherwise deposited in landfills during the 2008 calendar year.

~~SEC. 4~~ SEC. 3. Section 48000 of the Public Resources Code is amended to read:

48000. (a) An operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization that is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site, except solid waste for which the payment of a fee is required pursuant to Section 48030.

(b) The fee for solid waste disposed of shall be one dollar and thirty-four cents (\$1.34) per ton. Commencing with the 1995-96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents (\$1.40) per ton.

(c) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

(d) The board and the State Board of Equalization shall ensure that all the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

~~SEC. 5~~ SEC. 4. Article 3 (commencing with Section 48030) is added to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 3. Organics Management Account

48030. (a) (1) ~~On and after January 1, 2009~~ Commencing January 1, 2010, an operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization that is based on the amount, by weight or volumetric equivalent, as determined by the board, of all green material, as defined in regulations adopted by the California Integrated Waste Management Board pursuant to Section 40502, that is used for beneficial reuse, including use as alternative daily cover, at each disposal site.

(2) Notwithstanding paragraph (1), the State Board of Equalization may require the payment of the fee imposed pursuant to this section and the filing of returns for other than quarterly periods.

(3) An operator of a disposal facility shall pay the fee imposed pursuant to this section by the 25th day of the calendar month following the quarterly period for which the fee is due.

(4) (A) Each payment of a fee pursuant to this section shall be accompanied by a return in the form as prescribed by the State Board of Equalization, including, but not limited to, electronic media. The return shall include the following information:

(i) The total amount of green material subject to the fee.

(ii) The amount of the fee for the period covered by the return.

(iii) Other information that the State Board of Equalization determines to be necessary.

(B) A return submitted pursuant to this paragraph shall be authenticated pursuant to methods as may be prescribed by the State Board of Equalization.

(b) The fee imposed pursuant to this section shall be one dollar and forty cents (\$1.40) per ton.

(c) The board and the State Board of Equalization shall ensure

that all fees for green material imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

(d) *The State Board of Equalization shall collect the fee imposed pursuant to this section in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).*

48031. (a) The revenue from the fees paid pursuant to Section 48030 shall, after payment of refunds and administrative costs of collection, be deposited in the Organics Management Account, which is hereby created in the Integrated Waste Management Fund.

(b) For purposes of this article, "account" means the Organics Management Account, created pursuant to subdivision (a).

48032. The state board shall adopt rules and regulations to carry out Section 48030, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

48033. The state board shall not spend more than one-half of 1 percent of the total revenues deposited, or anticipated to be deposited, in the account during a fiscal year for the administration of this article during that fiscal year.

48034. (a) The board shall expend the moneys in the account, upon appropriation by the Legislature, for the administration and implementation of this article.

(b) The board shall adopt rules and regulations governing the expenditure of the moneys in the account, in accordance with the purposes set forth in this article.

48035. (a) (1) The board shall develop a program of grants and loans for compostable organics management projects.

(2) In expending the moneys in the account pursuant to paragraph (1), the board shall support only projects that meet or exceed new or existing state environmental standards.

(b) The board shall adopt a program, to commence on July 1, 2010, for compostable organics management. The program shall be administered by the board pursuant to regulations adopted by the board.

~~SEC. 6. 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.~~

OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

2008 MAY -1 PM 4:40
RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION IN SUPPORT OF AB 2640 (HUFFMAN) – “COMPOSTABLE ORGANICS MANAGEMENT” WHICH WOULD INCENTIVIZE THE DEVELOPMENT OF ENVIRONMENTALLY SUPERIOR ALTERNATIVES TO LANDFILLING ORGANIC COMPOSTABLE MATERIALS THROUGH A \$1.40 PER TON FEE FOR GREEN MATERIALS USED FOR "BENEFICIAL REUSE" IN LANDFILLS, USED TO PROMOTE ACTIVITIES THAT DIVERT THESE MATERIALS FROM LANDFILLS

WHEREAS, the Oakland City Council has set a 75% Waste Diversion by 2010 goal, and a Zero Waste by 2020 goal; and

WHEREAS, organic materials constitute a significant portion of Oakland’s total solid waste stream going to landfill; and

WHEREAS, the current regional processing capacity for recycling organic material is insufficient for the amount of recoverable organic material Oakland and other Alameda County cities are committed to recovering; and

WHEREAS, AB 2640 (Huffman) would fund promotion of environmentally superior alternatives to landfilling organic materials, including the expansion of organics processing and recycling capacity; now, therefore be it

RESOLVED: the City of Oakland declares its support for AB 2640 (Huffman); and be it

FURTHER RESOLVED: that the City Council hereby directs the City Administrator and the City’s legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California