

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

BILL ANALYSIS

Date: 2009 JUN 17 PM 9:51
June 25, 2009

Bill Number: Assembly Bill 479

Bill Author: Wesley Chesbro



DEPARTMENT INFORMATION

Contact: Peter Slote
Department: Public Works Agency
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RECOMMENDED POSITION: SUPPORT

Summary of the Bill

This bill would require a city or county to adopt ordinances establishing mandatory recycling for businesses and commercial establishments, including multi-family dwellings. The bill would also require the California Integrated Waste Management Board to establish policies, programs, and incentives to ensure 75% diversion of solid waste state-wide by 2020. Another provision in the bill as originally written would require the operator of a disposal facility to charge customers a per-ton fee on materials delivered for disposal, to fund local programs to help jurisdictions achieve the diversion rate. The Author anticipates that the bill will be amended to eliminate this provision.

Positive Factors for Oakland

Oakland's commercial and multi-family dwelling sectors together constitute approximately 75% of the City's solid waste sent to landfill. Yet the waste diversion rate for the commercial sector is estimated at well below 50%, and the waste diversion rate for multi-family dwellings is approximately 13%. A state wide mandate for commercial recycling aligns with the City's goals of 75% waste diversion by 2010, and 90% reduction of waste to landfill by 2020 ("Zero Waste by 2020"). The mandate would further justify program implementation and rate payer based funding of programs in coming years to achieve the City's goals and comply with the state mandate. While Oakland is a leader in zero waste policies, many of the programs and practices that would help Oakland achieve its goals are still in the design/planning stage. This bill would ensure equity for businesses throughout the region and state, and enable implementation of zero waste systems in Oakland and other leading cities.

Negative Factors for Oakland

A state wide mandate for commercial recycling may be perceived as a negative by some Oakland businesses and rental property owners.

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

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

StopWaste.Org
San Francisco Department of the Environment
Californians Against Waste
California Resource Recovery Association
American Federation of State, County and Municipal Employees, AFL-CIO
California Senior Legislature

Known Opposition:

(Due to the anticipated amendments, current opposition is unknown.)

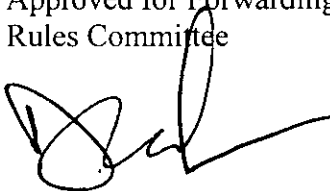
Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,



Raul Godinez II, P.E.
Director, Public Works Agency

Approved for Forwarding to
Rules Committee



Office of City Administrator

Item: _____
Rules & Legislation Comte.
June 25, 2009

BILL NUMBER: AB 479 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 22, 2009

INTRODUCED BY Assembly Member Chesbro

FEBRUARY 24, 2009

An act to amend Sections 41780 and 48000 of, and to add Sections 41780.01, 42649, and 48001.5 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 479, as amended, Chesbro. Solid waste: diversion.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components, including a source reduction component, a recycling component, and a composting component. With certain exceptions, the source reduction and recycling element of that plan is required to divert 50% of all solid waste from landfill disposal or transformation by January 1, 2000, through source reduction, recycling, and composting activities.

Existing law requires the board to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The board is required to issue an order of compliance if the board finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the board finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the board is authorized to impose administrative civil penalties upon the city, county, or regional agency.

This bill would require a city or county to divert 60% of all solid waste through source reduction, recycling, and composting activities on and after January 1, 2015, thereby imposing a state-mandated local program by imposing new duties on local agencies regarding solid waste management. The bill would also require the board to establish policies, programs, and incentives to ensure diversion of solid waste in accordance with a specified schedule.

(2) Existing law requires a local agency to impose certain requirements on an operator of a large venue or event to facilitate solid waste reduction, reuse, and recycling.

This bill would require the owner or operator of a business that contracts for solid waste services and generates more than 4 cubic yards of total solid waste and recyclable materials per week to arrange for recycling service, consistent with state and local laws and requirements, to the extent that these services are offered and reasonably available from a local service provider. The bill would require specified local agencies, by January 1, 2011, to adopt commercial recycling ordinances that include certain minimum requirements.

The bill would impose a state-mandated local program by imposing

new duties upon local agencies with regard to the adoption of commercial recycling ordinances.

(3) 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 in the State Treasury. The act requires the board to use the moneys in the account, upon appropriation by the Legislature, for specified purposes.

This bill would, on and after January 1, 2010, establish the amount of the fee in an amount of \$3.90 per ton and would require \$2.50 of that fee after that date to be available for expenditure by the board, upon appropriation by the Legislature, for apportionment to jurisdictions, as specified.

(4) 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:

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) Since the enactment of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), local governments and private industries have worked jointly to create an extensive material collection and recycling infrastructure and have implemented effective programs to achieve a statewide diversion rate above 50 percent.

(2) Although the state now leads the nation in solid waste reduction and recycling, the state continues to dispose of more than 40 million tons of solid waste each year, which is more than the national average on a per capita basis. Additional efforts must be undertaken to divert more solid waste from disposal in order to conserve scarce natural resources.

(b) The Legislature further finds and declares all of the following:

(1) Approximately 64 percent of the state's solid waste disposal is from commercial sources, including commercial, industrial, construction, and demolition activities. In addition, 8 percent of the state's solid waste disposal is from multifamily residential housing that is often collected along with the commercial waste stream.

(2) The state's local governments have made significant progress in reducing the amount of solid waste disposal from single-family residential sources that make up 28 percent of the state's disposal, but have faced more challenges in reducing disposal from the commercial and multifamily sources.

(3) The disposal of commercial solid wastes harms natural resources, negatively impacts the state's environment, prevents materials from circulating in the state economy to produce jobs and new products, and contributes to global warming.

(4) The state has long been a national and international leader in

environmental stewardship efforts and mandating the diversion of solid waste away from disposal. Bold environmental leadership and a new approach are needed to divert commercial solid waste away from disposal.

(5) By exercising a leadership role, the state will lead the business community toward a future in which the environment and the economy both grow stronger together by recycling materials, which creates new jobs, instead of burying resources, which exit the economy forever.

(6) By requiring commercial recycling, the state will help businesses reduce costly disposal fees and reclaim valuable resources.

(7) Solid waste diversion and disposal reduction requires the availability of adequate solid waste processing and composting capacity.

(8) The existing network of public and private solid waste processing and composting facilities provides a net environmental benefit to the communities served, and represents a valuable asset and resource of this state, one that must be sustained and expanded to provide the additional solid waste processing capacity that will be required to achieve the additional solid waste diversion mandates expressed in Section 41780 of the Public Resources Code as amended by this act.

(9) It is the intent of the Legislature to encourage the development of the additional solid waste processing and composting capacity that is needed to meet state objectives for decreasing solid waste disposal by identifying incentives for local governments to locate and approve new or expanded facilities that meet and exceed their capacity needs, and to recognize local agencies that make significant contributions to the state's overall solid waste reduction and recycling objectives through the siting of facilities for the processing and composting of materials diverted from the solid waste stream.

(10) The provisions in existing law that confer broad discretion on local agencies to determine aspects of solid waste handling that are of local concern have significantly contributed to the statewide diversion rate exceeding 50 percent, and further progress toward decreasing solid waste disposal requires that this essential element of local control be preserved.

(11) Accordingly, by setting in this act new statewide solid waste diversion requirements in Section 41780 of the Public Resources Code, new solid waste diversion targets in Section 41780.01 of the Public Resources Code, and new commercial waste recycling requirements in Section 42649 of the Public Resources Code, the Legislature does not intend to limit a right afforded to local governments pursuant to Section 40059 of the Public Resources Code, or to modify or abrogate in any manner the rights of a local government or solid waste enterprise with regard to a solid waste handling franchise or contract granted on or before January 1, 2010.

SEC. 2. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each jurisdiction's source reduction and recycling element shall include an implementation schedule that shows both of the following:

(1) For the initial element, the jurisdiction shall divert 25 percent of all solid waste by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783 and 41784, for the first and each subsequent revision of the element, the jurisdiction shall divert 50 percent of all solid waste on and after January 1, 2000,

through source reduction, recycling, and composting activities.

(3) Except as provided in Sections 41783 and 41784, for each subsequent revision of the element, the jurisdiction shall divert 60 percent of all solid waste on or after January 1, 2015, through source reduction, recycling, and composting activities.

(b) This part does not prohibit a jurisdiction from implementing source reduction, recycling, and composting activities designed to exceed these requirements.

SEC. 3. Section 41780.01 is added to the Public Resources Code, to read:

41780.01. The board shall adopt policies, programs, and incentives to ensure that solid waste generated in this state is source reduced, recycled, or composted in accordance with the following schedule:

(a) On and before January 1, 2015, ensure that 60 percent of all solid waste generated is source reduced, recycled, or composted.

(b) On or before January 1, 2020, and annually thereafter, ensure that 75 percent of solid waste generated is source reduced, recycled, and composted.

SEC. 4. Section 42649 is added to the Public Resources Code, to read:

42649. (a) The owner or operator of a business that contracts for solid waste services and generates more than four cubic yards of total solid waste and recyclable materials that are not solid waste per week shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

(b) On or before January 1, 2011, each city, county, solid waste authority, or other joint powers authority located within a county with a population of 200,000 or more shall adopt a commercial recycling ordinance that is consistent with this section.

(c) A commercial recycling ordinance adopted pursuant to this section shall include, at a minimum, both of the following:

(1) An enforceable requirement that a commercial waste generator take one of the following actions:

(A) Source separate specified recyclable materials from solid waste and subscribe to a basic level of recycling service that includes the collection of those recyclable materials or specific provisions for authorized self-hauling.

(B) Subscribe to an alternative type of recycling service, which may include mixed waste processing, that yields diversion results comparable to source separation.

(2) Educational, implementation, and enforcement provisions.

(d) For the purposes of this section, "business" means a commercial entity operated by a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity.

(e) This section does not limit the authority of a local agency to adopt, implement, or enforce a local commercial recycling ordinance that is more stringent or comprehensive than the requirements of this section or limit the authority of a local agency in a county with a population of less than 200,000 to require commercial recycling.

(f) This section does not modify or abrogate in any manner either of the following:

(1) A franchise granted or extended by a city, county, or other local government agency on or before January 1, 2010.

(2) A contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local

government agency on or before January 1, 2010.

(3) The existing right of a business to sell or donate their recyclable materials.

(g) (1) When adopting an ordinance pursuant to this section, a local agency may consider the adequacy of areas for collecting and loading recyclable materials.

(2) Notwithstanding paragraph (1), a local agency shall not consider the adequacy of areas for collecting and loading recyclable materials for purposes of determining noncompliance with this section at a development project, as defined pursuant to Section 42905, if the development project was approved by the local agency on or after September 1, 1994.

SEC. 5. 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.

(b) On and after January 1, 2010, the amount of the fee shall equal three dollars and ninety cents (\$3.90) per ton.

(c) 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.

(d) Notwithstanding Section 48001, on and after January 1, 2010, an amount of two dollars and fifty cents (\$2.50) of the fee imposed for each ton of solid waste disposed of at each disposal site shall be available to the board for expenditure pursuant to Section 48001.5.

SEC. 6. Section 48001.5 is added to the Public Resources Code, to read:

~~48001.5. The fee revenues collected by the State Board of Equalization pursuant to subdivision (c) of Section 48000 shall be~~

48001.5. The fee amount of two dollars and fifty cents (\$2.50) per ton of solid waste described in subdivision (d) of Section 48000 that is collected by the board shall be available to the board, upon appropriation by the Legislature, for expenditure by the board according to the following:

(a) Between January 1, 2010, and January 1, 2015, the fee revenue shall be apportioned on a per capita basis to jurisdictions for the expansion of source reduction, recycling, and composting programs, including residential recycling programs and commercial recycling programs, as well as the development of new and expanded recycling and composting infrastructure.

(b) On and after January 1, 2015, the fee revenues shall be apportioned on a per capita basis to jurisdictions that have achieved the diversion rate specified in paragraph (3) of subdivision (a) of Section 41780 for use pursuant to subdivision (a) of this section. For jurisdictions that have not reach the diversion rate required in paragraph (3) of subdivision (a) of Section 41780, the board shall expend the fee revenues to establish local programs to help the jurisdictions achieve the diversion rate required by paragraph (3) of subdivision (a) of Section 41780.

SEC. 7. 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.

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ASSEMBLY THIRD READING
AB 479 (Chesbro)
As Amended April 22, 2009
Majority vote

NATURAL RESOURCES 6-3 APPROPRIATIONS 11-5

Ayes: Skinner, Brownley, Chesbro, De Leon, Hill, Huffman	Ayes: De Leon, Ammiano, Charles Calderon, Davis, Fuentes, Hall, John A. Perez, Price, Skinner, Torlakson, Krekorian
Nays: Gilmore, Knight, Logue	Nays: Nielsen, Duvall, Harkey, Miller, Audra Strickland

SUMMARY : Increases the solid waste diversion rate for local jurisdictions to 60% by 2015 and establishes a statewide diversion goal of 60% by 2015 and 75% by 2020. Specifically, this bill :

- 1) Requires local jurisdictions to divert 60% of all solid waste by January 1, 2015, through source reduction, recycling, and composting.
- 2) Requires the California Integrated Waste Management Board (CIWMB) to adopt policies and incentives to ensure that statewide diversion reaches 60% by January 1, 2015, and 75% by January 1, 2020.
- 3) Requires owners or operators of businesses that contract for solid waste services and generate more than four cubic yards of solid waste and recyclable materials per week to arrange for recycling services consistent with local and state requirements and to the extent that the service is "reasonably available."
- 4) On or before January 1, 2011, requires each city, county, solid waste authority, or joint powers authority located within a county with a population of 200,000 or more to adopt

a commercial recycling ordinance. Specifies that the bill does not limit the authority of a local agency to adopt, implement, or enforce a local commercial recycling ordinance that is more stringent or limit the authority of a local agency in a county of less than 200,000.

5) Specifies that the bill does not modify or abrogate a franchise granted by a local agency on or before January 1, 2010; a contract, license, or permit to collect solid waste on or before January 1, 2010; or, the right of a business to sell or donate their recyclable materials.

6) Increases the state tipping fee on solid waste from \$1.40 per ton to \$3.90 per ton on and after January 1, 2010, and appropriates the increase as follows:

a) Between January 1, 2010, and January 1, 2015, on a per capita basis to jurisdictions for the expansion of source reduction and recycling programs and commercial recycling programs; and,

b) After January 1, 2015, on a per capita basis to jurisdictions that have achieved 60% diversion. For jurisdictions that have not reached 60%, requires CIWMB to expend the fee revenues on a per capita basis to establish local programs to meet this requirement.

FISCAL EFFECT : According to the Assembly Appropriations Committee, this bill would generate revenues of approximately \$100 million annually (allocated to local government) resulting from the fee increase. This bill has minor costs, likely less than \$150,000, to the Board of Equalization (BOE) to adjust its imposition and collection of the fee in fiscal year (FY) 2009-2010 and ongoing costs to BOE to administer allocation of the additional revenue. BOE's costs are covered by the revenue collected. This bill has moderate one-time special fund costs, in the range of \$400,000, to CIWMB to develop an increased diversion plan; moderate ongoing special fund costs, around \$500,000 annually, to CIWMB to adopt policies, programs, and incentives to achieve the increased statewide diversion rates; and, substantial cost pressures, in the millions of dollars annually, to CIWMB and to local governments to implement the policies, programs, and incentives needed to achieve increased diversion rates. (Integrated Waste Management Account)

COMMENTS : California is a national leader in diverting waste from landfills, currently diverting 54% of all waste. CIMMB has adopted a "zero waste" goal for California. While a laudable goal, this is unreachable without significant increases in diversion efforts, including requirements for commercial recycling. According to CIMMB, the commercial sector generates approximately 60% of waste disposed. The AB 32 Scoping Plan, adopted by ARB in December 2008 in response to the California Global Warming Solutions Act, calls for substantial increases in recycling for the commercial sector and states that "this could be implemented, for example, through voluntary or mandatory programs, including protocols, enhanced partnerships with local governments, and provision of appropriate financial incentives."

Recycling provides significant benefits. Not only does it conserve natural resources, energy, and water, it also creates jobs and builds California's economy. According to Californians Against Waste, the recycling industry accounts for more than 85,000 jobs and generates nearly \$4 billion annually in wages and produces \$10 billion worth of goods and services annually. Moreover, recycling helps reduce greenhouse gas emissions from landfills and manufacturing. According to the Scoping Plan, 5.6 million metric tons carbon dioxide equivalent (MMTCO2E), of the state's total GHG emissions are from solid waste landfills. If left unaddressed, that number will reach 7.7 MMTCF by the year 2020. The Scoping Plan calls for reductions in methane emissions from landfills through increased diversion/recycling, composting, and commercial recycling.

According to the author, this bill provides a new standard for recycling and waste reduction in California by moving the state from the current 50% diversion requirement to 60% by 2015 and 75% by 2020 and establishes "shared responsibility" for reaching these goals by requiring local governments to achieve 60% with the remaining responsibility placed on CIMMB to achieve a statewide rate of 75%. Additionally, this bill establishes commercial recycling requirements, which closes a significant loophole in the state's diversion efforts.

This bill provides funding to assist local governments with achieving the 60% goal by increasing the state's tipping fee by \$2.50 and redirecting that money back to locals on a per capita basis.

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

FN: 0001100

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OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Patricia Jones
City Attorney

2009 JUN 17 PM 9:57

RESOLUTION NO. _____ C.M.S.

**RESOLUTION IN SUPPORT OF ASSEMBLY BILL (AB) 479 (CHESBRO) –
“SOLID WASTE: DIVERSION” THAT WOULD ESTABLISH A
STATEWIDE GOAL OF 75% WASTE DIVERSION BY THE YEAR 2020
AND REQUIRE CITIES AND COUNTIES TO ESTABLISH MANDATORY
RECYCLING FOR BUSINESSES AND MULTI-FAMILY DWELLINGS**

WHEREAS, Oakland City Council adopted a goal of “Zero Waste” by 2020, defined as a 90% reduction from 2000 tonnage to landfill; and

WHEREAS, approximately 75% of solid waste generated in Oakland is from businesses and multi-family dwellings; and

WHEREAS, the estimated waste diversion rate for all Oakland businesses is well below 50%; and

WHEREAS, the waste diversion rate for multi-family dwellings is approximately 13%; and

WHEREAS, a state wide goal for 75% waste diversion, and state wide mandatory recycling in the commercial and multi-family dwelling sectors would be an additional means to increase waste diversion in Oakland; and

WHEREAS, AB 479 would create a level playing field state wide for businesses and multi-family dwellings to divert waste from landfills; and

WHEREAS, such a level playing field state wide would enable Oakland to implement policies and programs to help Oakland businesses and multi-family dwellings to divert significant amount of waste from landfills and recycle more, at no disadvantage to Oakland businesses; therefore be it

RESOLVED: that the City of Oakland declares its support for AB 479 (Chesbro); and be it

FURTHER RESOLVED: that the City Council hereby directs the City Administrator to advocate for enacting AB 479 with the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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