

Assembly Bill No. 881

CHAPTER 501

An act to amend Section 41821.5 of, and to add Section 41781.4 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 05, 2021. Filed with Secretary of State
October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 881, Lorena Gonzalez. Recycling: plastic waste: export.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and joint powers authority formed under the act, referred to as a regional agency, to develop a source reduction and recycling element of an integrated waste management plan. The act requires the source reduction and recycling element to divert from disposal 50% of all solid waste subject to the element through source reduction, recycling, and composting activities, with specified exceptions.

This bill would make the export out of the country of a mixture of plastic wastes “disposal” for purposes of the act, unless the mixture includes only certain plastics destined for separate recycling and satisfies other specified requirements, in which case that export would constitute diversion through recycling. Until January 1, 2024, or the expiration of a relevant trade agreement or arrangement with Canada or Mexico, whichever is later, these provisions would not apply to exports to Canada or Mexico. To the extent the bill would require local agencies to revise the source reduction and recycling elements of their integrated waste management plans, the bill would impose a state-mandated local program.

Existing law requires recycling and composting operations and facilities to submit periodic information to the department on the types and quantities of materials that are disposed of, sold, or transferred to other recycling or composting facilities, end users inside of the state or outside the state, or exporters, brokers, or transporters for sale inside of the state or outside of the state. Existing law authorizes the provision of information in the reports on an aggregate facilitywide basis and the exclusion of information related to the jurisdiction of the origin of the materials.

This bill would, except as provided, require the report to contain information on the jurisdiction or region of origin for materials that are a mixture of plastic wastes and are exported out of the country. The bill would require the department to make publicly available information on the jurisdiction or region of origin and tonnage for those exported materials.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Digest Key

Bill Text

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

SECTION 1. Section 41781.4 is added to the Public Resources Code, to read:

41781.4. (a) Except as provided in subdivision (b), the export of a mixture of plastic wastes shall not constitute diversion through recycling and shall be considered disposal for purposes of this division.

(b) Plastic waste export that is a mixture of plastic wastes shall constitute diversion through recycling and shall not be considered disposal for purposes of this division if it meets both of the following criteria:

(1) The plastic waste export is a mixture of plastic wastes consisting of polyethylene, polypropylene, or polyethylene terephthalate and the export is destined for separate recycling of each material.

(2) The plastic waste export is not prohibited by an applicable law or treaty of the country of destination and the import of the plastic waste into the country of destination will be conducted in accordance with all applicable laws and treaties of the country of destination.

(c) For purposes of this section, “export” means export out of the country. Until January 1, 2024, or the expiration of a relevant trade agreement or arrangement with Canada or Mexico, whichever is later, “export” does not include export to Canada or Mexico.

SEC. 2. Section 41821.5 of the Public Resources Code is amended to read:

41821.5. (a) Disposal facility operators shall submit information on the disposal tonnages by jurisdiction or region of origin that are disposed of at each disposal facility to the department, and to counties that request the information, in a form prescribed by the department. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) (1) Recycling and composting operations and facilities shall submit periodic information to the department on the types and quantities of materials that are disposed of, sold, or transferred to other recycling or composting facilities, end users inside of the state or outside of the state, or exporters, brokers, or transporters for sale inside of the state or outside of the state.

(2) Exporters, brokers, self-haulers, and transporters of recyclables or compost shall submit periodic information to the department on the types, quantities, and destinations of materials that are disposed of, sold, or transferred. The department shall develop regulations implementing this section that define “self-hauler” to include, at a minimum, a person or entity that generates and transports, utilizing its own employees and equipment, more than one cubic yard per week of its own food waste to a location or facility that is not owned and operated by that person or entity.

(3) The information in the reports submitted pursuant to this subdivision may be provided to the department on an aggregated facilitywide basis and may exclude financial data, such as contract terms and conditions (including information on pricing, credit terms, volume discounts and other proprietary business terms), the jurisdiction of the origin of the materials, or information on the entities from which the materials are received. The department may provide this information to jurisdictions, aggregated by company, upon request. The aggregated information, other than that aggregated by company, is public

information.

(4) (A) Notwithstanding paragraph (3), the information in the report submitted pursuant to this subdivision shall include the jurisdiction or region of origin for exported materials that are a mixture of plastic wastes. This subparagraph does not apply to plastic waste consisting of only plastic resin 1, 2, or 5, as assigned to resin types under Section 18015, or a mixture of plastic waste consisting only of a combination of those resins.

(B) The department shall make publicly available information on the jurisdiction or region of origin and tonnage information for exported materials that are a mixture of plastic wastes.

(C) For purposes of this subdivision, “export” has the same definition as set forth in Section 41781.4.

(c) The department shall adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to implement this section, and that provide a representative accounting of solid wastes and recyclable materials that are handled, processed, or disposed. Those regulations approved by the department shall not impose an unreasonable burden on waste and recycling handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste and recyclables. The department shall include in those regulations both of the following:

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

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

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

(e) Any person who knowingly or willfully files a false report, or any person who refuses to permit the department or any of its representatives to make inspection or examination of records, or who fails to keep any records for the inspection of the department, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records as required by regulations adopted pursuant to this section, is liable for a civil penalty of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

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

(g) (1) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, all records that the facility or operator is reasonably required to keep to allow the department to verify information in, or verification of, the reports required pursuant to subdivisions (a) and (b) and implementing regulations shall be subject to inspection and copying by the department, but shall be confidential and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, an employee of a government entity may, at the disposal facility, inspect and copy records related to tonnage received at the facility on or after July 1, 2015, and originating within the government entity’s geographic jurisdiction. Those records shall be limited to weight tags that identify the hauler, vehicle, quantity, date, type, and origin of waste received at a disposal facility. Those records shall be available to those

government entities for the purposes of subdivision (a) and as necessary to enforce the collection of local fees, but those records shall be confidential and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Names of haulers using specific landfills shall not be disclosed by a government entity unless necessary as part of an administrative or judicial enforcement proceeding to fund local programs or enforce local franchises.

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

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

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

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

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

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

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

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.