

Board	Author	Bill Number
California Integrated Waste Management Board	Aroner	AB 1383
Sponsor	Related Bills	Date Amended
Author		April 21, 1997

BILL SUMMARY

AB 1383 would require the California Debt Limit Allocation Committee to allocate at least 85% of the State's ceiling on private activity bonds to housing bonds and not more than 10% of the State ceiling to exempt facility bonds. The bill would authorize the Committee to reallocate unused portions of the housing bond allocation to other bonds, including exempt facility bonds.

BACKGROUND

Interest on government-issued bonds is generally exempt from income tax. Because this tax exempt status effectively increases the net interest income to bond purchasers, government bonds generally bear a lower interest rate than bonds issued by private enterprises. However, Federal and State income taxes may apply to the interest on bonds when State and local governments use bond revenues to finance loans for "private activities." Federal law establishes a maximum dollar amount of tax-exempt bonds that each State may issue each year to finance private activities. This maximum amount is calculated as \$50 per capita for each State; for California for Fiscal Year 1996-97, the maximum amount is \$1.6 billion.

The California Debt Limit Allocation Committee allocates portions of this maximum amount to the various State government agencies that have authority to issue bonds to fund four categories of private activities (for brevity, private activity bonds): bonds for housing, student loans, industrial development, and other "exempt facilities" such as solid waste facilities and wastewater treatment facilities. The Committee currently uses no fixed formula for allocating private activity bonds among the various State government applicants. However, Legislative statutory declarations indicate that promotion of housing for low-income families and individuals serves a substantial public benefit. Further, statute explicitly allocated \$470 million in 1991 and \$505 million in 1992 to the California Housing Finance Agency for mortgage revenue bonds. Since then, allocations for a given year have been affected by several factors that determine the need of various agencies to issue bonds. These factors have included the level of federal expenditures in public housing programs, the amount of housing

Departments That May Be Affected		
California Pollution Control Financing Authority and other agencies authorized to issue private activity bonds.		
Committee Recommendation	Committee Chair	Date

construction activity, and real estate loan interest rates. From 1993 to 1996, the allocation for housing bonds has ranged from 58% of the ceiling to 91% of the ceiling; the allocation for exempt facilities has ranged from 41% (1993) to 4% (1994).

The California Pollution Control Financing Authority is one of the State government agencies authorized to issue private activity bonds. The Authority loans proceeds from its revenue bonds to a variety of private enterprises for acquisition, construction, and installation of pollution control facilities to meet environmental requirements mandated by public agencies. Generally, interest rates on these loans are lower than on loans obtained through conventional financing, in part because the Authority passes through the lower interest rates on the bonds it sells to finance these loans. The Governor's Budget for Fiscal Year 1997-98 indicates that integrated waste management programs are expected to be a large component of the Authority's workload during the next few years.

The author asserts that, in an era of welfare reform, as many resources as possible need to be allocated to promoting affordable housing and that low-income families have a much greater need for tax-exempt financing for affordable housing than private companies which can use their profits for pollution control projects.

Opponents contend that, without reduced-interest loans from the State government to solid waste enterprises, rates for solid waste management services will increase, and these rate increases will adversely impact achievement of State mandates that local governments reduce landfill disposal by 50% by 2000. Opponents also contend that it would be inappropriate to mandate achievement of waste diversion requirements, while simultaneously severely restricting a critical source of funding for solid waste diversion programs because of pressure from competing interests that already receive a disproportionate share of the funding allocations.

EXISTING LAW

Current law:

1. Establishes a maximum dollar amount of tax-exempt bonds that each State may issue each year to finance private activities. This maximum amount is calculated as \$50 per capita for each State; for California for Fiscal Year 1996-97, the maximum amount is \$1.6 billion. (Internal Revenue Code §146)
2. Requires the California Debt Limit Allocation Committee to allocate portions of this maximum amount to the various State government agencies that have authority to issue bonds to fund four categories of private activities (for brevity, private activity bonds): bonds for housing, student loans, industrial development, and other "exempt facilities" such as solid waste facilities and wastewater treatment facilities. (Government Code §§8869.84 and 8869.86).
- 6 3. Declares the Legislature's finding that promotion of housing for low-income families and individuals serves a substantial public benefit. (Government Code 8869.80).

4. Allocated \$470 million in 1991 and \$505 million in 1992 to the California Housing Finance Agency for qualified mortgage revenue bonds. (Government Code §8869.94).
5. Authorizes the California Pollution Control Financing Authority to issue revenue bonds to finance loans to private enterprises for acquisition, construction, and installation of pollution control facilities to meet environmental requirements mandated by public agencies. (Health and Safety Code §44526).

ANALYSIS

AB 1383 would:

1. Require the California Debt Limit Allocation Committee to allocate at least 85% of the State ceiling to agencies for housing bonds and to allocate not more than 10% of the State ceiling to agencies for exempt facilities; and
2. Authorize the Committee, at the end of the calendar year, to reallocate any unclaimed allocations to any other authorized use.

COMMENTS

Impacts on CIWMB operations. AB 1383 would not directly impact California Integrated Waste Management Board (CIWMB) operations; the bill addresses activities of the California Debt Limit Allocation Committee and of agencies authorized to issue bonds to finance loans to private enterprises.

Financing of solid waste management infrastructure. AB 1383 would limit the amount of tax-exempt bonds sold by State government agencies (such as California Pollution Control Financing Authority) to finance loans to exempt facilities (including solid waste facilities) to 10% of the total amount of tax-exempt private activity bonds authorized by Federal law. This limited amount for exempt facilities would be about \$160 million in FY 96-97. This limit may restrict the ability of private enterprises to finance development and expansion of solid waste facilities (landfills, transfer stations, and materials recovery facilities) in future fiscal years. Further, this limit may cause facility owners and operators to increase fees to ratepayers (residential, commercial, and industrial waste generators) for waste management services to cover the costs of higher-interest, private-sector loans.

Level of solid waste facility construction. The Integrated Waste Management Act encourages source reduction, recycling, and composting as alternatives to disposal and transformation of solid waste. Additionally, federal standards for landfills, found in Subtitle D of the Resource Conservation and Recovery Act (RCRA), have increased in the past few years. Solid waste enterprises have invested significantly in construction of recycling and composting facilities and in improvements to landfills to comply with RCRA standards. Efforts to achieve the 50% diversion levels of the Integrated Waste Management Act will require additional capital investment in solid waste facilities.

Debt Allocation Committee discretion. AB 1383 would reduce the Debt Allocation Committee's discretion to decide the appropriate allocation of the total amount of private activity tax-exempt bonds as between various types of private activity functions. The Legislature has established explicit allocations for housing bonds in past years, however.

LEGISLATIVE HISTORY

AB 1383 was introduced on February 28, 1997, was passed by Assembly Committee on Housing and Community Development (8-1), and was referred to Assembly Committee on Banking and Finance.

FISCAL AND ECONOMIC IMPACT

AB 1383 would have no cost impact on the CIWMB.

AB 1383 may have an undetermined cost impact on solid waste enterprises that intend to borrow from the California Pollution Control Financing Authority to finance the acquisition, construction, or installation of pollution control facilities to meet environmental requirements mandated by public agencies. Because the level of future borrowing is not yet known, projection of the effect of a 10% limit on exempt facility bonds is premature.

Board	Author	Bill Number
California Integrated Waste Management Board	Costa	SB 675
Sponsor	Related Bills	Date Amended
Browning Ferris Industries		May 1, 1997

BILL SUMMARY

SB 675 would provide that local enforcement agencies (LEAs) would be the sole enforcement bodies to regulate compost facilities odors. The bill would require LEAs to inspect any composter after receiving a complaint from an air pollution control district. Additionally, the bill would require the California Integrated Waste Management Board (CIWMB) to convene a working group by April 1, 1998; and in consultation with the working group, the CIWMB would be required to initiate training activities, regional workshops, and local advisory guidance to ensure that LEAs properly implement this law. SB 675 is an urgency measure.

BACKGROUND

Purpose of the Bill. According to the sponsor, Browning Ferris Industries, enactment of SB 675 will promote the healthy development of compost facilities in California, enhance the State's ability to achieve the Integrated Waste Management Act of 1989 mandate and ensure that compost facilities are not the victims of duplicate and contrary regulatory oversight.

Current Law. Odor regulation at compost facilities was placed under the authority of the LEAs by AB 59 (Sher, Chapter 952, Statutes of 1995). This provision is set to expire on October 16, 1997, two years after the enactment of this law. Among other things, Chapter 952 revised solid waste facility permitting and enforcement activities carried out by the CIWMB and the LEAs. Chapter 952 included a new requirement that, for compost facilities only, the LEAs would have jurisdiction over odor complaints involving compost operations and facilities. (For all other types of facilities, solid waste or otherwise, jurisdiction rests with the local air districts.)

CIWMB Compost Regulations. The CIWMB adopted compost regulations in 1993 establishing State minimum standards for operations and facilities handling and processing compost. These operations and facilities were slotted into a tiered permitting structure based on the threat to public health and the environment and the CIWMB's regulatory authority.

Departments That May Be Affected Air Resources Board		
Committee Recommendation	Committee Chair	Date
		9

Purpose of Current Law Regarding Compost Facilities. Until Health and Safety Code § 41700 was amended by Chapter 952, this section of law provided a nuisance exemption only for those odors that derived from the growing of crops or the raising of animals. Chapter 952 added an exemption for the operations that produce, manufacture, or handle compost, and required that the complaints received by the air district pertaining to odor from a composting facility be referred to the LEA for appropriate enforcement action. These changes were made in order to help the State's local jurisdictions comply with the Integrated Waste Management Act of 1989, which requires a 25 percent reduction of the waste disposed into California's solid waste landfills by 1995 and a 50 percent reduction by the year 2000. These amendments were designed to protect and encourage the fledging composting industry as it geared up to handle waste materials that were traditionally disposed of in landfills.

Amount of Green Waste and Wood Waste Going to Compost Facilities. Increasing amounts of green waste and wood waste are being diverted from the wastestream and converted to compost in a growing number of composting facilities. Some compost facilities are associated with the landfills themselves, some with industries producing vegetative wastes, and some facilities operate independently.

Materials that could be used as feedstock for compost include the following percentages of the solid wastestream:

Type of Waste	Number of Tons Per Year	Percent of the Wastestream
Yard Waste	5,825,842	14.6 percent
Wood Wastes	3,371,910	8.5 percent
Crop Residues	69,898	.2 percent

LEAs' Enforcement of Air Pollution from Composting Facilities. Supporters believe that SB 675 assures continued public health protection while eliminating duplicative, unnecessary regulations for farmers and other composters. They maintain that enactment of SB 675 will allow the LEAs to continue to enforce the odor standards for compost operations thus eliminating confusion for operators and the general public. Supporters contend that purview by a LEA allows quick response to concerns by all parties as demonstrated by experiences during the last two years when this exemption has been in effect and that it is appropriate to keep this authority with the LEAs who are the lead agencies responsible for the enforcement of the CIWMB's composting regulations.

CIWMB's Actions Regarding Odor Issues at Compost Facilities. Since the enactment of Chapter 952, CIWMB and air districts have collaborated on two LEA advisories issued in September and October of 1996. The subjects of the two advisories were "Jurisdiction Over Odor Complaints at Composting Operations and Facilities" and "Odor Complaint Response at Composting Operations and Facilities." These advisories were developed with input from local air districts. In November of 1996, the CIWMB held two workshops/training events (one in Northern California, one in Southern California) on organic material recycling, with a specific focus on odor control at compost facilities. These sessions were well attended (24 LEAs and numerous industry representatives and air districts). The CIWMB is planning additional training, (scheduled for the late Summer of 1997) on compost facility issues, including odor aspects and a follow-up to issues raised in the November workshop.

EXISTING LAW

Existing State law:

1. Prohibits regulations of the CIWMB from including aspects of solid waste handling or disposal which are solely within the jurisdiction of the State Air Resources Board or the State Water Resources Control Board or a California regional water quality board (Public Resources Code [PRC] §'s 40055, 43020 and 43021).
2. Provides that if an owner or operator of a solid waste landfill is in compliance with certain air pollution requirements, the owner or operator is deemed to be in compliance with the CIWMB's landfill gas migration regulations (PRC § 43030).
3. Prohibits the discharge of any air contaminant or other material that causes injury, detriment, nuisance, or annoyance to, or that endangers, a considerable number of persons or the public (Health and Safety Code § 41700).
4. Exempts from the prohibition in number three above, odors emanating directly from a facility or operations that produce, manufacture, or handle compost until October 16, 1997 (Health and Safety Code § 41705, as amended by Section 2.1 of Chapter 952 of the Statutes of 1995).
5. Defines "compost" as the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid wastestream, or which are separated at a centralized facility. "Compost" includes vegetable, yard, and wood wastes which are not hazardous waste (PRC § 40116).
6. Defines "enforcement agency" as the local agency designated for the purposes of carrying out the Integrated Waste Management Act of 1989, or the CIWMB if no designation of a local agency has been approved by the CIWMB (PRC § 40130).

Existing State regulations:

1. Establish regulatory requirements and define composting activities for composting operations (Title 14, *California Code of Regulations*, §'s 17850 through 17895).

ANALYSIS

SB 675 would:

1. Provide that the LEA will be the sole enforcement body to regulate compost facilities odors;
2. Require LEAs to inspect any composter after receiving a complaint from an air pollution control district;
3. Require the CIWMB to convene a working group by April 1, 1998;

4. Require the CIWMB, in consultation with the working group, to initiate training activities, regional workshops, and local advisory guidance to ensure that LEAs properly enforce air pollution from composting facilities; and
5. Make these provisions take effect immediately as an urgency statute.

COMMENTS

Responsibility of Air Districts. Air districts have the primary regulatory authority over all air emissions, including odors, from all stationary sources of air pollutants, including landfills. Air district staff inspect and permit these sources specifically because of their potential to emit air pollution. Some air districts believe that they are the more appropriate enforcement agency for odor nuisance. The enforcement authority for abating odor nuisance was temporarily shifted from the air districts to the LEAs in 1995 through the enactment of Chapter 952. The LEAs vary in their enforcement capabilities, inherent conflicts of interest, and caseloads. Their primary focus is on regulating the disposal and handling of waste, not the enforcement of odors.

Needed Funding and Enforcement Tools for LEAs. While Chapter 952 gave jurisdiction to LEAs over odor issues at compost facilities, this law did not give LEAs the enforcement tools and penalty provisions that air districts have; nor did it give LEAs any increased level of funding to provide the kind of 24-hour immediate response capability that air districts apparently have. Air districts have better technical capabilities in this arena. For example, the local air district for the Bay Area has the following capabilities: (1) a 24-hour, seven-day-per-week capability to dispatch inspectors to respond to the complaints; and (2) a certified odor laboratory and odor panels. The LEAs throughout the State have differing capabilities--some have adequate staff and funding to deal with odor complaints while other LEAs have more limitations.

"Zero Tolerance" Standards. The bill's sponsor contends that some local air districts have a "zero tolerance" when it comes to odor regulation. The sponsors believe that this "zero tolerance" standard fails to distinguish between "good odors" like that found at a nursery, which emanate from a well-run compost facility, and the "bad odors," which emanate from a poorly run facility. The sponsor contends that this "zero tolerance" standard puts all compost facilities at risk of being shut down. The sponsors believe that that LEAs regulate the entire compost facility, including odor, ensuring the compost facility meets its permit requirements and compost facility operating standards.

CIWMB's Commitment to Assist LEAs Enforcement of Odor Issues at Compost Facilities. While the CIWMB has provided the advisories and workshops on since the enactment of Chapter 952, there is an indication that more can be done to assist LEAs in successful implementation of this law. As an example, there has been some controversy over the LEAs' response to public complaints about the controversial Sonoma compost facility. Some local community groups believe that the LEA has not responded in a timely manner to public complaints. A lot of this has to do with the LEA process and authority being so different from that of air districts. Generally, LEAs need to work through the permit to address violations of permit conditions--this takes time and may not always appear responsive to the public. The CIWMB is fully prepared to continue our training and technical assistance program and to continue our effort to work with air districts to improve LEA response to odor issues at compost facilities.

Unfunded Mandate. SB 675 would have the CIWMB form a working group of enforcement agencies and air districts to assist in the implementation of this bill. Additionally the bill would require the CIWMB to initiate integrated training activities, regional workshops, and local advisory documents to ensure that this law is properly implemented. Although the bill does not expressly specify a funding source, the bill like impose additional costs of \$50,000 on an annual basis upon the CIWMB from the Integrated Waste Management Account. Since this bill is an urgency statute, some current year dollars (FY 1997-98) would be required to begin implementation.

SUGGESTED AMENDMENTS

The LPEC may wish to consider an amendment that would require the CIWMB to consult with enforcement agencies and air districts to ensure proper implementation of this law, rather than form a working group. The end result would be the same; but the proposed language would be a more simpler, workable mechanism for the CIWMB.

LEGISLATIVE HISTORY

SB 675 was introduced on February 25, 1997. The bill passed the Senate Environmental Quality Committee (8-1) on May 5, 1997. SB 675 has been referred to the Senate Appropriations Committee; no hearing date has been set.

Support: Browning Ferris Industries (sponsor)
 Wine Institute
 Norcal Waste Systems, Inc.

Opposition: None on file.

FISCAL AND ECONOMIC IMPACT

SB 675 would impose costs of \$17,500 (.5 PY) in FY 1997-98, and \$35,000 (.5 PY in FY 1998-99) and annually thereafter from the Integrated Waste Management Account. These costs would include consulting with approximately 58 LEAs and 34 to 50 air districts (34 based on 1993 statistics, but could potentially be up to 50); to initiate training activities, regional workshops, and local advisory documents.

The bill would impose a new cost to the CIWMB. The Integrated Waste Management Account would be strained to support this additional cost. As a result of the successful diversion of solid waste from California's landfills, the CIWMB is experiencing declining revenues due to decreased tipping fees. For this reason, less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.

If the bill were enacted, it could have a positive economic effect for compost facilities by making it easier for them to operate, helping them to more accepted by their communities because of better public response to complaints regarding odors from compost facilities and decreasing the amount of waste going into local solid waste landfills.

**SB 675 (Costa) As Amended on May 1, 1997
Suggested Amendments**

1. On page 2, line 13, put a comma after the word "shall"
2. On page 2, line 13, delete the word "convene,"
3. On page 2, line 14, after the word "1998," insert the words "consult with"
4. On page 2, line 14, delete the words "a working group of."

These proposed amendments will make the first sentence of (B), starting on page 2, line 12, of the May 1, 1997 amended version of SB 675 read as:

The California Integrated Waste Management Board shall, commencing not later than April 1, 1998, consult with enforcement agencies and districts to assist in the implementation of this paragraph.

Author	Bill Number
California Integrated Waste Management Board	SB 1175
Sponsor	Date Amended
Calif. Independent Oil Marketers Association	April 17, 1997

BILL SUMMARY

SB 1175 would require the purchaser of lubricating oil that is exempt from the \$.16 per gallon amount to give the seller of that oil an exemption certificate declaring that the oil is intended for use in an manner that makes the oil exempt from the fee.

BACKGROUND

Under current law, oil manufacturers pay the State \$.16 per gallon for lubricating oil sold in the state. The Board of Equalization, under contract with the CIWMB, collects about \$22 million annually in these oil amounts from about 200 oil manufacturers. The CIWMB uses these revenues, deposited into the California Used Oil Recycling Fund, to finance local government programs to encourage the collection and recycling of used oil and to cover the costs of administering the used oil program. In specified circumstances, some oil is exempt from the \$.16 per gallon amount; these exemptions affect about 11 million gallons of oil each year, which converts to about \$1.75 million annually in foregone revenues to the Used Oil Recycling Fund.

This bill is sponsored by the California Independent Oil Marketers Association (CIOMA), a trade association of about 500 oil marketers who are independent from the major oil manufacturers. CIOMA asserts that current arrangements for collecting and refunding the oil amount place them at a competitive disadvantage compared to oil manufacturers. This disadvantage arises because oil manufacturers pass the \$.16 per gallon amount on to CIOMA members for all oil sold to CIOMA members, but do not pass the amount on to the manufacturers' customers who will use the oil in an exempt manner. CIOMA asserts that, to remain competitive, its members do not pass the amount on to their exempt customers, but instead submit claims to the Board of Equalization for refunds under current exemptions. To document their claims, however, CIOMA members must obtain an exemption certificate for each transaction where they have sold oil for exempt uses. Further, CIOMA asserts that claims processing at the Board of Equalization takes between six and twelve months, resulting in a loss of cash flow to CIOMA members of \$85,000 to \$130,000 per oil marketer.

Departments That May Be Affected		
Board of Equalization		
Committee Recommendation	Committee Chair	Date

EXISTING LAW

State law:

1. Requires every oil manufacturer to pay to the CIWMB a quarterly amount of \$.16 per gallon of oil sold or transferred in California or imported into California for use within the state. (PRC §48650) and authorizes the CIWMB to contract with the Board of Equalization for processing of payments and refunds. (PRC §48643).
2. Defines "oil manufacturer" as the first person or entity to take title to lubricating or industrial oil for sale, use, or transfer in the state. (PRC §48619).
3. Exempts oil that meets any one of the following six criteria from the \$.16 per gallon amount: oil for which a payment has already been made; oil exported from California; oil used in vessels used in interstate commerce; oil in the operating parts of new automobiles or other machinery; bulk oil sold to a motor carrier; or oil sales that have a total volume of 500 gallons or less per quarter. (PRC §48650).
4. Requires the CIWMB to refund the \$.16 per gallon amount, upon presentation of a claim by any person stating that the oil was used in a manner that qualifies for an exemption. [PRC §48650.5 (a)].
5. Authorizes the CIWMB to credit oil manufacturers for oil that the manufacturer claims qualifies for an exemption. [(PRC §48650.5 (e) and (f)].
6. Defines "bulk oil" as oil delivered in a single transaction of more than 55 gallons. (PRC §48610.5).

ANALYSIS

SB 1175 would:

1. Require the purchaser of lubricating oil that is exempt from the \$.16 per gallon amount to give the seller of that oil an exemption certificate declaring that the oil is intended for use in an manner that qualifies for an exemption;
2. Redefine "bulk oil" to include oil delivered in a single transaction of 55 gallons or more;
3. Repeal the authorization for the CIWMB to credit oil manufacturers for oil used in a manner that qualifies for an exemption; and
4. Authorize the CIWMB to apply a credit to an oil manufacturer's subsequent payment for oil used in a manner that qualifies for an exemption.

COMMENTS

Exemption certificates. SB 1175 would require the purchaser of lubricating oil that is intended to be used in an exempt manner from the \$.16 per gallon amount to give the seller of that oil an exemption certificate. This certificate would be a declaration that the buyer intends to use or resell the oil for use in an manner that qualifies for an exemption. CIOMA members are purchasers of lubricating oil. This bill would require them to provide oil manufacturers with exemption certificates, as appropriate. Similarly, oil users would be required to provide exemption certificates to their suppliers, either oil manufacturers or oil marketers. The changes proposed in this bill are technical and would allow CIOMA members to follow procedures similar to those of oil manufacturers for exempted lubricating oil sales.

Redefinition of bulk oil. SB 1175 would redefine "bulk oil" to include oil delivered in a single transaction of 55 gallons or more. Current law defines "bulk oil" as oil delivered in a single transaction of more than 55 gallons. This definition is significant in the exemption for bulk oil sold to motor carriers. This redefinition allows single transactions of 55 gallons, a common size of oil container, to qualify for the exemption. This redefinition will have virtually no impact on revenues.

CIWMB to assume oil manufacturer payment processing activities. The CIWMB is scheduled to assume responsibility from the Board of Equalization for processing oil amount payments and refunds, beginning in July 1997.

Technical matters. Current law contains two versions of PRC §48650, which establishes the \$.16 per gallon charge and exemptions. The first version is effective until December 31, 1999; the second version is effective January 1, 2000. The provision of SB 1179 that would require submission of exemption certificates would appear in the version effective until December 31, 1999; it would not appear in the version effective January 1, 2000. This omission appears to be an oversight. Further, amendments to current PRC §48650.5 (g) change vocabulary from "fee" to "charge" but do so in a manner that is inconsistent with other vocabulary that uses the term "payment" to mean the total amount due. For consistency, this subdivision may need further amendments.

SUGGESTED AMENDMENTS

The LPEC may wish to consider recommending amendments to SB 1175:

1. incorporate the exemption certificate requirement in the version of PRC §48650 effective January 1, 2000.
2. for consistency between §48650 and §48650.5, use the phrase "of payment due" in §48650.5 (f), in lieu of the proposed phrase "of the charge that is due."

LEGISLATIVE HISTORY

SB 1175 was introduced February 28; referred to Senate Committee on Environmental Quality and Senate Committee on Public Safety; passed by Senate Committee on Environmental Quality (7-0); and referred to Senate Committee on Appropriations.

FISCAL AND ECONOMIC IMPACT

SB 1175 would have little or no fiscal impact to the CIWMB. The bill should not result in any additional processing of oil amounts or refunds. Further, the bill would have no impact on revenues to the California Used Oil Recycling Fund, nor would it increase program expenditures from the Fund.

This bill would have an impact to oil users by requiring them to complete an exemption certificate for every transaction where oil will be used, or is intended to be used, in a manner that qualifies for an exemption from the \$.16 per gallon charge. The bill could positively affect cash flow for CIOMA members by allowing them to claim an exemption from the \$.16 gallon charge.

Board	Author	Bill Number
California Integrated Waste Management Board	Polanco	SB 1179
Sponsor	Related Bills	Date Amended
Browning-Ferris Industries		April 14, 1997

BILL SUMMARY

SB 1179 would prohibit local governments from including a provision in permits to require solid waste enterprises to pay a penalty for failure to meet solid waste diversion mandates. The bill would authorize local governments to include such a provision in contracts and franchises, provided the penalty is the result of the solid waste enterprise's breach of an express obligation, the local government has petitioned the California Integrated Waste Management Board (CIWMB) for an alternative diversion requirement, and the local government has fully paid any fine imposed by the CIWMB for failure to implement a source reduction and recycling program.

BACKGROUND

Supporters of SB 1179 assert that many local governments are imposing license conditions to require solid waste enterprises, as a condition of doing business within those governments' jurisdictions, to indemnify the local government against fines and penalties imposed by the CIWMB for failure to meet solid waste diversion mandates specified in the Integrated Waste Management Act. Supporters assert that these indemnification arrangements undermine the public policy objectives of the Integrated Waste Management Act, harm public health and safety, and create inequities for those local governments that operate their solid waste activities and therefore cannot shift liability to other parties. Supporters further assert that, since the Integrated Waste Management Act imposes obligations on local agencies, it is inappropriate and legally questionable to transfer to the solid waste enterprise liability for the entire penalty, especially when the enterprise is not in full control of all programs to divert solid waste.

Opponents contend that SB 1179 is an intrusion into the existing franchise authority of local governments relative to solid waste collection, that solid waste enterprises have made guarantees -- memorialized in the indemnification provisions of contracts and franchises -- that the enterprise's programs will achieve the 25% and 50% diversion levels, and that SB 1179 attempts to address a problem that does not exist.

Departments That May Be Affected		
Committee Recommendation	Committee Chair	Date

EXISTING LAW

Current law:

1. Authorizes cities, counties, special districts, and other local governments to determine aspects of solid waste handling that are of local concern and to determine whether solid waste services are to be provided by the local government itself or by solid waste enterprises through exclusive, partial, or nonexclusive franchise, through contracts without or without competitive bidding, or through permits or licenses. (PRC §40059).
2. Requires cities and counties to prepare source reduction and recycling elements, to submit those SRREs to the CIWMB for review, and to submit periodic reports to the CIWMB on implementation of those SRREs. Current law requires SRREs to include an implementation schedule which shows that the local government will divert 25% of solid waste from landfills by 1995 and 50% by 2000. (PRC §41780).
3. Authorizes the CIWMB to impose fines on local governments of up to \$10,000 per day for failure to submit an adequate SRRE (PRC §41813) and for failure to implement a SRRE (PRC §41850). Current law requires the CIWMB, when determining the amount of the penalty, if any, for failure to implement, to consider the local government's good faith efforts to implement its SRRE, the extent to which the local government implemented additional programs to divert solid waste from landfills, and the extent to which the local government is meeting the diversion requirement. (PRC §41850).
4. Defines "indemnity" as "...a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person" (Civil Code §2772), establishes rules for interpreting a contract of indemnity (Civil Code §2778), and explicitly voids indemnity contracts in specified circumstances related to construction contracts and hauling, trucking, and cartage contracts (Civil Code §§2782 and 2784.5).
5. Establishes, by case law, that the obligation to indemnify may be expressly provided for by contract, may be implied from a contract not expressly mentioning indemnity, or may arise from the equities of particular circumstances.

ANALYSIS

SB 1179 would:

1. Prohibit local governments from adopting ordinances or issuing licenses, permits, or other entitlements or rights (except for franchises or contracts) for municipal solid waste collection and recycling that contain any term, provision, condition, or requirement to require a solid waste enterprise to pay a penalty for failure to meet any solid waste requirement;

2. Authorize local governments to include a "diversion penalty" provision in contracts

2. Authorize local governments to include a "diversion penalty" provision in contracts and franchises, provided 1) the penalty is enforceable only to the extent the failure is the result of the solid waste enterprise's breach of an express obligation, 2) the amount of the penalty is directly attributable to the enterprise's breach, 3) the local government has first petitioned the California Integrated Waste Management Board for an alternative diversion requirement, and 4) the local government has fully paid any fine imposed by the CIWMB for failure to implement a source reduction and recycling program;
3. Define "diversion penalty" to mean any indemnity obligation, fine, penalty, assessment, or damages imposed by a local government on a solid waste enterprise for failure to meet the 25% and 50% diversion mandates or any fine, penalty or assessment by a local government on a solid waste enterprise for failure to meet any solid waste diversion requirement;
4. Declare that the bill's provisions apply to any franchise, contract, ordinance, permit, etc., entered into or adopted after February 28, 1997; and
5. Declare that the definition, authorization, prohibition, and effective date are not subject to waiver and any attempted waiver is null and void as against public policy.

COMMENTS

Impact on CIWMB operations. This bill would not directly impact CIWMB operations -- the bill would not affect CIWMB permitting or enforcement activities, planning functions, or market development activities. The CIWMB does not enter into indemnification contracts and does not regulate solid waste handling agreements between local governments and solid waste enterprises. This bill explicitly and exclusively addresses indemnification arrangements between local governments and solid waste enterprises.

Solid waste collection and handling arrangements. This bill may cause an increase in the number of franchise and contract arrangements for municipal solid waste collection and recycling. This bill would prohibit adoption of indemnification arrangements (diversion penalty provisions) in permits or licenses issued by local governments. On the other hand, the bill would authorize adoption of limited indemnification provisions by local governments that enter into contract or franchise agreements. Local governments concerned about incurring fines from the CIWMB for failing to implement SRREs may view restricted indemnification as better than no indemnification at all and therefore move from a permit or license arrangement and instead seek contracts or franchises with solid waste enterprises.

Enforcement penalties. A large majority of cities and counties have complied with requirements to prepare source reduction and recycling elements, nondisposal facility elements, and household hazardous waste elements. Those local governments that have not submitted SRREs, NDFEs, or HHWEs have submitted compliance schedules detailing their plans for submitting their outstanding elements. In recognition of this effort to comply, the CIWMB in April 1997 determined not to schedule a public hearing to consider penalties for these local governments. The CIWMB will consider enforcement proceedings later this

summer for the twenty local governments with past-due Summary Plans and the nineteen local governments with past-due siting elements.

Impact on diversion. This bill would place those local governments that license solid waste enterprises to conduct solid waste collection and recycling operations within their jurisdictions in the position of assuming full responsibility for implementing SRREs and achieving diversion goals, even though those collection and recycling operations are not within their day-to-day control. In this situation, solid waste enterprises would appear to have little incentive to modify their operations or aggressively pursue program implementation, public education, and monitoring to meet the statutory diversion levels.

LEGISLATIVE HISTORY

SB 1179 was introduced February 28, 1997, was passed by the Senate Committee on Environmental Quality (5-4), and was referred to the Senate Committee on Appropriations.

FISCAL AND ECONOMIC IMPACT

SB 1179 would have no fiscal impact on the CIWMB, unless the CIWMB chose to become involved in resolution of disputes between local governments and solid waste enterprises over the enforceability of indemnification provisions.

SB 1179 would limit the exposure of solid waste enterprises to fines or penalties imposed by the CIWMB on local governments for failure to meet statutory diversion levels. By limiting the exposure of solid waste enterprises, the bill would increase the exposure of local governments to those fines or penalties.

The bill would also limit the exposure of solid waste enterprises to fines or penalties imposed by local governments for failure to meet any other diversion requirement.

Board	Author	Bill Number
California Integrated Waste Management Board	Leslie	SB 1196
Sponsor	Related Bills	Date Amended
Alpine County		April 14, 1997

BILL SUMMARY

SB 1196 would allow a county to forgo preparing a countrywide siting element if it does not have an incorporated city within its boundaries, generates less than 25 tons of waste daily, and exports all waste out of the county. It would also allow a county to forgo preparing a summary plan if the county does not contain an incorporated city and is not required to do a siting element.

BACKGROUND

According to the Alpine County Board of Supervisors, sponsor of SB 1196, current law "requires production of documents (siting element and summary plan) which do not further objectives of the solid waste code when required in small counties with minimal waste production, and which are impractical for small counties to finance and administer."

Although SB 1196 does not mention Alpine County by name, the descriptive factors in the bill apply only to Alpine County. Alpine County has the smallest population of any county in California -- 1,160 in 1994, and 95% of the county is publicly owned. The county has three distinctive population concentrations: Markleeville/Woodsford, Bear Valley, and Kirkwood. The three population centers also represent three distinct wastesheds, which are separated from each other in the winter by snow covered mountains. Each wasteshed's waste is disposed in three separate jurisdictions outside of Alpine County: Storey County, Nevada; Amador County; and Calaveras County.

Alpine County residents generate a small quantity of waste compared to other jurisdictions -- 3.2 pounds per person per day compared to the statewide average of 8.1 pounds per day. Alpine County only generates 0.00743% of the State's 45 million ton wastestream. Alpine County lacks the businesses that are typical in most jurisdictions. There are no fast food restaurants, grocery stores, banks, or major clothing stores. The two largest businesses in the County are the two ski resorts: Kirkwood and Mt. Reba at Bear Valley. The remaining businesses include government offices, schools, small bars, "mom and pop" grocery stores, and campgrounds. The only two businesses with more than 10 employees are the ski resorts.

Departments That May Be Affected		
Committee Recommendation	Committee Chair	Date
		23

EXISTING LAW

Current law:

1. Requires each county to prepare a countywide siting element which provides a description of the areas to be used for development of adequate transformation or disposal capacity concurrent and consistent with the development and implementation of the county and city source reduction and recycling elements adopted (Public Resources Code §41700).
2. Requires each countywide siting element and revision to include the following:
 - a. A statement of goals and policies for the environmentally safe transformation or disposal of solid waste which cannot be reduced, recycled, or composted.
 - b. An estimate of the total transformation or disposal capacity in cubic yards that will be needed for a 15-year period to safely handle solid wastes generated within the county which cannot be reduced, recycled, or composted.
 - c. The remaining combined capacity of existing solid waste transformation or disposal facilities existing at the time of the preparation of the siting element, or revision thereto, in cubic yards and years.
 - d. The identification of an area or areas for the location of new solid waste transformation or disposal facilities or the expansion of existing facilities which are consistent with the applicable city or county general plan if the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired (PRC §41701).
3. Requires each county to prepare a summary plan of significant waste management problems facing the county or city and county. The plan shall provide an overview of the specific steps that will be taken by local agencies, to achieve the purposes of waste management law. The plan must contain a statement of the goals and objectives set forth by the countywide task force (PRC §41751).

Current regulations:

1. Allow a rural jurisdiction to petition the CIWMB for a reduction in diversion and planning requirements (CCR 18755).
2. Allow a petitioner to identify those specific diversion and planning requirements from which it wants to be relieved and provide justification for the reduction (CCR 18755).
3. Require jurisdictions requesting a reduction in the diversion and planning requirements to include specific information in the reduction petition (CCR 18755).

ANALYSIS

SB 1196 would:

1. Allow a county to forgo preparing a countywide siting element if it does not have an incorporated city within its boundaries, generates less than 25 tons of waste daily, and exports all waste out of the county; and
2. Allow a county to forgo preparing a summary plan if the county does not contain an incorporated city and is not required to do a siting element.

COMMENTS

Past Due. Alpine County has prepared three of the five planning documents required by law (Source Reduction and Recycling Element -- SRRE, Household Hazardous Waste Element -- HHWE, and Nondisposal Facility Element -- NDFE) on time, but has failed to turn in the last two (Siting Element -- SE, and Summary Plan -- SP). The Siting Element and the Summary Plan were due in August of 1995. Model documents have been available for both elements since April 1994, and CIWMB planning staff are in regular contact with Alpine County.

Siting Element. The only information needed in Alpine County's Siting Element is evidence that there are formal agreements in place to assure that the County has capacity to take care of its waste for 15 years. It is the CIWMB's understanding that not all of the three agreements Alpine County has to export its waste are formal, written documents. The law also states that the Siting Element must include siting criteria for any new facilities, if the County ever decides to open a landfill. The CIWMB is willing to assist Alpine County with this document.

Summary Plan. The Summary Plan was designed to summarize -- for counties that have incorporated cities -- their plans for meeting the requirements of the Integrated Waste Management Act. Since Alpine County does not have incorporated cities, there may not be a need for them to complete a Summary Plan. However, because the statute requires a Summary Plan, the CIWMB is willing to work with Alpine County on what would probably be a one and one-half page document to summarize significant waste management problems facing the County.

Nature of Alpine County. SB 1196 is drafted so that it affects only Alpine County -- a County that does not have an incorporated city within its boundaries, generates less than 25 tons of waste daily, and exports all of its waste. In September 1994, Alpine County was granted reduced diversion goals of 14% by 1995 and 25% by 2000, and has already exceeded both goals. Alpine County has the smallest population of any county in California -- 1,160 in 1994, and 95% of the County is publicly owned.

Administrative Remedy. Under CIWMB regulations, any rural jurisdiction can petition the CIWMB for a reduction in planning requirements. Alpine County could choose to petition for a reduction in the requirements of the Siting Element or Summary Plan. To date, Alpine County has not attempted to petition the CIWMB.

Status of Siting Elements/Summary Plans. As of April 1997, 26 of 58 possible Siting Elements have been approved (an additional 9 have sent in preliminary drafts, and 4 are in process); and 21 of 58 possible Summary Plans have been approved (an additional 4 have been conditionally approved; 10 have sent in preliminary drafts, and 3 are in process). Nineteen counties have not turned in Siting Elements, and 20 counties have not turned in Summary Plans.

Enforcement action. The CIWMB has plans to begin enforcement action on those counties who have not turned in Siting Elements and Summary Plans. Letters will be mailed out by mid-June with responses due July 22, 1997. The CIWMB will hear the responses received and take further action at its September 1997 board meeting.

LEGISLATIVE HISTORY

SB 1196 was introduced on February 28, 1997. It passed the Senate Environmental Quality Committee (9-0) on May 5, 1997, and was referred to the Senate Floor.

Support: Alpine County (sponsor)
Environmental Services Joint Power Authority

Opposition: None on file

FISCAL AND ECONOMIC IMPACT

SB 1196 will save a small amount of staff time for the CIWMB by not having to review a Siting Element and a Summary Plan for Alpine County. This cost is minor and not quantifiable.

Alpine County would save some amount of staff time and money by not having to prepare the Siting Element and Summary Plan, hold public hearings, prepare CEQA documentation, and convene Local Task Force meetings for developing goals and objectives and providing comments.