

CALIFORNIA COASTAL COMMISSION

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**W-31**

August 10, 2011

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR AUGUST, 2011

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 08/05/11. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ The Governor has 30 days from the date of passage to sign or veto enrolled bills. Current status of any bill may be checked by visiting the California Senate Homepage at www.senate.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

2011 Legislative Calendar

Jan 1	Statutes take effect
Jan 3	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 21	Last day to submit bill requests to Legislative Counsel
Feb 18	Last day for bill introduction
April 14	Spring Recess begins
April 25	Legislature reconvenes
May 6	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 13	Last day for Policy Committees to hear and report 1 st House non-fiscal bills to the Floor
May 20	Last day for Policy Committees to meet prior to June 7
May 27	Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor
May 31-June 3	Floor Session only. No committees may meet
June 3	Last day to pass bills from house of origin
June 6	Committee meetings may resume
June 15	Budget must be passed by midnight
June 24	Last day for a legislative measure to qualify for the November General Election ballot
July 8	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 15	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 15	Legislature reconvenes
Aug 26	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 29-Sept 9	Floor session only. No committees may meet
Sept 2	Last day to amend bills on the Floor

¹ Terms used in this report relating to bill status. 1) "On Suspense" means bill is held in Appropriations because of potential costs to state agency. Bills usually heard by Appropriations near Fiscal Committee Deadline in June. 2) "Held in committee" means bill was not heard in the policy committee this year. 3) "Failed passage" means a bill was heard by policy committee but failed to get a majority vote. Reconsideration can be granted by the committee.

Sept 9

Last day for any bill to be passed. Interim Recess begins on adjournment of session

PRIORITY LEGISLATION

AB 95 (Committee on Budget) Budget: resources

In relevant part, this bill provides immunity to a public entity and/or a public employee for injury or damage either caused by a condition of public property occurring at a state park system unit that is designated as closed, partially closed, or subject to service reduction by the department. This immunity applies notwithstanding the fact that the public has access, whether invited or uninvited, to the state park system unit, and notwithstanding that the department may take actions such as patrols, inspections, maintenance, and repairs necessary to protect the state park system unit facilities and resources from deterioration, damage, or destruction. Other, pre-existing statutory immunities would probably also apply to many claims that are covered by this new immunity, but they all have specific criteria that need to be satisfied in order to apply. Under this bill, all that needs to be established for the new immunity to apply is that the park where the injury occurred was either closed, partially closed, or subject to service reductions.

Introduced 01/10/11

Last Amended 03/17/11

Status Chaptered with the Secretary of State, Statutes of 2011, Chapter 2

AB 206 (Harkey), Coastal resources: fireworks displays

This bill would provide that a fireworks display conducted by a public entity does not constitute “development” as defined by the Coastal Act. *Amendments on 3/24 expand the bill to exempt fireworks displays from CEQA, replace the term “public entity” with the term “municipal fireworks display,” and define it as follows:*

“a public display of fireworks conducted, organized, or sponsored by a city or county.”

Introduced 01/27/11

Status Held in Assembly Natural Resources Committee

Last Amended 03/24/11

Commission position Oppose

AB 337 (Monning) Ocean Protection Council: sustainable seafood

This bill would require the Ocean Protection Council to develop and implement a voluntary sustainable seafood program for the state, including a marketing assistance program for seafood caught in California that follows the protocols established by the program.

Introduced 02/10/11

Last Amended 06/20/11

Status Senate Appropriations Committee

AB 376 (Fong) Shark fins

This bill would make it a crime to possess, sell, trade, offer for sale or distribute a detached shark fin in any form, other than one that has been obtained from a shark landed lawfully with a commercial or recreational license or permit. Amendments taken on 5/19 would delay the bill from taking effect until January 1, 2013.

Introduced	02/10/11
Last Amended	05/19/11
Status	Senate Appropriations Committee
Commission position	Support

AB 484 (Alejo) Land use: natural resources: transfer of long term management funds

This bill would authorize funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization to also be conveyed directly to the nonprofit organization. The bill also provides that the funds shall revert to the state or local public agency if the nonprofit ceases operations, is dissolved, becomes insolvent or fails to perform its duties. *Amendments of 5/27 allow the state to contract with a third party to review qualifications of a non-profit, to review reports, and/or to evaluate land management practices.*

Introduced	02/10/11
Last Amended	05/27/11
Status	Senate Natural Resources and Wildlife Committee, hearing cancelled at request of author. This is a 2-year bill.

AB 565 (Monning) Conservation: State Coastal Conservancy

This bill would authorize the State Coastal Conservancy to award a grant to a for-profit company for the removal of the San Clemente dam if the Conservancy determined that no public agency or non-profit entity could achieve the same result.

Introduced	02/16/11
Last Amended	04/25/11
Status	Senate Appropriations Committee, Suspense File

AB 587 (Gordon) Public works: volunteers

This bill would extend until 2017 the sunset provision in existing law that allows volunteers, volunteer coordinators and California Conservation Corps staff to work for free or for less than prevailing wage on projects that are funded in whole or in part by public funds.

Introduced	02/17/11
Last amended	03/29/11
Status	Assembly Concurrence

AB 971 (Monning) Sea otter fund

This bill would This allow taxpayers to designate on their state tax returns that a specified amount in excess of their tax liability be transferred to the California Sea Otter Fund, which would be created by this bill. The money in that fund would be allocated to the Department of Fish and Game for the purposes of establishing a sea otter fund, and to the California Coastal Conservancy for competitive grants and contracts for research, projects, and programs related to the Federal Sea Otter Recovery Plan or improving the near-shore ocean ecosystem.

Introduced	02/18/11
Last Amended	04/25/11
Status	Senate Appropriations Committee

AB 1112 (Huffman) Oil spill prevention and administration fee

This bill would raise the fee of \$.05 per-barrel of oil landed at a marine terminal to \$.07. The bill would require the OSPR administrator to conduct a screening mechanism and risk assessment of vessels engaged in fuel bunkering or lightering. Amendments of 5/25 require the State Auditor to audit the OSPAF fund by January 1, 2013.

Introduced	01/27/11
Last Amended	07/12/11
Status	Senate Appropriations Committee

Commission position Support

SB 1 (Kehoe) 22nd Agricultural Association: Del Mar Racetrack: sale of state property

This bill would divide the 22nd Ag District in San Diego County into two separate entities. The newly created Agricultural District 22a would be comprised of the Del Mar Racetrack and Fair Grounds. The bill would authorize the Department of General Services to sell the assets of District 22a to the City of Del Mar, at which time Agricultural District 22a would be dissolved.

Introduced	12/06/10
Status	Senate Government Organization Committee and Rules Committee. This is a 2-year bill.

SB 366 (Calderon, Pavley) Regulations: agency review

This bill would require all state agencies, including the Coastal Commission, within 180 days of enactment of the bill, to review and revise/repeal all regulations that are considered duplicative, overlapping, inconsistent or out of date. All agencies, including the Commission, would have to report to the Legislature and the Governor on any actions taken to address this requirement. This bill would also create the “Streamlined Permit Review Team” consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection and the Secretary for Natural Resources. Upon request of any applicant, the SPRT would be convene all applicable permitting agencies with jurisdiction over an application, to coordinate actions on permits, eliminate delays, reduce paperwork, and ensure that agencies take action in the earliest feasible timeframe. The bill creates time limits for agencies to review and act on applications. If those timelines are not met, the projects would be deemed approved by operation of law.

Introduced	02/15/11
Status	Senate G.O. Committee, hearing postponed by Committee. This is a 2-year bill.

SB 468 (Kehoe) Department of Transportation: capacity-increasing state highway projects: coastal zone

This bill would proscribe the content of a Public Works Plan prepared by Caltrans or SANDAG for the Highway 5 North Coast Corridor project. Those provisions include, but are not limited to, public access, restoration projects, multimodal, environmental mitigation measures, and community enhancements. It would also require SANDAG to recommend to Caltrans a project no larger than the “8 plus 4” alternative when reviewing the FEIR for the project, and establish a “safe routes to transit” program. It would also require that all bridge and rail lagoon crossings be constructed concurrently to reduce environmental impacts. The bill would require that all multimodal projects, as defined, move forward concurrently with each phase of the capacity increasing projects in the coastal zone. The bill requires consultation with the Coastal Commission and other stakeholders, and authorizes the Commission to utilize Section 30515 for the North Coast Corridor project. Amendments taken 6/29, 7/4 and 7/13 bring the Commission into full support of the bill.

Introduced	02/17/11
Last amended	07/13/11
Status	Assembly Appropriations Committee
Commission position	Support

SB 568 (Lowenthal) Recycling: polystyrene food containers

This bill would prohibit any food vendor, after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container. The measure would not apply to correctional facilities, school districts, or food vendors selling freshly cut meat. *Amendments taken on 5/23 and 5/15 would allow a school district or local government to dispense food in a polystyrene container if the applicable governing board elects to adopt a policy or ordinance elects to implement a verifiable recycling program for polystyrene foam food containers, effective July 1, 2017.*

Introduced 02/17/11
Last Amended 07/12/11
Status Assembly Appropriations Committee
Commission Position Support

SB 584 (Evans) Oil spill prevention and administration fee

This bill would authorize the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund (OSPAF) for the purpose of covering costs incurred by the Oiled Wildlife Care Network.

Introduced 02/17/11
Status Held in Appropriations Committee, Suspense File

SB 588 (Evans) Coastal Commission: enforcement

This bill would authorize the Coastal Commission to collect administrative civil penalties up to \$50,000 per violation. The bill would require that any penalties collected for violation of the Coastal Account be deposited into the Coastal Act Services Fund.

Introduced 02/17/11
Status Held in Senate Judiciary Committee. This is a 2-year bill.
Commission position Support

SB 833 (Vargas) Solid waste: disposal facilities: San Diego County

This bill would prohibit the constructing or operating of a solid waste landfill disposal facility in the County of San Diego within 1,000 feet of the San Luis Rey River or an aquifer that is hydrologically connected to that river and is within 1,000 feet of a site that is considered sacred or of spiritual or cultural importance to a tribe and is listed in the California Native American Heritage Commission Sacred Lands Inventory.

Introduced 02/18/11
Last Amended 04/25/11
Status Assembly Appropriations Committee
Commission position Recommend Support, analysis attached

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BILL ANALYSIS
SB 833 (Vargas)
As Amended, April 25, 2011

SUMMARY

This bill would prohibit the construction or operation of a solid waste landfill disposal facility in the County of San Diego within 1,000 feet of the San Luis Rey River or an aquifer that is hydrologically connected to that river and is within 1,000 feet of a site that is considered sacred or of spiritual or cultural importance to a tribe and is listed in the California Native American Heritage Commission Sacred Lands Inventory.

PURPOSE OF THE BILL

The purpose of the bill is to prevent protect drinking water sources, endangered species habitat and Native American cultural sites that could be negatively impacted by the construction of the proposed Gregory Canyon Landfill (GCL).

EXISTING LAW

The siting, construction, and operation of a solid waste landfill is a complex process. The Department of Resource Recovery and Recycling (DRRR) is the focus of SB 833, but DRRR is just one of many agencies that must be consulted with before construction and operation can commence. Potentially as many as a dozen or more local, state, and federal permits are required, as well as compliance with CEQA and local land use ordinances, including conformance with the General Plan. Federal permits are often required by the Clean Water Act for water quality and US Fish and Wildlife Service for take of listed species. Denial of a required permit or approval would prevent the project from going forward as currently proposed, unless there was a successful litigation challenge to the denial, or the project was modified to address concerns. It is noteworthy that DRRR cannot add additional conditions to a permit.

However, in 1994, the proponents of the landfill bypassed the local process through a ballot initiative (Proposition C), which altered the local approval and CEQA review process (see below).

LEGISLATIVE HISTORY

To avoid the need for County approval, GCL proponents sponsored a county-wide ballot initiative in 1994, which passed by a vote of 68-32%. By amending the County's General Plan and Zoning Ordinance to allow a landfill without a County major use permit, Proposition C bypassed the usual local project approval process. Ten years later, in 2004, landfill opponents drafted and sponsored a second voter initiative, Proposition B, seeking to invalidate the 1994 initiative. Proposition B was not approved by the voters, by a vote of 64-36%. Because of Proposition C, the County Board of Supervisors is not involved in decisions about the proposed landfill.

BACKGROUND

The proposed site, owned by Gregory Canyon, Ltd., is located within an approximately 1,770 acre parcel of privately owned in northern San Diego County, on both the north and south sides of State Route 76, approximately three miles east of Interstate 15 and two miles southwest of the community of Pala. The site is crossed by the San Luis Rey River.

The site is situated on the western slope of Gregory Mountain and on one of the tributary canyons to the Pala groundwater basin. There have been 39 sensitive animal species observed on the landfill site, including three federally endangered species associated with coastal habitat: the southwestern willow flycatcher, least Bell's vireo, and southwestern arroyo toad, as well as one species, the coastal California gnatcatcher, that is listed as federally threatened. The vireo and flycatcher are also listed by the state as endangered.

The eastern portion of Gregory Mountain is on the Pala Indian Reservation, a 12,273-acre reservation, established for Cupeño and Luiseño Indians who now consider themselves as one people, the Pala Band of Mission Indians. Gregory Mountain, called "Chokla" by the Luiseño, is one of the most spiritually important places in the Luiseño world. It is believed to be one of the residing places of "Taakwic," a powerful and feared spirit that is the guardian spirit of many Shoshonean shamans. The entire mountain, including the area within the proposed landfill boundary, is considered an important place for fasting, praying, and conducting ceremonies by the Luiseño. Medicine Rock, which is a historic resource as defined by the California Environmental Quality Act (CEQA) Guidelines, is three stories tall and located north of the project site. The rock art at Medicine Rock is an important spiritual site to the Luiseño people. Based upon ethnographic testimony and ethnohistoric literature, some of the paintings at Medicine Rock may have been made in association with female puberty or Wakenish ceremonies held by the people of Pala.

The 183-acre landfill footprint would be in the largest canyon on the site, south of State Route 76, along the western slope of Gregory Mountain. The entire project development comprises approximately 308 acres.

ANALYSIS

The author's office and bill proponents are concerned about impacts to water quality, cultural sites, and habitat for state and federally listed species. The bill's opponents counter that adequate environmental controls will be included in the project design, and a majority of the project site will be set aside as open space.

This is clearly an impaired watershed. The 55-mile long San Luis Rey River empties into the Pacific at the San Luis Rey Estuary, just north of the City of Oceanside. The river, and its surrounding watershed, has been the focus of several restoration efforts by the California Department of Fish and Game, the Natural Resource Conservation Service, and the Mission Resource Conservation District. The CDFG oversees the San Luis Rey Watershed Management Program, and its associated Urban Runoff Management Plan. Their Coastal Watershed Planning and Assessment Program has identified numerous anthropogenic sources of habitat and water quality impairment,

including hydrologic modifications, diversions, urban runoff and invasive species introduction. It has also been the subject of several Army Corps flood control projects and associated restoration efforts. CDFG and the has also identified further restoration opportunities for possible steelhead recovery, and authorized the establishment of habitat mitigation banks for this purpose.

Although the landfill site is not in the coastal zone, the potential for the project's impacts to affect coastal resources is high. All of the federally listed species identified on the site are coastal-associated, and potential runoff or leaching into the river course from the landfill could make its way into coastal waters. While the Coastal Commission has no direct permitting authority over this project, (only the lower 1.3 miles of rivercourse is within the Coastal Zone boundary) it could be subject to the Commission's review under Federal Consistency review as a result of federal permitting activities. The Commission has, in the past, exerted Federal Consistency Review authority over ACOE activities within the lower seven miles of the river.

While the owners of the site contend that all appropriate environmental precautions will be incorporated into the project, it is troubling that the County Board of Supervisors, who had the initial opportunity to consider the rezoning of this property of this property in great detail, never authorized a General Plan Amendment that would have enabled the landfill to proceed. Also of concern is the truncated CEQA process prescribed by the passage of Prop 20. The Commission recently saw this type of Ballot Box planning in Monterey when the Pebble Beach Corporation sought to expand their existing golf course by amending the LCP by popular vote. Experience has shown that this process is driven more by the amount of money proponents can devote to the PR campaign, than by the educated scrutiny of voters. Ballot Box planning does not typically yield enlightened land use decisions, and should not be confused with Coastal Act policies calling for maximum public participation.

Technological safeguards cannot overcome the fundamental risks inherent in an inappropriately located facility. Plainly stated, land fills and rivers are contraindicated. Liners, dikes, and monitoring equipment can fail, and when they do, the speed at which an entire river course can become contaminated has been well demonstrated. But even if the design and construction were 100% fail-safe (again, an unlikely possibility), the direct impacts to endangered species habitat and cultural resources cannot be fully mitigated. If the CEQA review process were robustly applied to this project, these impacts would be fully disclosed, and an alternatives analysis would give local decision-makers and the public the opportunity to weigh the options and consequences. But because Proposition 20 has bypassed the local process, these regulatory off-ramps are closed for this project. Applying the precautionary principle to this question would require the project proponent to demonstrate that the environmental impacts have been avoided or fully mitigated. But if they had been able to do this, there would have been no need for Prop 20.

Absent compelling evidence that the Gregory Canyon Landfill will not harm important coastal resources, the Commission may wish to consider registering their support for SB 833.

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 833.

SUPPORT/OPPOSITION

Support for SB 833:

Agua Caliente Band of Cahuilla Indians
Barona Band of Mission Indians
California Coastal Protection Network
California Native American Heritage Commission
California Tribal Business Alliance
Californians Against Waste
City of Oceanside
Endangered Habitats League
Environmental Health Coalition
Habematolel Pomo of Upper Lake
Inaja Cosmit Band of Mission Indians
Jackson Rancheria Band of Miwuk Indians
Los Coyotes Band of Indians
Manzanita Band of Kumeyaay Nation
Native American Heritage Commission
Natural Resources Defense Council
Pala Band of Mission Indians
Pala-Pauma Sponsor Group
Pam Slater-Price, 3rd District San Diego
County Board of Supervisors
Planning and Conservation League
Ramona Band of Cahuilla
Rincon Band of Luiseño Indians
RiverWatch
San Diego Chapter of the Sierra Club
San Diego and Imperial Counties Labor Council
San Luis Rey Band of Mission Indians
San Pasqual Band of Mission Indians
Santa Ynez Band of Chumash Indians

Sierra Club California
Southern California Tribal Chairmen's Association
Surfrider Foundation
United Auburn Indian Community
Unit-Here
Yocha Dehe Wintun Nation

Opposition to SB 833:

Associated General Contractors of America, San Diego Chapter, Inc.
California Chapters of the Associated General Contractors
California-Nevada Conference of Operating Engineers
California State Association of Counties
Gregory Canyon Landfill, LLC
Herzog Contracting Corp.
Los Angeles County Solid Waste Management Committee
Mayor Jim Desmond, City of San Marcos
Regional Council of Rural Counties
Ron Roberts, 4th District San Diego County Board of Supervisors
San Diego County Board of Supervisors
San Diego County Taxpayers Association
San Diego Regional Chamber of Commerce
San Diego Regional Economic Development Corporation
Solid Waste Association of North America
Waste Management

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 833

Introduced by Senator Vargas
(Coauthor: Assembly Member Hueso)

February 18, 2011

An act to ~~amend Section 44002 of~~ *add Section 44000.6* to the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 833, as amended, Vargas. Solid waste: *disposal* facilities ~~permit~~.
San Diego County.

The

(1) *The California Integrated Waste Management Act of 1989 regulates the management of solid waste. The act authorizes that the California Integrated Waste Management Board may designate and certify a local enforcement agency within each county to carry out specified powers and duties, and requires the board and certified local enforcement agencies to perform specified functions with regard to the regulation of solid waste management, including the issuance of solid waste facilities permits.*

Existing law prohibits the operation of a solid waste facility without a solid waste facilities permit and ~~authorizes an enforcement agency to issue a solid waste facilities permit only if it determines that the permit application is consistent with the requirements of the act~~ *prohibits a person from disposing of solid waste, causing solid waste to be disposed of, arranging for the disposal of solid waste, transporting solid waste, or accepting solid waste for disposal, except at a permitted solid waste disposal facility. A violation of the provisions prohibiting the disposal of solid waste is a crime.*

~~This bill would additionally prohibit an enforcement agency from issuing a solid waste facilities permit, on or after January 1, 2012, if that permit would allow the disposal of solid waste within 500 feet of a river that supplies any aquifer that provides drinking water for more than 50,000 persons, or within 1,000 feet of a site considered to be sacred and of spiritual importance to a federally recognized Indian tribe.~~
prohibit a person from constructing or operating a solid waste landfill disposal facility located in the County of San Diego if that disposal facility is located within 1,000 feet of the San Luis Rey River or an aquifer that is hydrologically connected to that river and is within 1,000 feet of a site that is considered sacred or of spiritual or cultural importance to a tribe and is listed in the California Native American Heritage Commission Sacred Lands Inventory.

The bill would require the enforcement agency to enforce a violation of this prohibition by the immediate issuance of a cease and desist order, thereby imposing a state-mandated local program by imposing a new duty upon local agencies.

The bill would make a declaration of legislative findings regarding why a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

Because a violation of this bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** *Section 44000.6 is added to the Public Resources*
- 2 *Code, to read:*
- 3 **44000.6.** *(a) Notwithstanding any other provision of this*
- 4 *division, a person shall not construct or operate a solid waste*
- 5 *landfill disposal facility in the County of San Diego if that disposal*
- 6 *facility meets both of the following conditions:*

1 (1) Any portion of the disposal facility is located on or within
2 1,000 feet of the San Luis Rey River or an aquifer that is
3 hydrologically connected to that river.

4 (2) The disposed facility is located on or within 1,000 feet of a
5 site that is considered sacred or of spiritual or cultural importance
6 to a tribe, as defined in Section 44201, and that is listed in the
7 California Native American Heritage Commission Sacred Lands
8 Inventory.

9 (b) This section does not apply to a permitted disposal facility
10 at which solid waste was disposed of before January 1, 2012, or
11 to the expansion of that facility.

12 (c) The enforcement agency shall enforce a violation of this
13 section by the immediate issuance of a cease and desist order
14 pursuant to Section 45005.

15 SEC. 2. The Legislature finds and declares that, due to the
16 unique circumstances arising from a proposal to construct and
17 operate a solid waste landfill that would be located adjacent to
18 the San Luis Rey River and its drinking water supplies and to sites
19 considered sacred by numerous Native American tribes, and given
20 the unique relationship between the state government and tribal
21 governments in the state, a statute of general applicability cannot
22 be enacted within the meaning of subdivision (b) of Section 16 of
23 Article IV of the California Constitution, and therefore this special
24 statute is necessary.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the costs may be incurred by a local agency or school district
28 because this act creates a new crime or infraction, eliminates a
29 crime or infraction, or changes the penalty for a crime or
30 infraction, within the meaning of Section 17556 of the Government
31 Code, or changes the definition of a crime within the meaning of
32 Section 6 of Article XIII B of the California Constitution or because
33 a local agency or school district has the authority to levy service
34 charges, fees, or assessments sufficient to pay for the program or
35 level of service mandated by this act, within the meaning of Section
36 17556 of the Government Code.

37 ~~SECTION 1. Section 44002 of the Public Resources Code is~~
38 ~~amended to read:~~

1 ~~44002. (a) (1) A person shall not operate a solid waste facility~~
2 ~~without a solid waste facilities permit if that facility is required to~~
3 ~~have a permit pursuant to this division.~~

4 ~~(2) The prohibition specified in paragraph (1) includes, but is~~
5 ~~not limited to, the operation of a solid waste facility without a~~
6 ~~required solid waste facilities permit or the operation of a solid~~
7 ~~waste facility outside the permitted boundaries specified in a solid~~
8 ~~waste facilities permit.~~

9 ~~(b) If the enforcement agency determines that a person is~~
10 ~~operating a solid waste facility in violation of subdivision (a), the~~
11 ~~enforcement agency shall immediately issue a cease and desist~~
12 ~~order pursuant to Section 45005 ordering the facility to~~
13 ~~immediately cease all activities for which a solid waste facilities~~
14 ~~permit is required and desist from those activities until the person~~
15 ~~obtains a valid solid waste facilities permit authorizing the activities~~
16 ~~or has obtained other authorization pursuant to this division.~~

17 ~~(c) Notwithstanding any other provision of this division, an~~
18 ~~enforcement agency shall not issue a solid waste facilities permit,~~
19 ~~on or after January 1, 2012, if that permit would allow the disposal~~
20 ~~of solid waste within 500 feet of an aquifer that provides a source~~
21 ~~of drinking water for more than 50,000 persons, or within 1,000~~
22 ~~feet of a site considered to be sacred and of spiritual importance~~
23 ~~to a federally recognized Indian tribe.~~