

AMENDED IN SENATE AUGUST 21, 1996

AMENDED IN SENATE JULY 2, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3358

Introduced by Assembly Member Ackerman

February 23, 1996

An act to amend Section 22056 of the Financial Code, to amend Section 11126 of the Government Code, to amend Section 12162 of the Public Contract Code, and to amend Sections 40055, 40062, 40122, 40191, 40192, 42164, 42823.5, 43501, 43600, 43602, 43610, 44009, 44106, and 48670 of, and to repeal and add Section 40120.1 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 3358, as amended, Ackerman. Solid waste management.

(1) Existing law, the California Finance Lenders Law, regulates consumer and commercial loans.

This bill would exempt the California Integrated Waste Management Board from the application of that law.

(2) Existing law requires that all meetings of a state body to be open and public, except as specified.

This bill would specify that those provisions requiring open and public meetings do not prevent the board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or

confidential or proprietary information in its possession, or discussing other data the public disclosure of which is prohibited by law. The bill would make technical and clarifying changes in related provisions.

(3) Existing law, the California Integrated Waste Management Act of 1989, ~~regulates the management and handling of solid waste and is~~ *establishes an integrated waste management program* administered by the board.

The act defines “solid waste disposal” or “disposal” to mean the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

This bill would limit that definition for specified purposes of the act to the final deposition of solid wastes onto land.

The bill would make various technical and clarifying changes in the act.

(4) This bill would incorporate changes in Section 11126 of the Government Code proposed by SB 1803, to be operative only if SB 1803 and this bill are both chaptered and this bill becomes effective on or before January 1, 1997, and this bill is chaptered last.

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

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

1 SECTION 1. Section 22056 of the Financial Code is
2 amended to read:

3 22056. This division does not apply to the Department
4 of Commerce or to the California Integrated Waste
5 Management Board.

6 SEC. 2. Section 11126 of the Government Code is
7 amended to read:

8 11126. (a) (1) Nothing in this article shall be
9 construed to prevent a state body from holding closed
10 sessions during a regular or special meeting to consider
11 the appointment, employment, or dismissal of a public
12 employee or to hear complaints or charges brought
13 against that employee by another person or employee
14 unless the employee requests a public hearing.



1 (2) As a condition to holding a closed session on the
2 complaints or charges to consider disciplinary action or to
3 consider dismissal, the employee shall be given written
4 notice of his or her right to have a public hearing, rather
5 than a closed session, and that notice shall be delivered to
6 the employee personally or by mail at least 24 hours
7 before the time for holding a regular or special meeting.
8 If notice is not given, any disciplinary or other action
9 taken against any employee at the closed session shall be
10 null and void.

11 (3) The state body also may exclude from any public
12 or closed session, during the examination of a witness, any
13 or all other witnesses in the matter being investigated by
14 the state body.

15 (4) Following the public hearing or closed session, the
16 body may deliberate on the decision to be reached in a
17 closed session.

18 (b) For the purposes of this section, “employee” shall
19 not include any person who is elected to, or appointed to
20 a public office by, any state body. However, officers of the
21 California State University who receive compensation for
22 their services, other than per diem and ordinary and
23 necessary expenses, shall, when engaged in that capacity,
24 be considered employees. Furthermore, for purposes of
25 this section, the term employee shall include a person
26 exempt from civil service pursuant to subdivision (e) of
27 Section 4 of Article VII of the California Constitution.

28 (c) Nothing in this article shall be construed to do any
29 of the following:

30 (1) Prevent state bodies which administer the
31 licensing of persons engaging in businesses or professions
32 from holding closed sessions to prepare, approve, grade,
33 or administer examinations.

34 (2) Prevent an advisory body of a state body which
35 administers the licensing of persons engaged in
36 businesses or professions from conducting a closed session
37 to discuss matters which the advisory body has found
38 would constitute an unwarranted invasion of the privacy
39 of an individual licensee or applicant if discussed in an
40 open meeting, provided the advisory body does not



1 include a quorum of the members of the state body it
2 advises. Those matters may include review of an
3 applicant's qualifications for licensure and an inquiry
4 specifically related to the state body's enforcement
5 program concerning an individual licensee or applicant
6 where the inquiry occurs prior to the filing of a civil,
7 criminal, or administrative disciplinary action against the
8 licensee or applicant by the state body.

9 (3) Prohibit a state body from holding a closed session
10 to deliberate on a decision to be reached in a proceeding
11 required to be conducted pursuant to Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3
13 of Title 2 or similar provisions of law.

14 (4) Prevent any state body from holding a closed
15 session to consider matters affecting the national security.

16 (5) Grant a right to enter any correctional institution
17 or the grounds of a correctional institution where that
18 right is not otherwise granted by law, nor shall anything
19 in this article be construed to prevent a state body from
20 holding a closed session when considering and acting
21 upon the determination of a term, parole, or release of
22 any individual or other disposition of an individual case,
23 or if public disclosure of the subjects under discussion or
24 consideration is expressly prohibited by statute.

25 (6) Prevent any closed session to consider the
26 conferring of honorary degrees, or gifts, donations, and
27 bequests which the donor or proposed donor has
28 requested in writing to be kept confidential.

29 (7) Prevent the Alcoholic Beverage Control Appeals
30 Board from holding a closed session for the purpose of
31 holding a deliberative conference as provided in Section
32 11125.

33 (8) (A) Prevent a state body from holding closed
34 sessions with its negotiator prior to the purchase, sale,
35 exchange, or lease of real property by or for the state body
36 to give instructions to its negotiator regarding the price
37 and terms of payment for the purchase, sale, exchange, or
38 lease.

39 (B) However, prior to the closed session, the state
40 body shall hold an open and public session in which it



1 identifies the real property or real properties which the
2 negotiations may concern and the person or persons with
3 whom its negotiator may negotiate.

4 (C) For purposes of this paragraph, the negotiator
5 may be a member of the state body.

6 (D) For purposes of this paragraph, “lease” includes
7 renewal or renegotiation of a lease.

8 (E) Nothing in this paragraph shall preclude a state
9 body from holding a closed session for discussions
10 regarding eminent domain proceedings pursuant to
11 subdivision (q).

12 (9) Prevent the California Postsecondary Education
13 Commission from holding closed sessions to consider
14 matters pertaining to the appointment or termination of
15 the Director of the California Postsecondary Education
16 Commission.

17 (10) Prevent the Council for Private Postsecondary
18 and Vocational Education from holding closed sessions to
19 consider matters pertaining to the appointment or
20 termination of the Executive Director of the Council for
21 Private Postsecondary and Vocational Education.

22 (11) Prevent the Franchise Tax Board from holding
23 closed sessions for the purpose of discussion of
24 confidential tax returns or data the public disclosure of
25 which is prohibited by law, or from considering matters
26 pertaining to the appointment or removal of the
27 Executive Officer of the Franchise Tax Board.

28 (12) Prevent the Board of Corrections from holding
29 closed sessions when considering reports of crime
30 conditions under Section 6027 of the Penal Code.

31 (13) Prevent the State Air Resources Board from
32 holding closed sessions when considering the proprietary
33 specifications and performance data of manufacturers.

34 (14) Prevent the State Board of Education, or any
35 committee advising the State Board of Education, from
36 holding closed sessions on those portions of its review of
37 assessment instruments pursuant to Chapter 5
38 (commencing with Section 60600) of Part 33 of the
39 Education Code during which actual test content is
40 reviewed and discussed. The purpose of this provision is



1 to maintain the confidentiality of the assessments under
2 review.

3 (15) Prevent the California Integrated Waste
4 Management Board or its auxiliary committees from
5 holding closed sessions for the purpose of discussing
6 confidential tax returns, discussing trade secrets or
7 confidential or proprietary information in its possession,
8 or discussing other data, the public disclosure of which is
9 prohibited by law.

10 (16) Prevent a state body that invests retirement,
11 pension, or endowment funds from holding closed
12 sessions when considering investment decisions. For
13 purposes of consideration of shareholder voting on
14 corporate stocks held by the state body, closed sessions for
15 the purposes of voting may be held only with respect to
16 election of corporate directors, election of independent
17 auditors, and other financial issues that could have a
18 material effect on the net income of the corporation. For
19 the purpose of real property investment decisions that
20 may be considered in a closed session pursuant to this
21 paragraph, a state body shall also be exempt from the
22 provisions of paragraph 8 relating to the identification of
23 real properties prior to the closed session.

24 (17) Prevent a state body, or boards, commissions,
25 administrative officers, or other representatives that may
26 properly be designated by law or by a state body, from
27 holding closed sessions with its representatives in
28 discharging its responsibilities under Chapter 10
29 (commencing with Section 3500) of Division 4 of Title 1
30 as the sessions relate to salaries, salary schedules, or
31 compensation paid in the form of fringe benefits. For the
32 purposes enumerated in the preceding sentence, a state
33 body may also meet with a state conciliator who has
34 intervened in the proceedings.

35 (d) (1) Notwithstanding any other provision of law,
36 any meeting of the Public Utilities Commission at which
37 the rates of entities under the commission's jurisdiction
38 are changed shall be open and public.

39 (2) Nothing in this article shall be construed to
40 prevent the Public Utilities Commission from holding



1 closed sessions to deliberate on the institution of
2 proceedings, or disciplinary actions against regulated
3 utilities.

4 (e) (1) Nothing in this article shall be construed to
5 prevent a state body, based on the advice of its legal
6 counsel, from holding a closed session to confer with, or
7 receive advice from, its legal counsel regarding pending
8 litigation when discussion in open session concerning
9 those matters would prejudice the position of the state
10 body in the litigation.

11 (2) For purposes of this article, all expressions of the
12 lawyer-client privilege other than those provided in this
13 subdivision are hereby abrogated. This subdivision is the
14 exclusive expression of the lawyer-client privilege for
15 purposes of conducting closed-session meetings pursuant
16 to this article. For purposes of this subdivision, litigation
17 shall be considered pending when any of the following
18 circumstances exist:

19 (3) An adjudicatory proceeding before a court, an
20 administrative body exercising its adjudicatory authority,
21 a hearing officer, or an arbitrator, to which the state body
22 is a party, has been initiated formally.

23 (4) (A) A point has been reached where, in the
24 opinion of the state body on the advice of its legal counsel,
25 based on existing facts and circumstances, there is a
26 significant exposure to litigation against the state body.

27 (B) Based on existing facts and circumstances, the
28 state body is meeting only to decide whether a closed
29 session is authorized pursuant to subparagraph (A).

30 (5) (A) Based on existing facts and circumstances, the
31 state body has decided to initiate or is deciding whether
32 to initiate litigation.

33 (B) The legal counsel of the state body shall prepare
34 and submit to it a memorandum stating the specific
35 reasons and legal authority for the closed session. If the
36 closed session is pursuant to paragraph (1), the
37 memorandum shall include the title of the litigation. If
38 the closed session is pursuant to paragraph (2) or (3), the
39 memorandum shall include the existing facts and
40 circumstances on which it is based. The legal counsel shall



1 submit the memorandum to the state body prior to the
2 closed session, if feasible, and in any case no later than one
3 week after the closed session. The memorandum shall be
4 exempt from disclosure pursuant to Section 6254.25.

5 (C) For purposes of this subdivision, “litigation”
6 includes any adjudicatory proceeding, including eminent
7 domain, before a court, administrative body exercising its
8 adjudicatory authority, hearing officer, or arbitrator.

9 (D) Disclosure of a memorandum required under this
10 subdivision shall not be deemed as a waiver of the
11 lawyer-client privilege, as provided for under Article 3
12 (commencing with Section 950) of Chapter 4 of Division
13 8 of the Evidence Code.

14 (f) In addition to subdivisions (a), (b), and (c),
15 nothing in this article shall be construed to do any of the
16 following:

17 (1) Prevent a state body operating under a joint
18 powers agreement for insurance pooling from holding a
19 closed session to discuss a claim for the payment of tort
20 liability or public liability losses incurred by the state body
21 or any member agency under the joint powers
22 agreement.

23 (2) Prevent the examining committee established by
24 the State Board of Forestry, pursuant to Section 763 of the
25 Public Resources Code, from conducting a closed session
26 to consider disciplinary action against an individual
27 professional forester prior to the filing of an accusation
28 against the forester pursuant to Section 11503.

29 (3) Prevent an administrative committee established
30 by the State Board of Accountancy pursuant to Section
31 5020 or 5020.3 of the Business and Professions Code from
32 conducting a closed session to consider disciplinary action
33 against an individual accountant prior to the filing of an
34 accusation against the accountant pursuant to Section
35 11503. Nothing in this article shall be construed to prevent
36 an examining committee established by the Board of
37 Accountancy pursuant to Section 5023 of the Business and
38 Professions Code from conducting a closed hearing to
39 interview an individual applicant or accountant
40 regarding the applicant’s qualifications.



1 (4) Prevent a state body, as defined in Section 11121.2,
2 from conducting a closed session to consider any matter
3 that properly could be considered in closed session by the
4 state body whose authority it exercises.

5 (5) Prevent a state body, as defined in Section 11121.7,
6 from conducting a closed session to consider any matter
7 that properly could be considered in a closed session by
8 the body defined as a state body pursuant to Section
9 11121, 11121.2, or 11121.5.

10 (6) Prevent a state body, as defined in Section 11121.8,
11 from conducting a closed session to consider any matter
12 that properly could be considered in a closed session by
13 the state body it advises.

14 (7) Prevent the State Board of Equalization from
15 holding closed sessions for either of the following:

16 (A) When considering matters pertaining to the
17 appointment or removal of the executive secretary of the
18 State Board of Equalization.

19 (B) For the purpose of hearing confidential taxpayer
20 appeals or data, the public disclosure of which is
21 prohibited by law.

22 (8) Prevent the California Earthquake Prediction
23 Evaluation Council, or other body appointed to advise the
24 Director of the Office of Emergency Services or the
25 Governor pursuant to Section 8590 concerning matters
26 relating to volcanic or earthquake predictions, from
27 holding closed sessions when considering the evaluation
28 of possible predictions.

29 (g) This article shall not prevent either of the
30 following:

31 (1) The Teachers' Retirement Board or the Board of
32 Administration of the Public Employees' Retirement
33 System from holding closed sessions when considering
34 matters pertaining to the recruitment, appointment,
35 employment, or removal of the chief executive officer or
36 when considering matters pertaining to the recruitment
37 or removal of the Chief Investment Officer of the State
38 Teachers' Retirement System or the Public Employees'
39 Retirement System.



1 (2) The Commission on Teacher Credentialing from
2 holding closed sessions when considering matters relating
3 to the recruitment, appointment, or removal of its
4 executive director.

5 *SEC. 2.5. Section 11126 of the Government Code is*
6 *amended to read:*

7 11126. (a) Nothing in this article shall be construed to
8 prevent a state body from holding closed sessions during
9 a regular or special meeting to consider the appointment,
10 employment, or dismissal of a public employee or to hear
11 complaints or charges brought against that employee by
12 another person or employee unless the employee
13 requests a public hearing. As a condition to holding a
14 closed session on the complaints or charges to consider
15 disciplinary action or to consider dismissal, the employee
16 shall be given written notice of his or her right to have a
17 public hearing, rather than a closed session, which notice
18 shall be delivered to the employee personally or by mail
19 at least 24 hours before the time for holding a regular or
20 special meeting. If notice is not given, any disciplinary or
21 other action taken against any employee at the closed
22 session shall be null and void. The state body also may
23 exclude from any public or closed session, during the
24 examination of a witness, any or all other witnesses in the
25 matter being investigated by the state body. Following
26 the public hearing or closed session, the body may
27 deliberate on the decision to be reached in a closed
28 session.

29 For the purposes of this section, “employee” shall not
30 include any person who is elected to, or appointed to a
31 public office by, any state body. However, officers of the
32 California State University who receive compensation for
33 their services, other than per diem and ordinary and
34 necessary expenses, shall, when engaged in that capacity,
35 be considered employees. Furthermore, for purposes of
36 this section, the term employee shall include a person
37 exempt from civil service pursuant to subdivision (e) of
38 Section 4 of Article VII of the California Constitution.

39 (b) Nothing in this article shall be construed to
40 prevent state bodies which administer the licensing of



1 persons engaging in businesses or professions from
2 holding closed sessions to prepare, approve, grade, or
3 administer examinations.

4 (c) Nothing in this article shall be construed to
5 prevent an advisory body of a state body which
6 administers the licensing of persons engaged in
7 businesses or professions from conducting a closed session
8 to discuss matters which the advisory body has found
9 would constitute an unwarranted invasion of the privacy
10 of an individual licensee or applicant if discussed in an
11 open meeting, provided the advisory body does not
12 include a quorum of the members of the state body it
13 advises. Those matters may include review of an
14 applicant's qualifications for licensure and an inquiry
15 specifically related to the state body's enforcement
16 program concerning an individual licensee or applicant
17 where the inquiry occurs prior to the filing of a civil,
18 criminal, or administrative disciplinary action against the
19 licensee or applicant by the state body.

20 (d) Nothing in this article shall be construed to
21 prohibit a state body from holding a closed session to
22 deliberate on a decision to be reached in a proceeding
23 required to be conducted pursuant to Chapter 5
24 (commencing with Section 11500) of Part 1 of Division 3
25 of Title 2 or similar provisions of law.

26 (e) Nothing in this article shall be construed to
27 prevent any state body from holding a closed session to
28 consider matters affecting the national security.

29 (f) Nothing in this article shall be construed to grant
30 a right to enter any correctional institution or the grounds
31 of a correctional institution where that right is not
32 otherwise granted by law, nor shall anything in this article
33 be construed to prevent a state body from holding a
34 closed session when considering and acting upon the
35 determination of a term, parole, or release of any
36 individual or other disposition of an individual case, or if
37 public disclosure of the subjects under discussion or
38 consideration is expressly prohibited by statute.

39 (g) Nothing in this article shall be construed to
40 prevent any closed session to consider the conferring of



1 honorary degrees, or gifts, donations, and bequests which
2 the donor or proposed donor has requested in writing to
3 be kept confidential.

4 (h) Nothing in this article shall be construed to
5 prevent the Alcoholic Beverage Control Appeals Board
6 from holding a closed session for the purpose of holding
7 a deliberative conference as provided in Section 11125.

8 (i) Nothing in this article shall be construed to prevent
9 a state body from holding closed sessions with its
10 negotiator prior to the purchase, sale, exchange, or lease
11 of real property by or for the state body to give
12 instructions to its negotiator regarding the price and
13 terms of payment for the purchase, sale, exchange, or
14 lease.

15 However, prior to the closed session, the state body
16 shall hold an open and public session in which it identifies
17 the real property or real properties which the
18 negotiations may concern and the person or persons with
19 whom its negotiator may negotiate.

20 For purposes of this subdivision, the negotiator may be
21 a member of the state body.

22 For purposes of this subdivision, “lease” includes
23 renewal or renegotiation of a lease.

24 Nothing in this subdivision shall preclude a state body
25 from holding a closed session for discussions regarding
26 eminent domain proceedings pursuant to subdivision
27 (q).

28 (j) (1) Nothing in this article shall be construed to
29 prevent the California Postsecondary Education
30 Commission from holding closed sessions to consider
31 matters pertaining to the appointment or termination of
32 the Director of the California Postsecondary Education
33 Commission.

34 (2) Nothing in this article shall be construed to
35 prevent the Council for Private Postsecondary and
36 Vocational Education from holding closed sessions to
37 consider matters pertaining to the appointment or
38 termination of the Executive Director of the Council for
39 Private Postsecondary and Vocational Education.



1 (k) Nothing in this article shall be construed to
2 prevent the Franchise Tax Board from holding closed
3 sessions for the purpose of discussion of confidential tax
4 returns or ~~data~~ *information* the public disclosure of which
5 is prohibited by law, or from considering matters
6 pertaining to the appointment or removal of the
7 Executive Officer of the Franchise Tax Board. *Nothing in*
8 *this article shall be construed to require the Franchise*
9 *Tax Board to disclose any confidential tax information*
10 *considered in closed sessions, the public disclosure of*
11 *which is prohibited pursuant to Article 2 (commencing*
12 *with Section 19542) of Chapter 7 of Part 10.2 of the*
13 *Revenue and Taxation Code.*

14 (l) Nothing in this article shall be construed to prevent
15 the Board of Corrections from holding closed sessions
16 when considering reports of crime conditions under
17 Section 6027 of the Penal Code.

18 (m) Nothing in this article shall be construed to
19 prevent the State Air Resources Board from holding
20 closed sessions when considering the proprietary
21 specifications and performance data of manufacturers.

22 (n) Nothing in this article shall be construed to
23 prevent a state body that invests retirement, pension, or
24 endowment funds from holding closed sessions when
25 considering investment decisions. For purposes of
26 consideration of shareholder voting on corporate stocks
27 held by the state body, closed sessions for the purposes of
28 voting may be held only with respect to election of
29 corporate directors, election of independent auditors,
30 and other financial issues that could have a material effect
31 on the net income of the corporation. For the purpose of
32 real property investment decisions that may be
33 considered in a closed session pursuant to this subdivision,
34 a state body shall also be exempt from the provision of
35 subdivision (i) relating to the identification of real
36 properties prior to the closed session.

37 (o) Nothing in this article shall be construed to
38 prevent a state body, or boards, commissions,
39 administrative officers, or other representatives that may
40 properly be designated by law or by a state body, from



1 holding closed sessions with its representatives in
 2 discharging its responsibilities under Chapter 10
 3 (commencing with Section 3500) of Division 4 of Title 1
 4 as the sessions relate to salaries, salary schedules, or
 5 compensation paid in the form of fringe benefits. For the
 6 purposes enumerated in the preceding sentence, a state
 7 body may also meet with a state conciliator who has
 8 intervened in the proceedings.

9 (p) Notwithstanding any other provision of law, any
 10 meeting of the Public Utilities Commission at which the
 11 rates of entities under the commission's jurisdiction are
 12 changed shall be open and public.

13 Nothing in this article shall be construed to prevent the
 14 Public Utilities Commission from holding closed sessions
 15 to deliberate on the institution of proceedings, or
 16 disciplinary actions against regulated utilities.

17 (q) Nothing in this article shall be construed to
 18 prevent a state body, based on the advice of its legal
 19 counsel, from holding a closed session to confer with, or
 20 receive advice from, its legal counsel regarding pending
 21 litigation when discussion in open session concerning
 22 those matters would prejudice the position of the state
 23 body in the litigation.

24 For purposes of this article, all expressions of the
 25 lawyer-client privilege other than those provided in this
 26 subdivision are hereby abrogated. This subdivision is the
 27 exclusive expression of the lawyer-client privilege for
 28 purposes of conducting closed-session meetings pursuant
 29 to this article. For purposes of this subdivision, litigation
 30 shall be considered pending when any of the following
 31 circumstances exist:

32 (1) An adjudicatory proceeding before a court, an
 33 administrative body exercising its adjudicatory authority,
 34 a hearing officer, or an arbitrator, to which the state body
 35 is a party, has been initiated formally.

36 (2) (A) A point has been reached where, in the
 37 opinion of the state body on the advice of its legal counsel,
 38 based on existing facts and circumstances, there is a
 39 significant exposure to litigation against the state body; or



1 (B) Based on existing facts and circumstances, the
2 state body is meeting only to decide whether a closed
3 session is authorized pursuant to subparagraph (A).

4 (3) Based on existing facts and circumstances, the state
5 body has decided to initiate or is deciding whether to
6 initiate litigation.

7 The legal counsel of the state body shall prepare and
8 submit to it a memorandum stating the specific reasons
9 and legal authority for the closed session. If the closed
10 session is pursuant to paragraph (1), the memorandum
11 shall include the title of the litigation. If the closed session
12 is pursuant to paragraph (2) or (3), the memorandum
13 shall include the existing facts and circumstances on
14 which it is based. The legal counsel shall submit the
15 memorandum to the state body prior to the closed
16 session, if feasible, and in any case no later than one week
17 after the closed session. The memorandum shall be
18 exempt from disclosure pursuant to Section 6254.25.

19 For purposes of this subdivision, “litigation” includes
20 any adjudicatory proceeding, including eminent domain,
21 before a court, administrative body exercising its
22 adjudicatory authority, hearing officer, or arbitrator.

23 Disclosure of a memorandum required under this
24 subdivision shall not be deemed as a waiver of the
25 lawyer-client privilege, as provided for under Article 3
26 (commencing with Section 950) of Chapter 4 of Division
27 8 of the Evidence Code.

28 (r) Nothing in this article shall be construed to prevent
29 a state body operating under a joint powers agreement
30 for insurance pooling from holding a closed session to
31 discuss a claim for the payment of tort liability or public
32 liability losses incurred by the state body or any member
33 agency under the joint powers agreement.

34 (s) Nothing in this article shall be construed to prevent
35 the examining committee established by the State Board
36 of Forestry, pursuant to Section 763 of the Public
37 Resources Code, from conducting a closed session to
38 consider disciplinary action against an individual
39 professional forester prior to the filing of an accusation
40 against the forester pursuant to Section 11503.



1 (t) Nothing in this article shall be construed to prevent
 2 an administrative committee established by the State
 3 Board of Accountancy pursuant to Section 5020 or 5020.3
 4 of the Business and Professions Code from conducting a
 5 closed session to consider disciplinary action against an
 6 individual accountant prior to the filing of an accusation
 7 against the accountant pursuant to Section 11503.
 8 Nothing in this article shall be construed to prevent an
 9 examining committee established by the Board of
 10 Accountancy pursuant to Section 5023 of the Business and
 11 Professions Code from conducting a closed hearing to
 12 interview an individual applicant or accountant
 13 regarding the applicant's qualifications.

14 (u) Nothing in this article shall be construed to
 15 prevent a state body, as defined in Section 11121.2, from
 16 conducting a closed session to consider any matter that
 17 properly could be considered in closed session by the state
 18 body whose authority it exercises.

19 (v) Nothing in this article shall be construed to
 20 prevent a state body, as defined in Section 11121.7, from
 21 conducting a closed session to consider any matter that
 22 properly could be considered in a closed session by the
 23 body defined as a state body pursuant to Section 11121,
 24 11121.2, or 11121.5.

25 (w) Nothing in this article shall be construed to
 26 prevent a state body, as defined in Section 11121.8, from
 27 conducting a closed session to consider any matter that
 28 properly could be considered in a closed session by the
 29 state body it advises.

30 (x) Nothing in this article shall be construed to
 31 prevent the State Board of Equalization from holding
 32 closed sessions for either of the following:

33 (1) When considering matters pertaining to the
 34 appointment or removal of the executive secretary of the
 35 State Board of Equalization.

36 (2) For the purpose of hearing confidential taxpayer
 37 appeals or data, the public disclosure of which is
 38 prohibited by law.

39 *Nothing in this article shall be construed to require the*
 40 *State Board of Equalization to disclose any action taken*



1 *in closed session or documents executed in connection*
2 *with that action, the public disclosure of which is*
3 *prohibited by law pursuant to Sections 15619 and 15641 of*
4 *this code and Sections 833, 7056, 8255, 9255, 11655, 30455,*
5 *32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and*
6 *60609 of the Revenue and Taxation Code.*

7 (y) Nothing in this article shall be construed to
8 prevent the California Earthquake Prediction Evaluation
9 Council, or other body appointed to advise the Director
10 of the Office of Emergency Services or the Governor
11 pursuant to Section 8590 concerning matters relating to
12 volcanic or earthquake predictions, from holding closed
13 sessions when considering the evaluation of possible
14 predictions.

15 (z) This article shall not prevent the Teachers'
16 Retirement Board or the Board of Administration of the
17 Public Employees' Retirement System from holding
18 closed sessions when considering matters pertaining to
19 the recruitment, appointment, employment, or removal
20 of the chief executive officer or when considering matters
21 pertaining to the recruitment or removal of the Chief
22 Investment Officer of the State Teachers' Retirement
23 System or the Public Employees' Retirement System.

24 (aa) This article shall not prevent the Commission on
25 Teacher Credentialing from holding closed sessions when
26 considering matters relating to the recruitment,
27 appointment, or removal of its executive director.

28 (bb) Nothing in ~~the~~ *this* article shall be construed to
29 prevent the State Board of Education, or any committee
30 advising the State Board of Education, from holding
31 closed sessions on those portions of its review of
32 assessment instruments pursuant to Chapter 5
33 (commencing with Section 60600) of Part 33 of the
34 Education Code during which actual test content is
35 reviewed and discussed. The purpose of this provision is
36 to maintain the confidentiality of the assessments under
37 review.

38 (cc) *This article shall not prevent the California*
39 *Integrated Waste Management Board or its auxiliary*
40 *committees from holding closed sessions for the purpose*



1 *of discussing confidential tax returns, discussing trade*
2 *secrets or confidential or proprietary information in its*
3 *possession, or discussing other data, the public disclosure*
4 *of which is prohibited by law.*

5 SEC. 3. Section 12162 of the Public Contract Code is
6 amended to read:

7 12162. (a) The department shall set as a goal for the
8 purchase of recycled paper products that, by January 1,
9 1996, at least 50 percent of the total dollar amount of
10 paper products purchased or procured is to be a recycled
11 paper product, as defined in Section 12161. In addition, at
12 least 25 percent of the total fine writing and printing
13 paper purchased or procured is to be a recycled paper
14 product, as defined in Section 12161.

15 (b) All state agencies shall report to the department
16 and to the board on their progress in meeting the goals
17 specified in subdivision (a) and Section 12205 and shall
18 submit to the department and to the board a detailed plan
19 to meet those goals. The department shall develop a
20 uniform reporting procedure which state agencies shall
21 follow. If at any time a goal has not been met, the
22 department, in consultation with the board, shall review
23 procurement policies and shall make recommendations
24 for immediate revisions to ensure that the goal is met. The
25 department, in consultation with the board, shall present
26 its conclusions and recommendations on these revisions
27 of procurement policies to the Legislature in the
28 department's annual report pursuant to Section 12225.

29 (c) (1) All state agencies shall give a price preference,
30 not to exceed 10 percent, to recycled paper products, if
31 the product's fitness, quality, and availability are
32 comparable to nonrecycled products. The board, in
33 consultation with the department, shall establish, on or
34 before May 1, 1994, and every two years thereafter, price
35 preferences for the purposes of meeting the goals set
36 forth in this section and Section 12205 for recycled
37 products. For those priority commodities, as defined by
38 the board, the price preference established by the board
39 shall not be less than 5 percent. The board shall publish
40 the established price preferences annually in the board's



1 report to the Legislature pursuant to Section 40507 of the
2 Public Resources Code.

3 (2) In establishing the price preferences, the board
4 shall take into consideration all of the following factors:

5 (A) Materials that comprise the largest percentage of
6 the state's solid waste stream.

7 (B) Materials that have the highest percentage of
8 postconsumer material.

9 (C) Materials that require expanded markets.

10 (D) Any other market factors as determined by the
11 board.

12 (3) The combined dollar amount of preference
13 granted pursuant to this section and any other provision
14 of law shall not exceed one hundred thousand dollars
15 (\$100,000).

16 (d) Notwithstanding paragraph (1) of subdivision (c),
17 the recycled paper bidder preference shall not exceed
18 fifty thousand dollars (\$50,000) if a preference exceeding
19 that amount would preclude an award to a small business
20 that offers nonrecycled paper products and is qualified in
21 accordance with Section 14838 of the Government Code.

22 (e) The board shall implement a pilot program, from
23 January 1, 1994, to January 1, 1997, for funding claims
24 submitted by state agencies for providing the price
25 preferences required by this section and Section 12205. A
26 state agency's purchase of recycled paper products
27 pursuant to subdivision (a) shall be ineligible for claims
28 under the pilot program. On or before March 31, 1996, in
29 conjunction with the annual report required by Section
30 40507 of the Public Resources Code, the board shall report
31 to the Legislature and Governor on the pilot program and
32 make recommendations concerning the continuation or
33 modification of the program. A sum of not more than
34 three hundred thousand dollars (\$300,000) total, or one
35 hundred thousand dollars (\$100,000) annually, shall be
36 expended for the purposes of implementing the pilot
37 program. This subdivision shall be operative only if
38 adequate funds for the pilot program are made available.

39 (f) This section shall remain in effect only until
40 January 1, 2001, and as of that date is repealed, unless a



1 later enacted statute which is chaptered prior to that date
2 extends or deletes that date.

3 SEC. 4. Section 40055 of the Public Resources Code is
4 amended to read:

5 40055. (a) This division, or any rules or regulations
6 adopted pursuant thereto, is not a limitation on the power
7 of any state agency in the enforcement or administration
8 of any provision of law which it is specifically authorized
9 or required to enforce or administer, including, but not
10 limited to, the exercise by the state water board or the
11 regional water boards of any of their powers and duties
12 pursuant to Division 7 (commencing with Section 13000)
13 of the Water Code, the exercise by the Department of
14 Toxic Substances Control of any of its powers and duties
15 pursuant to Chapter 6.5 (commencing with Section
16 25100) of Division 20 of the Health and Safety Code, and
17 the exercise by the State Air Resources Board or any air
18 pollution control district or air quality management
19 district of any of its powers and duties pursuant to
20 Division 26 (commencing with Section 39000) of the
21 Health and Safety Code.

22 (b) The exercise of authority under this division,
23 including, but not limited to, the adoption of regulations,
24 plans, permits, or standards or the taking of any
25 enforcement actions shall not duplicate or be in conflict
26 with any determination relating to water quality control
27 made by the state water board or regional water boards,
28 including requirements in regulations adopted by or
29 under the authority of the state water board.

30 (c) Any plans, permits, standards, or corrective action
31 taken under this division shall be consistent with all
32 applicable water quality control plans adopted pursuant
33 to Section 13170, and Article 3 (commencing with Section
34 13240) of Chapter 4 of Division 7, of the Water Code and
35 the state policies for water quality control adopted
36 pursuant to Article 3 (commencing with Section 13140)
37 of Chapter 3 of Division 7 of the Water Code existing at
38 the time of the action or proposed action.

39 SEC. 5. Section 40062 of the Public Resources Code is
40 amended to read:



1 40062. (a) Upon the request of any person furnishing
2 any report, notice, application, plan, or other document
3 required by this division, including any research or
4 survey information requested by the board for the
5 purpose of implementing its programs, neither the board
6 nor an enforcement agency, in accordance with
7 subdivisions (c) and (d), shall make available for
8 inspection by the public any portion of the report, notice,
9 application, plan, or other document that contains a trade
10 secret, as defined in subdivision (d) of Section 3426.1 of
11 the Civil Code, that has been identified pursuant to
12 subdivision (b).

13 (b) Any person furnishing information, as described in
14 subdivision (a), to the board or an enforcement agency
15 pursuant to this division shall, at the time of submission,
16 identify all information which the person believes is a
17 trade secret. Any information not identified by the
18 person as a trade secret shall be made available to the
19 public, unless exempted from disclosure by another
20 provision of law.

21 (c) (1) With regard to information that has been
22 identified as a trade secret pursuant to subdivision (b),
23 the board, upon its own initiative, or upon receipt of a
24 request for public information pursuant to Chapter 3.5
25 (commencing with Section 6250) of Division 7 of Title 1
26 of the Government Code, shall determine whether any or
27 all of the information has been properly identified as a
28 trade secret. If the board determines that the information
29 is not a trade secret, the board shall notify the person who
30 furnished the information by certified mail.

31 (2) The person who furnished the information shall
32 have 30 days from the date of receipt of the notice
33 required by paragraph (1) to provide the board with a
34 complete justification and statement of the grounds on
35 which the trade secret privilege is claimed. The
36 justification and statement shall be submitted to the
37 board by certified mail.

38 (3) The board shall determine whether the
39 information is protected as a trade secret within 15 days
40 from the date of receipt of the justification and statement



1 or, if no justification and statement is filed, within 45 days
2 from the date of the notice required by paragraph (1).
3 The board shall notify the person who furnished the
4 information and any party who has requested the
5 information pursuant to Chapter 3.5 (commencing with
6 Section 6250) of Division 7 of Title 1 of the Government
7 Code of that determination by certified mail. If the board
8 has determined that the information is not protected as
9 a trade secret, this final notice shall also specify a date, not
10 sooner than 15 days from the date of the date of mailing
11 of the final notice, when the information shall be available
12 to the public.

13 (d) Except as provided in subdivision (c), the board or
14 an enforcement agency may release information
15 submitted and designated as a trade secret only to the
16 following public agencies under the following conditions:

17 (1) To other public agencies in connection with the
18 responsibilities of the board or an enforcement agency
19 under this division or for use in making reports.

20 (2) To the state or any state agency in judicial review
21 for enforcement proceedings involving the person
22 furnishing the information.

23 (e) For the purpose of implementing this section, the
24 disclosure of information shall be consistent with Chapter
25 3.5 (commencing with Section 6250) of Division 7 of Title
26 1 of the Government Code.

27 SEC. 6. Section 40120.1 of the Public Resources Code
28 is repealed.

29 SEC. 7. Section 40120.1 is added to the Public
30 Resources Code, to read:

31 40120.1. "Disposal" has the same meaning as "solid
32 waste disposal" as defined in Section 40192.

33 SEC. 8. Section 40122 of the Public Resources Code is
34 amended to read:

35 40122. "Disposal site" or "site" includes the place,
36 location, tract of land, area, or premises in use, intended
37 to be used, or which has been used, for the landfill disposal
38 of solid wastes. "Disposal site" includes solid waste
39 landfill, as defined in Section 40195.1.



1 SEC. 9. Section 40191 of the Public Resources Code is
2 amended to read:

3 40191. (a) Except as provided in subdivision (b),
4 “solid waste” means all putrescible and nonputrescible
5 solid, semisolid, and liquid wastes, including garbage,
6 trash, refuse, paper, rubbish, ashes, industrial wastes,
7 demolition and construction wastes, abandoned vehicles
8 and parts thereof, discarded home and industrial
9 appliances, dewatered, treated, or chemically fixed
10 sewage sludge which is not hazardous waste, manure,
11 vegetable or animal solid and semisolid wastes, and other
12 discarded solid and semisolid wastes.

13 (b) “Solid waste” does not include any of the following
14 wastes:

15 (1) Hazardous waste, as defined in Section 40141.

16 (2) Radioactive waste regulated pursuant to the
17 Radiation Control Law (Chapter 8 (commencing with
18 Section 114960) of Part 9 of Division 104 of the Health and
19 Safety Code).

20 (3) Medical waste regulated pursuant to the Medical
21 Waste Management Act (Part 14 (commencing with
22 Section 117600) of Division 104 of the Health and Safety
23 Code). Untreated medical waste shall not be disposed of
24 in a solid waste landfill, as defined in Section
25 40195.1. Medical waste that has been treated and
26 deemed to be solid waste shall be regulated pursuant to
27 this division.

28 SEC. 10. Section 40192 of the Public Resources Code
29 is amended to read:

30 40192. (a) Except as provided in subdivisions (b) and
31 (c), “solid waste disposal” or “disposal” means the final
32 deposition of solid wastes onto land, into the atmosphere,
33 or into the waters of the state.

34 (b) Except as provided in Part 2 (commencing with
35 Section 40900), for purposes of Part 2 (commencing with
36 Section 40900), “disposal” means the management of
37 solid waste through landfill disposal or transformation at
38 a permitted solid waste facility.

39 (c) For purposes of Chapters 16 (commencing with
40 Section 42800) and 19 (commencing with Section 42950)



1 of Part 3, Part 4 (commencing with Section 43000), Part
2 5 (commencing with Section 45000), Part 6
3 (commencing with Section 45030), and Chapter 2
4 (commencing with Section 47900) of Part 7, “solid waste
5 disposal” or “disposal” means the final deposition of solid
6 wastes onto land.

7 SEC. 11. Section 42164 of the Public Resources Code
8 is amended to read:

9 42164. “Solid waste landfill” means a solid waste
10 landfill, as defined in Section 40195.1.

11 SEC. 12. Section 42823.5 of the Public Resources Code
12 is amended to read:

13 42823.5. (a) A cement manufacturing plant shall be
14 exempt from the requirement to obtain a permit
15 pursuant to Section 42823 if the operator of the cement
16 manufacturing plant meets both of the following
17 requirements:

18 (1) The owner or operator of the cement
19 manufacturing plant stores not more than a one-month
20 supply of waste tires at the site of the cement
21 manufacturing plant at any time. A one-month supply of
22 waste tires shall be based on either of the following:

23 (A) The average monthly consumption of waste tires
24 by the plant during the previous year.

25 (B) The waste tire percentage of the total fuel supply
26 allowed by the air pollution control district or air quality
27 management district, multiplied by the average monthly
28 consumption of fuel for the previous year.

29 (2) The operator or owner of the cement
30 manufacturing plant is in compliance with any
31 regulations adopted by the board pertaining to waste tire
32 storage and disposal.

33 (b) To apply for the exemption provided by this
34 section, the operator or owner of a cement
35 manufacturing plant shall provide all of the following
36 information to the board in writing:

37 (1) The name, address, and physical location of the
38 plant.

39 (2) The name, address, and telephone number of the
40 plant operator and owner.



1 (3) Information describing compliance with
2 subdivision (a).

3 (4) Signatures of the operator and owner of the plant
4 certifying to the accuracy of the information provided.

5 (c) If there is any change to the information provided
6 pursuant to subdivision (b), the operator or owner of the
7 cement manufacturing plant shall report the change to
8 the board, in writing, within 30 days from the date of the
9 change.

10 (d) Within 60 days from the date of the receipt of the
11 information required by subdivision (b), the board shall
12 determine whether the operator or owner of a cement
13 manufacturing plant qualifies for the exemption
14 provided by this section and shall notify the operator or
15 owner of the plant of its determination in writing.

16 (e) The board or the local enforcement agency may
17 inspect a cement manufacturing plant that receives the
18 exemption provided by this section to determine
19 compliance with this section.

20 (f) Any operator or owner of a cement manufacturing
21 plant who receives an exemption pursuant to this section
22 shall allow the board, upon presentation of the proper
23 credentials, to enter the cement manufacturing plant
24 during normal working hours to examine and copy books,
25 papers, records, or memoranda pertaining to the use and
26 storage of waste tires, and to conduct inspections and
27 investigations pertaining to waste tire use and storage.

28 SEC. 13. Section 43501 of the Public Resources Code
29 is amended to read:

30 43501. (a) Any person owning or operating a solid
31 waste landfill, as defined in Section 40195.1, shall do both
32 of the following:

33 (1) Upon application to become an operator of a solid
34 waste facility pursuant to Section 44001, certify to the
35 board and the local enforcement agency that all of the
36 following have been accomplished:

37 (A) The owner or operator has prepared an initial
38 estimate of closure and postclosure maintenance costs.
39 The board shall adopt regulations that provide for an
40 increase in the initial cost estimate to account for cost



1 overruns due to unforeseeable circumstances, and to
2 provide a reasonable contingency comparable to that
3 which is built into cost estimates for other, similar public
4 works projects.

5 (B) The owner or operator has established a trust fund
6 or equivalent financial arrangement acceptable to the
7 board, as specified in Article 4 (commencing with Section
8 43600).

9 (C) The amounts that the owner or operator will
10 deposit annually in the trust fund or equivalent financial
11 arrangement acceptable to the board will ensure
12 adequate resources for closure and postclosure
13 maintenance.

14 (2) Submit to the regional water board, the local
15 enforcement agency, and the board a plan for the closure
16 of the solid waste landfill and a plan for the postclosure
17 maintenance of the solid waste landfill.

18 (b) Notwithstanding subparagraph (C) of paragraph
19 (1) of subdivision (a) or any other provision of law, if the
20 owner or operator is a county with a population of 200,000
21 or less, as determined by the 1990 decennial census, the
22 county shall not be required to make annual deposits in
23 excess of the amount required by the federal act or any
24 other applicable federal law, or by any board-approved
25 formula which meets the requirements of the federal act.

26 (c) If not in conflict with federal law or regulations, a
27 county or city may, with regard to a solid waste landfill
28 owned or operated by the county or city, base its estimate
29 of closure and postclosure maintenance costs on the costs
30 of employing county or city employees or persons under
31 contract with the county or city in performing closure
32 and postclosure maintenance. However, even if, to meet
33 federal requirements, the costs estimate is based on the
34 most expensive costs of closure and postclosure
35 maintenance performed by a third party, the county or
36 city may, to effect cost savings, employ county or city
37 employees or employ persons under contract to actually
38 perform closure operations or postclosure maintenance
39 operations.



1 SEC. 14. Section 43600 of the Public Resources Code
2 is amended to read:

3 43600. (a) Except as otherwise provided in
4 subdivision (b), any person owning or operating a solid
5 waste landfill, as defined in Section 40195.1, shall, with the
6 closure plan and postclosure maintenance plan submitted
7 pursuant to subdivision (b) of Section 43501, submit to the
8 board evidence of financial ability to provide for the cost
9 of closure and postclosure maintenance, in an amount
10 that is equal to the estimated cost of closure and 15 years
11 of postclosure maintenance, contained in the closure plan
12 and the postclosure maintenance plan submitted.

13 (b) On and after the effective date of the federal
14 regulations set forth in Subpart G (commencing with
15 Section 258.70) of Part 258 of Title 40 of the Code of
16 Federal Regulations, any person owning or operating a
17 solid waste landfill, shall, with the closure plan and
18 postclosure maintenance plan submitted pursuant to
19 subdivision (b) of Section 43501, submit to the board
20 evidence of financial ability to provide for closure and
21 postclosure maintenance, in an amount that is equal to
22 the estimated cost of closure and 30 years of postclosure
23 maintenance, contained in the closure plan and the
24 postclosure maintenance plan submitted.

25 SEC. 15. Section 43602 of the Public Resources Code
26 is amended to read:

27 43602. (a) Except as provided in subdivision (b),
28 evidence of financial ability required of an owner or
29 operator of a solid waste landfill, as defined in Section
30 40195.1, shall be adjusted to equal the estimated costs of
31 closure and 15 years of postclosure maintenance in the
32 approved plans. Revisions in the plans prior to closure
33 shall be accompanied by corresponding revisions in cost
34 estimates and financial assurances.

35 (b) On and after the effective date of the federal
36 regulations set forth in Subpart G (commencing with
37 Section 258.70) of Part 258 of Title 40 of the Code of
38 Federal Regulations, the evidence of financial ability
39 required of an owner or operator of a solid waste landfill
40 shall be adjusted to equal the estimated costs of closure



1 and 30 years of postclosure maintenance in the approved
2 plans. Revisions in the plans prior to closure shall be
3 accompanied by corresponding revisions in cost
4 estimates and financial assurances.

5 SEC. 16. Section 43610 of the Public Resources Code
6 is amended to read:

7 43610. (a) Notwithstanding Article 3 (commencing
8 with Section 43500) or this article, a small city which
9 operates a solid waste landfill, as defined in Section
10 40195.1, in Kings County, that is operational and, as of
11 January 1, 1991, has been granted all required permits, is
12 not required to submit a postclosure maintenance plan or
13 to provide a fund for postclosure maintenance pursuant
14 to Article 3 (commencing with Section 43500) or this
15 article, if all of the following conditions are met:

16 (1) The city has a population of less than 20,000
17 persons.

18 (2) The solid waste landfill receives less than 20,000
19 tons of solid waste per year.

20 (3) The water table of the highest aquifer under the
21 solid waste landfill is 250 or more feet below the base of
22 the solid waste landfill and the water in the highest
23 aquifer is not potable.

24 (4) The solid waste landfill receives less than an
25 average of 12 inches of rainfall per year.

26 (5) The solid waste landfill is closed in compliance with
27 all state closure testing requirements at the time of
28 closure.

29 (b) The exemption in subdivision (a) from the
30 requirement to submit a postclosure maintenance plan
31 shall become inoperative on the effective date of the
32 federal regulations set forth in Subpart F (commencing
33 with Section 258.60) of Part 258 of Title 40 of the Code of
34 Federal Regulations, and the exemption in subdivision
35 (a) from the requirement to provide a fund for
36 postclosure maintenance shall become inoperative on the
37 effective date of the federal regulations set forth in
38 Subpart G (commencing with Section 258.70) of Part 258
39 of Title 40 of the Code of Federal Regulations.



1 ~~SEC. 17. Section 44009 of the Public Resources Code~~
2 ~~is amended to read:~~

3 ~~44009. (a) (1) The board shall, in writing, concur or~~
4 ~~object to the issuance, modification, or revision of any~~
5 ~~solid waste facilities permit within 60 days from the date~~
6 ~~of the board's receipt of any proposed solid waste facilities~~
7 ~~permit submitted under Section 44007 after~~
8 ~~consideration of the issues in this section.~~

9 ~~(2) If the board determines that the permit is not~~
10 ~~consistent with the state minimum standards adopted~~
11 ~~pursuant to Section 43020, or is not consistent with~~
12 ~~Sections 43040, 43600, 44007, 44010, 44017, 44150, and~~
13 ~~44152 or Division 31 (commencing with Section 50000),~~
14 ~~the board shall object to provisions of the permit, and shall~~
15 ~~submit those objections to the local enforcement agency~~
16 ~~for its consideration.~~

17 ~~(3) Until an integrated waste management plan has~~
18 ~~been approved by the board pursuant to this division for~~
19 ~~the jurisdiction, if the board determines, based on~~
20 ~~substantial evidence in the record, that issuance of the~~
21 ~~permit would prevent or substantially impair~~
22 ~~achievement of the diversion requirements prescribed in~~
23 ~~Section 41780, the board shall object to the permit and~~
24 ~~shall submit its determination and specific objections to~~
25 ~~the local enforcement agency, the applicant, and the city~~
26 ~~or county within which the facility is located for their~~
27 ~~consideration.~~

28 ~~(4) If the board fails to concur or object in writing~~
29 ~~within the 60-day period specified in paragraph (1), the~~
30 ~~board shall be deemed to have concurred in the issuance~~
31 ~~of the permit as submitted to it.~~

32 ~~(b) Notwithstanding subdivision (a), the board is not~~
33 ~~required to concur in, or object to, and shall not be~~
34 ~~deemed to have concurred in, the issuance of a solid waste~~
35 ~~facilities permit for a disposal facility if the owner or~~
36 ~~operator is not in compliance with, as determined by the~~
37 ~~regional water board, an enforcement order issued~~
38 ~~pursuant to Chapter 5 (commencing with Section 13300)~~
39 ~~of Division 7 of the Water Code, or if all of the following~~
40 ~~conditions exist:~~



1 ~~(1) Waste discharge requirements for the disposal~~
2 ~~facility issued by the applicable regional water board are~~
3 ~~pending review in a petition before the state water board.~~

4 ~~(2) The petition for review of the waste discharge~~
5 ~~requirements includes a request for a stay of the waste~~
6 ~~discharge requirements.~~

7 ~~(3) The state water board has not taken action on the~~
8 ~~stay request portion of the pending petition for review of~~
9 ~~waste discharge requirements.~~

10 ~~(e) In objecting to the issuance, modification, or~~
11 ~~revision of any solid waste facilities permit pursuant to~~
12 ~~this section, the board shall, based on substantial evidence~~
13 ~~in the record as to the matter before the board, state its~~
14 ~~reasons for objecting. The board shall not object to the~~
15 ~~issuance, modification, or revision of any solid waste~~
16 ~~facilities permit unless the board finds that the permit is~~
17 ~~not consistent with state minimum standards adopted~~
18 ~~pursuant to Section 43020, or is not consistent with~~
19 ~~Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152~~
20 ~~or Division 31 (commencing with Section 50000).~~

21 ~~(d) Nothing in this section is intended to require that~~
22 ~~a solid waste facility obtain a waste discharge permit from~~
23 ~~a regional water board prior to obtaining a solid waste~~
24 ~~facilities permit.~~

25 *SEC. 17. Section 44009 of the Public Resources Code*
26 *is amended to read:*

27 44009. (a) (1) The board shall, in writing, concur or
28 object to the issuance, modification, or revision of any
29 solid waste facilities permit within 60 days *from the date*
30 of the board's receipt of any proposed solid waste facilities
31 permit submitted under Section 44007 after
32 consideration of the issues in this section.

33 (2) If the board determines that the permit is not
34 consistent with the state minimum standards adopted
35 pursuant to Section 43020, or is not consistent with
36 Sections 43040, 43600, 44007, 44010, 44017, 44150, and
37 44152 or Division 31 (commencing with Section 50000),
38 the board shall object to provisions of the permit and shall
39 submit those objections to the local enforcement agency
40 for its consideration.



1 (3) If the board fails to concur or object in writing
2 within ~~60 days,~~ *the 60-day period specified in paragraph*
3 *(1), the board* shall be deemed to have concurred in the
4 issuance of the permit as submitted to it.

5 (b) Notwithstanding subdivision (a), the board is not
6 required to concur in, or object to, and shall not be
7 deemed to have concurred in, the issuance of a solid waste
8 facilities permit for a disposal facility if the owner or
9 operator is not in compliance with, as determined by the
10 regional water board, an enforcement order issued
11 pursuant to Chapter 5 (commencing with Section 13300)
12 of Division 7 of the Water Code, or if all of the following
13 conditions exist:

14 (1) Waste discharge requirements for the disposal
15 facility issued by the applicable regional water board are
16 pending review in a petition before the state water board.

17 (2) The petition for review of the waste discharge
18 requirements includes a request for a stay of the waste
19 discharge requirements.

20 (3) The state water board has not taken action on the
21 stay request portion of the pending petition for review of
22 waste discharge requirements.

23 (c) In objecting to the issuance, modification, or
24 revision of any solid waste facilities permit pursuant to
25 this section, the board shall, based ~~upon~~ *on* substantial
26 evidence in the record ~~on~~ *as to* the matter before the
27 board, state its reasons for objecting. The board shall not
28 object to the issuance, modification, or revision of any
29 solid waste facilities permit unless ~~it~~ *the board* finds that
30 the permit is not consistent with the state minimum
31 standards adopted pursuant to Section 43020, or is not
32 consistent with Section 43040, 43600, 44007, 44010, 44017,
33 44150, or 44152 or Division 31 (commencing with Section
34 50000).

35 (d) *Nothing in this section is intended to require that*
36 *a solid waste facility obtain a waste discharge permit from*
37 *a regional water board prior to obtaining a solid waste*
38 *facilities permit.*

39 SEC. 18. Section 44106 of the Public Resources Code
40 is amended to read:



1 44106. (a) The enforcement agency shall develop a
2 compliance schedule for a solid waste facility included in
3 the inventory prepared pursuant to Section 44104. The
4 compliance schedule shall ensure that diligent progress
5 will be made to bring the solid waste facility into
6 compliance.

7 (b) Except as provided in subdivision (d), if the solid
8 waste facility is not in compliance with the schedule
9 established by the enforcement agency, the enforcement
10 agency may revoke the operating permit of the solid
11 waste facility until the violations of state minimum
12 standards are remedied. If a closed or abandoned disposal
13 site is not in compliance within the one-year period, the
14 unremedied condition is prima facie evidence of
15 negligence; and, in any action for damages against the
16 owner of the property for injury caused by the
17 unremedied condition, the burden of proving that the
18 injury was not caused by the unremedied condition shall
19 be on the owner of the property.

20 (c) The enforcement agency may recover any costs
21 incurred pursuant to this section by charging the fee
22 authorized by Section 43213.

23 (d) The enforcement agency shall refer violations of a
24 waste discharge requirement adopted under Section
25 13263 of the Water Code to the appropriate regional
26 water board.

27 SEC. 19. Section 48670 of the Public Resources Code
28 is amended to read:

29 48670. To be eligible for payment of a recycling
30 incentive, an industrial generator of used lubricating oil,
31 a used oil collection center, or a curbside collection
32 program shall report to the board, for each quarter, the
33 amount of lubricating oil purchased and the amount of
34 used lubricating oil that is transported to a certified used
35 oil recycling facility, or to a used oil storage facility or to
36 a used oil transfer facility, or that is transported to an
37 out-of-state recycling facility registered with the
38 Environmental Protection Agency and permitted to
39 operate by the applicable regulatory agency of the state
40 in which the facility is located, or that is used to generate



1 electricity pursuant to subdivision (b) of Section 48651.
2 The reports shall be submitted on or before the 45th day
3 following each quarter, in the form and manner which
4 the board may prescribe, and shall include copies of
5 manifests or modified manifest receipts from used oil
6 haulers. The board may delegate to the executive officer
7 of the board the authority to accept reports submitted
8 after the 45th day and to reduce, eliminate, or approve
9 the amount of incentive fee to be paid due to the late
10 submission of the report. The board may provide, by
11 regulation, for a longer reporting period for industrial
12 generators that generate less than 1,000 gallons of used oil
13 annually.

14 *SEC. 20. Section 2.5 of this bill incorporates*
15 *amendments to Section 11126 of the Government Code*
16 *proposed by both this bill and SB 1803. It shall only*
17 *become operative if (1) both bills are enacted and*
18 *become effective on January 1, 1997, (2) each bill amends*
19 *Section 11126 of the Government Code, and (3) this bill*
20 *is enacted after SB 1803, in which case Section 2 of this bill*
21 *shall not become operative.*

