

Complete Text of Selected Solid Waste Bills

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Assembly Bill No. 1343

CHAPTER 420

An act to add Chapter 5 (commencing with Section 48700) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 28, 2010. Filed with Secretary of State September 28, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1343, Huffman. Solid waste: architectural paint: recovery program.

Existing law prohibits the disposal of latex paint in the land or waters of the state and authorizes certain persons to accept latex paint for recycling.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would create an architectural paint recovery program that would be enforced by the department. On or before April 1, 2012, a manufacturer or designated stewardship organization would be required to submit to the department an architectural paint stewardship plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal. The plan would be required to contain specified elements of an architectural paint stewardship program, including, but not limited to, an architectural paint stewardship assessment, approved by the department, on each container of architectural paint sold in this state. The bill would require the plan to be reviewed and approved by the department within 90 days of receipt.

This bill would require, on or before July 1, 2012, or 3 months after a plan is approved by the department, the manufacturer or stewardship organization to implement the architectural paint stewardship program described in the approved plan.

The bill would also prohibit a manufacturer or retailer from selling or offering for sale architectural paint to any person in this state, unless the manufacturer is listed on the department's Internet Web site as being in compliance with the bill's requirements. The prohibition would be in effect on the 120th day after a notice listing the manufacturers that are in compliance is posted on the department's Internet Web site and would remain in effect with regard to a noncompliant manufacturer until that manufacturer is listed on the department's Internet Web site or can otherwise demonstrate compliance, as prescribed.

This bill would authorize the department to administratively impose civil penalties for violations of the act.

The bill would also require a stewardship organization to pay the department annual administrative fees in the amount that is sufficient to cover the department's full costs of administering and enforcing the program.

The bill would establish the Paint Recovery Account in the Integrated Waste Management Fund, would require the fees to be deposited in this account, and would require the department to expend those fees, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions. The bill would also establish the Paint Recovery Penalty Subaccount in the Integrated Waste Management Fund, would require the penalties collected to be deposited in that subaccount, and would authorize the department to expend those funds, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would require manufacturers to submit a report to the department by July 1, 2013, and each year thereafter, describing their paint recovery efforts.

The bill would provide that certain actions taken pursuant to the program established by the bill do not violate the Cartwright Act or the Unfair Practices Act.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Architectural paint is a priority waste type based on its high volume, subsequent cost to manage, and high potential for increased recovery, reuse, and recycling.

(b) The Department of Toxic Substances Control has deemed latex paint as presumed hazardous in California and oil-based paint is characteristically hazardous, making both latex and oil-based paints prohibited from disposal in California.

(c) The former California Integrated Waste Management Board estimated that architectural paint, both latex and oil-based, comprises the largest volume of waste product collected at publicly operated household hazardous waste facilities, 35 percent of total household hazardous waste collected in California in the 2007–08 fiscal year.

(d) The Department of Toxic Substances Control estimates that the cost to manage waste architectural paint in California is the single largest cost to local governments in the household hazardous waste system.

(e) The former board estimated that for the 2007–08 fiscal year only 5 percent of California households utilized a household hazardous waste program.

(f) Architectural paint is convenient to buy and inconvenient to recycle or legally dispose of in California.

(g) There has been an ongoing debate on how to better manage leftover architectural paint since 1989 when the board heard an item on options to fund a collection and management system.

(h) A national dialogue has been ongoing since 2002, yet has not resulted in any architectural paint collection or financial relief to California local governments.

(i) California has the largest number of latex paint recyclers in the country: Amazon Environmental (Riverside), Kelly-Moore (Sacramento), and Visions (Sacramento).

(j) State procurement of recycled paint is required. The state agency “buy recycled” mandates are not being met, and there is no enforcement mechanism, resulting in only 2 percent compliance reporting to the board.

SEC. 2. Chapter 5 (commencing with Section 48700) is added to Part 7 of Division 30 of the Public Resources Code, to read:

CHAPTER 5. ARCHITECTURAL PAINT RECOVERY PROGRAM

48700. The purpose of the architectural paint recovery program established pursuant to this chapter is to require paint manufacturers to develop and implement a program to collect, transport, and process postconsumer paint to reduce the costs and environmental impacts of the disposal of postconsumer paint in this state.

48701. For purposes of this chapter, the following terms have the following meanings:

(a) “Architectural paint” means interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include aerosol spray paint or architectural coatings purchased for industrial or original equipment manufacturer use.

(b) “Consumer” means a purchaser or owner of architectural paint, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(c) “Department” means the Department of Resources Recycling and Recovery.

(d) “Distributor” means a person that has a contractual relationship with one or more manufacturers to market and sell architectural paint to retailers.

(e) “Manufacturer” means a manufacturer of architectural paint.

(f) “Postconsumer paint” means architectural paint not used by the purchaser.

(g) “Retailer” means a person that sells architectural paint in the state to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means.

(h) “Stewardship organization” means a nonprofit organization created by the manufacturers to implement the architectural paint stewardship program described in Section 48703.

48702. (a) A manufacturer of architectural paint sold in this state shall, individually or through a stewardship organization, submit an architectural paint stewardship plan to the department to develop and implement a recovery program to reduce the generation of postconsumer architectural paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.

(b) (1) A manufacturer or retailer shall not sell or offer for sale in this state architectural paint to any person in this state unless the manufacturer is in compliance with this chapter.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) is posted on the department's Internet Web site, and shall apply to any manufacturer that is not listed on the department's Internet Web site, and shall remain in effect until the manufacturer is listed on the department's Internet Web site or can demonstrate compliance as described in paragraph (2) of subdivision (c).

(c) (1) On July 1, 2012, or upon the date the first plan is approved, whichever date is earlier, the department shall post on its Internet Web site a list of manufacturers for which the department has approved a plan pursuant to subdivision (a) of Section 48704. The department shall update this posting no less than once every six months thereafter. On and after April 1, 2013, the department shall post a notice on its Internet Web site listing manufacturers that are in compliance with this chapter pursuant to subdivision (b) of Section 48705 and shall update this posting no less than once every six months.

(2) A manufacturer that is not listed on the department's Internet Web site pursuant to this section, but demonstrates to the satisfaction of the department that it is in compliance with this chapter before the next notice is required to be posted pursuant to this section, may request a certification letter from the department stating that the manufacturer is in compliance. The manufacturer who receives that letter shall be deemed to be in compliance with this chapter.

(d) A wholesaler or a retailer that distributes or sells architectural paint shall monitor the department's Internet Web site to determine if the sale of a manufacturer's architectural paint is in compliance with this chapter.

48703. (a) On or before April 1, 2012, a manufacturer or designated stewardship organization shall submit an architectural paint stewardship plan to the department.

(b) (1) The plan shall demonstrate sufficient funding for the architectural paint stewardship program as described in the plan, including a funding mechanism for securing and dispersing funds to cover administrative, operational, and capital costs, including the assessment of charges on architectural paint sold by manufacturers in this state.

(2) The funding mechanism shall provide for an architectural paint stewardship assessment for each container of architectural paint sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.

(3) The architectural paint stewardship assessment shall be added to the cost of all architectural paint sold to California retailers and distributors, and each California retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in the state.

(4) The architectural paint stewardship assessment shall be approved by the department as part of the plan, and shall be sufficient to recover, but not exceed, the cost of the architectural paint stewardship program. The plan shall require that any surplus funds be put back into the program to reduce the costs of the program, including the assessment amount.

(c) The plan shall address the coordination of the architectural paint stewardship program with existing local household hazardous waste collection programs as much as this is reasonably feasible and is mutually agreeable between those programs.

(d) The plan shall include goals established by the manufacturer or stewardship organization to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, including recovery and recycling of postconsumer paint, as practical, based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(e) The plan shall include consumer, contractor, and retailer education and outreach efforts to promote the source reduction and recycling of architectural paint. This information may include, but is not limited to, developing, and updating as necessary, educational and other outreach materials aimed at retailers of architectural paint. These materials shall be made available to the retailers. These materials may include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer.

(2) Written materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery, or both. Written materials shall include information on the prohibition of improper disposal of architectural paint.

(3) Advertising or other promotional materials, or both, that include references to architectural paint recycling opportunities.

(f) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program.

48704. (a) The department shall review the plan within 90 days of receipt, and make a determination whether or not to approve the plan. The department shall approve the plan if it provides for the establishment of a paint stewardship program that meets the requirements of Section 48703.

(b) (1) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or the stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with Section

6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(2) Notwithstanding paragraph (1), the department may release a summary form of financial, production, or sales data if it does not disclose financial, production, or sales data of a manufacturer or stewardship organization.

(c) On or before July 1, 2012, or three months after a plan is approved pursuant to subdivision (a), whichever date is later, the manufacturer or stewardship organization shall implement the architectural paint stewardship program described in the approved plan.

(d) The department shall enforce this chapter.

(e) (1) The stewardship organization shall pay the department an annual administrative fee pursuant to paragraph (2).

(2) The department shall impose fees in an amount that is sufficient to cover the department's full costs of administering and enforcing this chapter, including any program development costs or regulatory costs incurred by the department prior to the submittal of the stewardship plans. Fee revenues collected under this section shall only be used to administer and enforce this chapter.

(f) (1) A civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount of up to one thousand dollars (\$1,000) per violation per day.

(2) A person who intentionally, knowingly, or negligently violates this chapter may be assessed a civil penalty by the department of up to ten thousand dollars (\$10,000) per violation per day.

48705. (a) On or before July 1, 2013, and each year thereafter, a manufacturer of architectural paint sold in this state shall, individually or through a representative stewardship organization, submit a report to the department describing its architectural paint recovery efforts. At a minimum, the report shall include all of the following:

(1) The total volume of architectural paint sold in this state during the preceding calendar year.

(2) The total volume of postconsumer architectural paint recovered in this state during the preceding calendar year.

(3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state.

(4) The total cost of implementing the architectural paint stewardship program.

(5) An evaluation of how the architectural paint stewardship program's funding mechanism operated.

(6) An independent financial audit funded from the paint stewardship assessment.

(7) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.

(b) The department shall review the annual report required pursuant to this section and within 90 days of receipt shall adopt a finding of compliance or noncompliance with this chapter.

48706. (a) Except as provided in subdivision (c), an action solely to increase the recycling of architectural paint by a producer, stewardship organization, or retailer that affects the types or quantities being recycled, or the cost and structure of any return program, is not a violation of the statutes specified in subdivision (b).

(b) The following statutes are not violated by an action specified in subdivision (a):

(1) The Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(2) The Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(c) Subdivision (a) shall not apply to any agreement establishing or affecting the price of paint, except for the architectural paint stewardship assessment, or the output or production of paint, or any agreement restricting the geographic area or customers to which paint will be sold.

Assembly Bill No. 1004

CHAPTER 417

An act to amend Sections 48000, 48010, 48012, and 48013 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 28, 2010. Filed with
Secretary of State September 28, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1004, Portantino. Solid waste: State Solid Waste Postclosure and Corrective Action Trust Fund.

(1) The California Integrated Waste Management Act of 1989 requires a solid waste disposal fee, on and after January 1, 2012, to be increased by \$0.12 per ton for each operator of a solid waste landfill that notifies the Department of Resources Recycling and Recovery that it elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund, which is available for expenditure, upon appropriation by the Legislature, for corrective action and postclosure activities. However, the fee will not be operative on or after January 1, 2012, unless the department receives, on or before July 1, 2011, letters of participation in the fund from landfill operators representing at least 50% of the total volume of waste disposed of in 2010. The act requires the department to notify the State Board of Equalization on or before August 31, 2011, if the increased fee will become operative.

This bill would extend all of those dates by 6 months, except the total volume of waste would still be measured by the 2010 standard, with the exception that letters of participation would be based on submission of those letters by landfill owners rather than landfill operators. The bill also would impose the participation notification requirements on the owner of a landfill rather than the operator.

(2) The act requires an operator of a landfill that meets specified requirements, including electing to participate in the fund, to submit written notice to the department on or before July 1, 2011. The act requires an operator that is operating a landfill on July 1, 2011, and submits that notice after the increased fee goes into effect to pay all trust fund fees applicable from January 1, 2012, and a 5% penalty before being allowed to participate. For a new landfill that receives a solid waste facility permit after July 1, 2011, the act requires the operator's election to participate in the fund to be submitted in writing to the department before the department concurs in the issuance of the permit. The act also requires an operator of multiple landfills who is required to maintain evidence of financial ability and whose landfills are operating on July 1, 2011, to include all other landfills in which that operator has in common ownership in the letter of participation.

This bill would extend all of those dates by 6 months, and would apply those requirements to owners rather than operators. Additionally, a landfill with multiple owners would be authorized to participate only if all owners of that landfill elect to participate, and participation of a landfill with multiple owners would not obligate a partial owner of that landfill to include any other landfills at which the owner has full or partial ownership.

(3) The act requires the department after January 1, 2015, to report annually on expenditures from the fund, the status of cost recovery actions, and any recommended statutory changes that are necessary to ensure adequate resources are available to carry out the purposes of the fund.

This bill would require the department to begin that annual reporting after January 1, 2016, rather than January 1, 2015.

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

SECTION 1. Section 48000 of the Public Resources Code is amended to read:

48000. (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization, which is based on the amount, by weight or volumetric equivalent, as determined by the Department of Resources Recycling and Recovery, of all solid waste disposed of at each disposal site.

(b) (1) The fee for solid waste disposed of shall be one dollar and thirty-four cents (\$1.34) per ton. Commencing with the 1995–96 fiscal year, the amount of the fee shall be established by the Department of Resources Recycling and Recovery at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents (\$1.40) per ton.

(2) On and after July 1, 2012, the amount of the fee established by the Department of Resources Recycling and Recovery pursuant to paragraph (1) shall be increased by twelve cents (\$0.12) per ton for each operator of a solid waste landfill whose owner has notified the department that it elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to Article 2.1 (commencing with Section 48010).

(c) The Department of Resources Recycling and Recovery shall notify the state board on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to paragraphs (1) and (2) of subdivision (b).

(d) The Department of Resources Recycling and Recovery and the state board shall ensure that all of the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the state board in accordance with this article.

(e) (1) The fee imposed by paragraph (2) of subdivision (b) shall not be operative on or after July 1, 2012, unless the Department of Resources Recycling and Recovery receives, on or before January 1, 2012, letters of participation in the State Solid Waste Postclosure and Corrective Action

Trust Fund from landfill owners representing at least 50 percent of the total volume of waste disposed of in 2010.

(2) The Department of Resources Recycling and Recovery shall notify the state board, on or before February 29, 2012, if the fee imposed by paragraph (2) of subdivision (b) shall become operative pursuant to paragraph (1).

SEC. 2. Section 48010 of the Public Resources Code is amended to read:

48010. (a) (1) An owner of a landfill for which evidence of financial ability is maintained pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, whose landfill is operating on January 1, 2012, and that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund pursuant to this article, shall submit written notice to the Department of Resources Recycling and Recovery on or before January 1, 2012.

(2) Except as provided in paragraph (3), an owner of multiple landfills that elects to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund is required to submit written notice that includes all of the owner's operating landfills and all other landfills in which that owner has in common ownership.

(3) A landfill with multiple owners may participate only if all owners of that landfill elect to participate. Participation of a landfill with multiple owners shall not obligate a partial owner of that landfill to include any other landfill at which that owner has full or partial ownership.

(4) The Department of Resources Recycling and Recovery shall provide to the state board the name and address, and any other information necessary to administer and collect the fee imposed pursuant to paragraph (2) of subdivision (b) of Section 48000, of every owner of a landfill electing to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund on or before February 29, 2012.

(b) If an operator that is operating a landfill on January 1, 2012, submits a written notification to the Department of Resources Recycling and Recovery that it elects to participate after the trust fund fee goes into effect, the operator shall pay all trust fund fees applicable from July 1, 2012, and a 5-percent penalty before being allowed to participate.

(c) For new landfills that receive a solid waste facility permit after January 1, 2012, the owner's election to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund shall be submitted in writing to the Department of Resources Recycling and Recovery before the department concurs in the issuance of the permit pursuant to Section 44009.

(d) All elections to participate made by landfill owners pursuant to this section are final, binding, and irrevocable for those owners and their successors and assignees.

SEC. 3. Section 48012 of the Public Resources Code is amended to read:

48012. After January 1, 2016, as part of the annual report required pursuant to Section 40507, the Department of Resources Recycling and Recovery shall report on expenditures from the State Solid Waste Postclosure and Corrective Action Trust Fund, the status of cost recovery actions, and

any recommended statutory changes that are necessary to ensure adequate resources are available to carry out the purposes of the State Solid Waste Postclosure and Corrective Action Trust Fund.

SEC. 4. Section 48013 of the Public Resources Code is amended to read:

48013. Except as provided in paragraph (3) of subdivision (a) of Section 48010, an owner of multiple landfills for which evidence of financial ability is maintained pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4 and whose landfills are operating on January 1, 2012, shall include all other landfills in which that owner has in common ownership in the letter of participation.

Assembly Bill No. 2398

CHAPTER 681

An act to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of, and to repeal Section 42980 of, the Public Resources Code, relating to recycling.

[Approved by Governor September 30, 2010. Filed with Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, John A. Pérez. Product stewardship: carpet.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

The bill would require, by September 30, 2011, a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department, which would be required to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan, including administrative, operational, and capital costs of the plan, the payment of fees, and incentive payments. The bill would require the funding mechanism to establish and provide for, on and after January 1, 2013, a carpet stewardship assessment to be added to the purchase price of carpet sold in the state by a manufacturer to a California retailer or wholesaler or otherwise sold for use in the state and would require each retailer and wholesaler to add the assessment to the purchase price of all carpet sold in the state.

The bill would require, until April 1, 2015, the Carpet America Recovery Effort (CARE), a 3rd-party nonprofit carpet stewardship organization, to serve as the carpet stewardship organization and would allow, on and after April 1, 2015, a carpet stewardship organization appointed by one or more manufacturers, to submit a plan.

The bill would require, as of July 1, 2011, until January 1, 2013, a manufacturer of carpet to add an assessment of \$0.05 per square yard upon the purchase price of all carpet sold in the state by that manufacturer. The bill would require the assessment to be remitted on a quarterly basis, as appropriate, to CARE or would allow the manufacturer to retain that assessment. The bill would require these revenues to be spent by CARE or by an individual manufacturer, prior to approval of its carpet stewardship plan, only to implement early action measures that are consistent to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

The department would be required to, among other things, within 60 days after the department receives a plan, review and determine whether the plan complies with the bill's requirements and notify the submitter of its decision. The bill would specify that any plan not approved by March 31, 2012, is out of compliance until determined to be complete by the department.

The bill would provide that a manufacturer, wholesaler, or retailer, on and after April 1, 2012, that offers carpet for sale or promotional purposes without an approved plan for that carpet is not in compliance with the act's requirements. The bill would require the department, by July 1, 2012, and not later than January 1 and July 1 annually thereafter, to post a notice on its Internet Web site listing manufacturers that are in compliance with the bill's requirements. The bill would require a wholesaler or retailer that distributes or sells carpets to monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance.

The act would also require the carpet stewardship organization to demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling and diversion and other specified goals in order to be in compliance.

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan.

A manufacturer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an annual administrative fee, as determined by the department. The bill would also require the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of carpet stewardship plans and to establish a fee in an amount adequate to cover those costs, that would be required to be paid by a carpet stewardship organization that submits a carpet stewardship plan. The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill and would provide that a plan submitter whose plan is not approved by the department by March 31, 2012, is subject to those penalties until the plan is approved. The bill would establish the Carpet Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Carpet Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would require the department and the Department of General Services to complete a study, by January 1, 2014, that examines the specifications for carpet purchases by the state, as provided in the NSF/ANSI 140-2007 Standard, Platinum Level, and to submit the study to the Governor

and the Legislature, including recommendations for any appropriate changes to that standard.

The bill would provide that certain actions of a carpet stewardship organization or its members are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

The bill would require the Department of General Services to revise relevant procurement rules to ensure that postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purposes of the bill.

(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, as prescribed, and to establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.

This bill would require the Department of Toxic Substances Control to fully consider the measures taken by the carpet industry pursuant to the program established by the bill, and the results of those measures, when considering whether to include carpet in the product registry adopted under those provisions or to otherwise regulate carpet pursuant to those provisions.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Discarded carpet is one of the 10 most prevalent waste materials in California landfills, equaling 3.2 percent of waste by volume disposed of in California in 2008. Because carpet is heavy and bulky, it imposes a significant solid waste management cost on local governments.

(b) Numerous products can be manufactured from recycled carpets, including carpet backing and backing components, carpet fiber, carpet underlayment, plastics and engineered materials, and erosion control products. Several carpet recycling facilities currently operate in California, producing products and feedstock for products made from recycled carpet.

(c) The United States carpet industry has established a third-party nonprofit organization, the Carpet America Recovery Effort, also known as CARE, to work with state governments to increase the amount of recycling and reuse of postconsumer carpet and reduce the amount of carpet going to landfills.

(d) CARE represents at least 90 percent of United States carpet manufacturers and 95 percent of the volume of carpet sold in the United States.

(e) According to CARE, in 2008, the most recent year for which data are available, 5.2 percent of carpet was diverted from landfills and 4.3 percent was recycled.

(f) It is in the interest of the state to establish a program, working to the extent feasible with the carpet industry and related reclamation entities, to increase the landfill diversion and recycling of postconsumer carpet generated in California.

SEC. 2. Chapter 20 (commencing with Section 42970) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS

42970. The purpose of this chapter is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051.

42971. For purposes of this chapter, and unless the context otherwise requires, the definitions in this section govern the construction of this chapter:

(a) "Brand" means a name, symbol, word, or mark that identifies the carpet, rather than its components, and attributes the carpet to the owner or licensee of the brand as the manufacturer.

(b) "CARE" means the Carpet America Recovery Effort, a third-party nonprofit carpet stewardship organization incorporated as a nonprofit corporation pursuant to Section 501(c)(3) of Title 26 of the United States Code in 2002 and established to increase the reclamation and stewardship of postconsumer carpet.

(c) "CARE MOU" means the 2012 Memorandum of Understanding for Carpet Stewardship, as to be negotiated among the carpet industry, states, and nongovernmental organization stakeholders as a successor to the 2002 memorandum of understanding.

(d) (1) "Carpet" means a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

(2) "Carpet" includes, but is not limited to, a commercial or a residential broadloom carpet or modular carpet tiles.

(3) "Carpet" does not include a rug, pad, cushion, or underlayment used in conjunction with, or separately from, a carpet.

(e) (1) "Carpet stewardship organization" or "organization" means either of the following:

(A) An organization appointed by one or more manufacturers to act as an agent on behalf of the manufacturer to design, submit, and administer a carpet stewardship plan pursuant to this chapter.

(B) A carpet manufacturer that complies with this chapter as an individual manufacturer.

(2) Notwithstanding paragraph (1), until April 1, 2015, CARE shall be the sole carpet stewardship organization pursuant to subparagraph (A) of paragraph (1).

This paragraph does not restrict the option of an individual carpet manufacturer to comply with this chapter as a carpet stewardship organization, on and after January 1, 2011, pursuant to subparagraph (B) of paragraph (1).

(f) “Carpet stewardship plan” or “plan” means a plan written by an individual manufacturer or a carpet stewardship organization, on behalf of one or more manufacturers, that includes all of the information required by Section 42972.

(g) “Consumer” means a purchaser, owner, or lessee of carpet, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(h) “Department” means the Department of Resources Recycling and Recovery.

(i) “Label” means a graphic representation of three chasing arrows with a carpet roll inside the arrows, or an alternative design, designed by CARE, after consultation with retailers and wholesalers, and approved by the department for use on all invoices or functionally equivalent billing documents pursuant to subparagraph (C) of paragraph (3) of subdivision (c) of Section 42972.

(j) “Manufacturer” means, with regard to a carpet that is sold, offered for sale, or distributed in the state any of the following:

(1) The person who manufactures the carpet and who sells, offers for sale, or distributes that carpet in the state under that person’s own name or brand.

(2) If there is no person who sells, offers for sale, or distributes the carpet in the state under the person’s own name or brand, the manufacturer of the carpet is the owner or licensee of a trademark or brand under which the carpet is sold or distributed in the state, whether or not the trademark is registered.

(3) If there is no person who is a manufacturer of the carpet for the purpose of paragraphs (1) and (2), the manufacturer of that carpet is the person who imports the carpet into the state for sale or distribution.

(k) “Postconsumer carpet” means carpet that is no longer used for its manufactured purpose.

(l) “Recycling” means the process, consistent with Section 40180, of converting postconsumer carpet into a useful product that meets the quality standards necessary to be used in the marketplace.

(m) “Retailer” means a person who offers new carpet in a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, including a retail sale through any means, including remote offerings such as sales outlets, catalogs, or an Internet Web site or other similar electronic means.

(n) “Sell” or “sales” means a transfer of title of a carpet for consideration, including a remote sale conducted through a sales outlet, catalog, Internet Web site or similar electronic means. For purposes of this chapter, “sell”

or “sales” includes a lease through which a carpet is provided to a consumer by a manufacturer, wholesaler, or retailer.

(o) “Wholesaler” means a person who offers new carpet for sale in this state in a sale that is not a retail sale, as defined in Section 6007 of the Revenue and Taxation Code, and in which the carpet is intended to be resold.

42972. (a) On or before September 30, 2011, a manufacturer of carpets sold in this state shall, individually or through a carpet stewardship organization, submit a carpet stewardship plan to the department that will do all of the following:

(1) Achieve the purposes of this chapter, as described in Section 42970, and meet the requirements of Section 42975.

(2) Include goals that, to the extent feasible based on available technology and information, increase the recycling of postconsumer carpet, increase the diversion of postconsumer carpets from landfills, increase the recyclability of carpets, and incentivize the market growth of secondary products made from postconsumer carpet. The goals established in the plan shall, at a minimum, be equal to the goals established in the CARE MOU, if it has been adopted at the time the plan is submitted to the department.

(3) Describe proposed measures that will enable the management of postconsumer carpet in a manner consistent with the state’s solid waste management hierarchy, including, but not limited to, source reduction, source separation and processing to segregate and recover recyclable materials, and environmentally safe management of materials that cannot feasibly be recycled.

(4) Include a funding mechanism, consistent with subdivision (c), that provides sufficient funding to carry out the plan, including the administrative, operational, and capital costs of the plan, payment of fees pursuant to Section 42977, and incentive payments that will advance the purposes of this chapter.

(5) Include education and outreach efforts to consumers, commercial building owners, carpet installation contractors, and retailers to promote their participation in achieving the purposes of the carpet stewardship plan as described in paragraph (1). These education and outreach materials may include, but are not limited to, any of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials and templates of materials for reproduction by retailers to be provided to carpet installation contractors and consumers at the time of purchase or delivery or both.

(C) Promotional materials or activities, or both, that explain the purpose of carpet stewardship and the means by which it is being carried out.

(6) Include a process by which the financial activities of the organization or individual manufacturer that are related to implementation of the plan will be subject to an independent audit, which may be reviewed by the department.

(b) The plan prepared pursuant to this section shall be designed to accept and manage all suitable postconsumer carpet, regardless of polymer type or primary materials of construction.

(c) (1) The funding mechanism required pursuant to paragraph (4) of subdivision (a) shall establish and provide for, on and after January 1, 2013, a carpet stewardship assessment per unit of carpet sold in the state in an amount that cumulatively will adequately fund the plan and be consistent with the purposes of the chapter. The assessment shall be remitted to the carpet stewardship organization on a quarterly basis and the carpet stewardship organization may expend the assessment only to carry out the plan.

(2) The amount of the assessment and the anticipated revenues from the assessment shall be specified in the plan and shall be approved by the department as part of the plan. The amount of the assessment shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the plan. The amount of the assessment shall not create an unfair advantage in the marketplace.

(3) The assessment established pursuant to this subdivision and Section 42972.5 is exempt from the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code and shall meet both of the following requirements:

(A) The assessment shall be added by a manufacturer to the purchase price of all carpet sold by manufacturers to a California retailer or wholesaler or otherwise sold for use in the state. The assessment shall be clearly visible on invoices or functionally equivalent billing documents as a separate line item and shall be accompanied by a brief description of the assessment or a label approved by the department.

(B) Each retailer and wholesaler shall add the assessment to the purchase price of all carpet sold in the state. The assessment shall be clearly visible on invoices or functionally equivalent billing documents as a separate line item and shall be accompanied by a brief description of the assessment or a label approved by the department.

(d) A carpet stewardship organization that submits a plan pursuant to this section shall consult with retailers and wholesalers in the development of the plan, in order to minimize the impacts of the plan on retailers and wholesalers.

(e) A carpet stewardship organization shall notify the department within 30 days after instituting a significant or material change to an approved carpet stewardship plan.

42972.5. (a) Notwithstanding paragraph (1) of subdivision (c) of Section 42972, on and after July 1, 2011, but not on or after January 1, 2013, a manufacturer of carpet shall add a carpet stewardship assessment of five cents (\$0.05) per square yard to the purchase price of all carpet sold in the state by that manufacturer. The assessment added pursuant to this subdivision shall be remitted on a quarterly basis, as appropriate, to CARE or be retained by the individual manufacturer referred to in subparagraph (B) of paragraph (1) of subdivision (d) of Section 42971, for expenditure pursuant to subdivision (b).

(b) Prior to approval of a carpet stewardship plan, CARE or an individual manufacturer shall spend revenues from the assessment imposed pursuant

to subdivision (a) only to implement early action measures that are consistent with the purposes of this chapter and that are designed to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

42973. (a) (1) Within 60 days after the department receives a plan submitted pursuant to Section 42972, it shall review the plan, determine whether it complies with Section 42972, and notify the submitter of its decision to approve or not approve the plan.

(2) On or after April 1, 2015, an organization appointed by one or more manufacturers to act as an agent on behalf of the manufacturer to design, submit, and administer a carpet stewardship plan pursuant to this chapter may submit a plan to the department pursuant to Section 42972 and that plan may be approved by the department, subject to the requirements of paragraph (1), only if the department makes both of the following findings:

(A) The plan will not have the effect of reducing the level of diversion and recycling of postconsumer carpet that has been achieved pursuant to this chapter at the time the department reviews the plan.

(B) The amount of the assessment in the plan will not create an unfair advantage in the marketplace for one or more of the companies in the organization.

(b) If the department does not approve the plan, it shall describe the reasons for its disapproval in the notice. The submitter may revise and resubmit the plan within 60 days after receiving notice of disapproval and the department shall review and approve or not approve the revised plan within 60 days after receipt. Any plan not approved by March 31, 2012, shall be out of compliance with this chapter and the submitter of the plan is subject to the penalties specified in Section 42978 until the plan is approved by the department.

42974. (a) The department shall enforce this chapter.

(b) On and after April 1, 2012, a manufacturer, wholesaler, or retailer that offers a carpet for sale in this state, or who offers a carpet for promotional purposes in this state, is not in compliance with this chapter and is subject to penalties pursuant to Section 42978, if the carpet is not subject to a plan that is submitted by an organization that includes the manufacturer of that carpet, which plan has been approved by the department pursuant to Section 42973.

(c) (1) On July 1, 2012, and not later than January 1 and July 1 annually thereafter, the department shall post a notice on its Internet Web site listing manufacturers that are in compliance with this chapter.

(2) A manufacturer that is not listed on the department's Internet Web site pursuant to this subdivision, but demonstrates to the satisfaction of the department that the manufacturer is in compliance with this chapter before the next notice is required to be posted, may request a certification letter from the department stating that the manufacturer is in compliance. The letter shall constitute proof of compliance with this chapter.

(d) A wholesaler or retailer that distributes or sells carpet shall monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance with the requirements of this chapter.

Notwithstanding Section 42978, a wholesaler or retailer otherwise in compliance with this chapter shall be deemed in compliance with this section if, on the date the wholesaler or retailer ordered or purchased carpet, the manufacturer was listed as a compliant manufacturer on the department's Internet Web site.

42975. (a) In order to achieve compliance with this chapter, a carpet stewardship organization shall, on or before July 1, 2013, and annually thereafter, demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet subject to its stewardship plan and in meeting the other goals included in the organization's plan pursuant to paragraph (2) of subdivision (a) of Section 42972. In determining compliance, the department shall consider all of the following:

(1) The baseline rate of compliance against which the demonstrated improvement is compared.

(2) The goals included in the CARE MOU.

(3) Information provided in the organization's report to the department pursuant to Section 42976.

(b) If more than one organization submits a carpet stewardship plan pursuant to this chapter, the department shall use information submitted by the organization in its annual report pursuant to Section 42976 to determine to what extent the recycling and diversion rates and the achievement of the other goals included in the plan are attributable to each organization and shall determine compliance with this chapter accordingly.

42976. On or before July 1, 2013, and each year thereafter, a manufacturer of carpet sold in the state shall, individually or through a carpet stewardship organization, submit to the department a report describing its activities to achieve the purposes of this chapter, as described in Section 42970, and to comply with Section 42975. At a minimum, the report shall include all of the following:

(a) The amount of carpet sold by square yards and weight, in the state during the reporting period. A carpet stewardship organization with more than one manufacturer may use average weight.

(b) The amount of postconsumer carpet recycled, by weight, during the reporting period.

(c) The amount of postconsumer carpet recovered but not recycled, by weight, and its ultimate disposition.

(d) The total cost of implementing the carpet stewardship plan.

(e) An evaluation of the effectiveness of the carpet stewardship plan, and anticipated steps, if needed, to improve performance.

(f) Examples of educational materials that were provided to consumers during the reporting period.

42977. (a) The carpet stewardship organization submitting a carpet stewardship plan shall pay the department an annual administrative fee. The department shall set the fee at an amount that, when paid by every carpet stewardship organization that submits a carpet stewardship plan, is adequate to cover the department's full costs of administering and enforcing this

chapter, including any program development costs or regulatory costs incurred by the department prior to carpet stewardship plans being submitted. The department may establish a variable fee based on relevant factors, including, but not limited to, the portion of carpets sold in the state by members of the organization compared to the total amount of carpet sold in the state by all organizations submitting a carpet stewardship plan.

(b) The total amount of annual fees collected pursuant to this section shall not exceed the amount necessary to recover costs incurred by the department in connection with the administration and enforcement of the requirements of this chapter.

(c) The department shall identify the direct development or regulatory costs it incurs pursuant to this chapter prior to the submittal of a carpet stewardship plan and shall establish a fee in an amount adequate to cover those costs, which shall be paid by a carpet stewardship organization that submits a carpet stewardship plan. The fee established pursuant to this subdivision shall be paid in three equal payments pursuant to the schedule specified in subdivision (d).

(d) A carpet stewardship organization subject to this section shall pay the department the administrative fee pursuant to subdivision (a) on or before July 1, 2012, and annually thereafter and the applicable portion of the fee pursuant to subdivision (c) on July 1, 2012, and annually thereafter through July 1, 2014. Each year after the initial payment, the annual administrative fee may not exceed 5 percent of the aggregate assessment collected for the preceding calendar year.

(e) The department shall deposit the fees collected pursuant to this section into the Carpet Stewardship Account created pursuant to Section 42977.1.

42977.1. (a) The Carpet Stewardship Account and the Carpet Stewardship Penalty Subaccount are hereby established in the Integrated Waste Management Fund.

(b) All fees collected by the department pursuant to this article shall be deposited in the Carpet Stewardship Account and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.

(c) All civil penalties collected pursuant to this article shall be deposited in the Carpet Stewardship Penalty Subaccount and may be expended by the department, upon appropriation by the Legislature, to cover the department's costs to implement this chapter.

42978. (a) A civil penalty up to the following amounts may be administratively imposed by the department on any person who is in violation of any provision of this chapter:

(1) One thousand dollars (\$1,000) per day.

(2) Ten thousand dollars (\$10,000) per day if the violation is intentional, knowing, or negligent.

(b) In assessing or reviewing the amount of a civil penalty imposed pursuant to subdivision (a) for a violation of this chapter, the department or the court shall consider all of the following:

(1) The nature and extent of the violation.

- (2) The number and severity of the violation or violations.
- (3) The economic effect of the penalty on the violator.
- (4) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.
- (5) The willfulness of the violator's misconduct.
- (6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (7) Any other factor that justice may require.

42979. (a) This chapter does not limit, supersede, duplicate, or otherwise conflict with the authority of the Department of Toxic Substances Control under Section 25257.1 of the Health and Safety Code to fully implement Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code, including the authority of the department to include a carpet in a product registry adopted pursuant to that article.

(b) Notwithstanding subdivision (a), the Department of Toxic Substances Control shall fully consider the measures taken by the carpet industry pursuant to this chapter, and the results of those measures, when considering whether to include carpet in a product registry adopted pursuant to, or to otherwise regulate carpet pursuant to, Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code.

42980. (a) On or before January 1, 2014, the department and the Department of General Services shall complete a study that examines the specifications for carpet purchases by the state, as provided in the American National Standards Institute (NSF/ANSI) 140-2009 Standard, Platinum Level, as in effect on January 1, 2011 or the most current version in effect, and shall submit the study to the Governor and the Legislature pursuant to Section 9795 of the Government Code, including recommendation for any appropriate changes to that standard. In examining the standard and recommending changes to the standard, the department and the Department of General Services shall consider all of the following:

(1) Any changes to the standard that would further the purpose of this chapter.

(2) Any changes to the standard that would improve the environmental sustainability of carpet purchased by the state.

(3) The life-cycle impacts of proposed changes to the standard.

(4) The impacts of the proposed changes to the standard on source reduction.

(5) The impacts of the proposed changes to the standard on the recyclability of carpet.

(6) Economic and technological barriers to the proposed changes to the standard.

(b) The department and Department of General Services shall hold at least one workshop to receive comments from interested stakeholders prior to the completion of the study.

(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2018.

42981. (a) Except as provided in subdivision (b), any action by a carpet stewardship organization or its members that relates to any of the following is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code):

(1) The creation, implementation, or management of a carpet stewardship plan approved by the department pursuant to Section 42973 and the types or quantities of carpet being recycled or otherwise managed as described in Section 42970.

(2) The cost and structure of an approved carpet stewardship plan.

(3) The establishment, administration, or disbursement of a carpet stewardship assessment as described in Section 42972 or 42972.5.

(b) Subdivision (a) does not apply to an agreement that does any of the following:

(1) Fixes a price of or for carpet, except for any agreement related to a carpet stewardship assessment pursuant to Section 42972.5 or to a carpet stewardship plan approved by the department and otherwise in accordance with this chapter.

(2) Fixes the output of production of carpet.

(3) Restricts the geographic area in which, or customers to whom, carpet will be sold.

42982. The Department of General Services shall, to the extent feasible and within existing resources, take appropriate steps, including, but not limited to, revising relevant procurement rules, to ensure that postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purpose of this chapter.

42983. It is the intent of the Legislature to review any federal law that has the purpose of managing postconsumer carpet in a manner consistent with this chapter and to consider the extent to which the program created by that federal law will, at a minimum, achieve the same levels of landfill diversion and recycling of postconsumer carpet in California as this chapter.

Senate Bill No. 390

CHAPTER 275

An act to amend Sections 42023.1, 42023.2, 42023.3, 42023.4, 42023.5, and 42023.6 of, and to add Section 40118 to, the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 23, 2010. Filed with Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 390, Kehoe. Solid waste: recycling market development.

(1) The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, establishes an integrated waste management program. The act creates the Recycling Market Development Revolving Loan Subaccount in the Integrated Waste Management Account and continuously appropriates the funds deposited in the subaccount to the department for making loans for the purposes of the Recycling Market Development Revolving Loan Program (program). Existing law makes the provisions regarding the loan program, the creation of the subaccount, and expenditures therefrom inoperative on July 1, 2011, and repeals them as of January 1, 2012, and provides for disposition of funds remaining after inoperation and repeal.

This bill would define the term "department" for purposes of the act.

The bill would prohibit the department from funding a loan under the program until it determines that the applicant has obtained all significant, as determined by the department, applicable federal, state, and local permits and would extend the program and the continuous appropriation to July 1, 2021, and the repeal date to January 1, 2022, thereby making an appropriation.

(2) The act requires, upon authorization by the Legislature in the annual Budget Act, the Controller to transfer a sum that does not exceed \$5,000,000 from the account to the subaccount as necessary to meet anticipated loan demand under the program. The act provides that the transferred amount is a loan to the subaccount, repayable with interest to the account.

This bill would delete the limitation of the transfer to \$5,000,000 and the requirement that the amount transferred be a loan to the subaccount, repayable with interest. The bill would retroactively delete the requirement that the amount transferred from the account to the subaccount be repaid with interest.

Appropriation: yes.

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

SECTION 1. Section 40118 is added to the Public Resources Code, to read:

40118. "Department" means the Department of Resources Recycling and Recovery.

SEC. 2. Section 42023.1 of the Public Resources Code is amended to read:

42023.1. (a) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(b) Notwithstanding Section 13340 of the Government Code, the funds deposited in the subaccount are hereby continuously appropriated to the department without regard to fiscal year for making loans pursuant to this article.

(c) The department may expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act.

(d) The money from loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on an asset recovered pursuant to a loan default, and funds collected through foreclosure actions shall be deposited in the subaccount.

(e) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(f) The department may expend the money in the subaccount to make loans to local governing bodies, private businesses, and nonprofit entities within recycling market development zones, or in areas outside zones where partnerships exist with other public entities to assist local jurisdictions to comply with Section 40051.

(g) The department shall not fund a loan until it determines that the applicant has obtained all significant applicable federal, state, and local permits. The department shall determine which applicable federal, state, and local permits are significant.

(h) The department shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the department's cost of processing applications for loans. In addition, the department shall establish a schedule of fees or points for loans that are entered into by the department, to fund the department's administration of the revolving loan program.

(i) The department may expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. In addition, the department may expend money

in the account to administer the revolving loan program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall be provided only if there are not sufficient funds in the subaccount to fully fund the administration of the program.

(j) The department, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(k) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the date on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 3. Section 42023.2 of the Public Resources Code is amended to read:

42023.2. (a) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer a sum, as available, from the account to the subaccount as necessary to meet anticipated loan demand under the program.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the date on which it becomes inoperative and is repealed.

(2) (A) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

(B) The department shall not be obligated to pay interest on the amount appropriated from the account to the subaccount pursuant to subdivision (a). This subparagraph shall apply retroactively from January 1, 1992.

SEC. 4. Section 42023.3 of the Public Resources Code is amended to read:

42023.3. (a) All money remaining in the subaccount on July 1, 2021, and all money received as repayment and interest on loans shall, as of July 1, 2021, be transferred to the account and any money due and outstanding on loans as of July 1, 2021, shall be repaid to the department and deposited by the department in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings

may be expended for administrative costs associated with the collection of outstanding loan accounts.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 5. Section 42023.4 of the Public Resources Code is amended to read:

42023.4. (a) A loan made pursuant to Section 42023.1 shall be subject to all of the following requirements:

(1) The terms of an approved loan shall be specified in a loan agreement between the borrower and the department. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, a recipient of a loan that the department approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. All money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of a loan made pursuant to this section shall be not more than 10 years when collateralized by assets other than real estate, or not more than 15 years when partially or wholly collateralized by real estate.

(3) The department shall approve only those loan applications that demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects that demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The department shall not finance more than three-fourths of the cost of a project or two million dollars (\$2,000,000), whichever is less.

(5) The Department of Finance may audit the expenditure of the proceeds of a loan made pursuant to Section 42023.1 and this section.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 6. Section 42023.5 of the Public Resources Code is amended to read:

42023.5. (a) The department shall, as part of the annual report to the Legislature, pursuant to Section 40507, include a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(b) This section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 7. Section 42023.6 of the Public Resources Code is amended to read:

42023.6. (a) The department shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the department and local agencies to comply with Sections 40051 and 41780, the department may participate, in an amount not to exceed five hundred thousand dollars (\$500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(b) For purposes of participating in the Capital Access Loan Program, as specified in subdivision (a), or in a program that leverages subaccount funds, the department may operate both inside and outside the recycling market development zones.

(c) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2021, and as of January 1, 2022, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2022, deletes or extends the date on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

Summary Listing of Selected Solid Waste Related Bills

October 1, 2010

To obtain a copy of the actual bill language, go to: <http://www.leginfo.ca.gov/bilinfo.html>

ESJPA BILLS

10/1/10

CA AB 737 **AUTHOR:** Chesbro (D)
TITLE: Solid Waste: Diversion
LAST AMEND: 08/20/2010
LOCATION: Vetoed
SUMMARY:
 Requires the Department of Resources Recycling and Recovery to report to the Legislature on the current diversion rate in the state and potential strategies to increase it. Requires solid waste businesses that generate a certain amount to take specified action to reduce, reuse, or recycle. Authorizes a local agency to charge and collect a fee from a commercial waste generator to recover costs incurred in complying with the commercial recycling program. Relates to solid waste facility permit requirements.
STATUS:
 09/28/2010 **Vetoed by GOVERNOR.**

<u>BOARD.PACKET</u>	<u>Lobbyist</u>	<u>Position</u>	<u>Subject</u>
9.24.10	Mary Paul	Support	ESJPA Solid.Waste

CA AB 1004 **AUTHOR:** Portantino (D)
TITLE: Solid Waste Postclosure and Correction Action Fund
LAST AMEND: 07/15/2010
LOCATION: Chaptered
SUMMARY:
 Extends the inoperative dates of the State Integrated Waste Management Act regarding the solid waste disposal fee placed on operators of solid waste landfills that elect to participate in the State Solid Waste Postclosure and Corrective Action Trust Fund. Provides the conditions under which the fee would be inoperative. Extends the inoperative dates in the Act relating to operator participation in the fund and the paying of the related fee. Applies the participation and fee requirements on the owners.
STATUS:
 09/28/2010 Signed by GOVERNOR.
 09/28/2010 **Chaptered by Secretary of State.** Chapter No. 417 [Effective Rule]

<u>Lobbyist</u>	<u>Position</u>	<u>Staff</u>	<u>Subject</u>
Paul	Watch	Mary	ESJPA Emergency Services

CA AB 1343 **AUTHOR:** Huffman (D)
TITLE: Solid Waste: Architectural Paint: Recovery Program
LAST AMEND: 08/31/2010
LOCATION: Chaptered
SUMMARY:
 Creates the Architectural Paint Recovery Program. Requires a manufacturer or designated stewardship organization to submit a plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of such paint, and manage the end-of-life of such paint in an environmentally sound manner. Prohibits the sale of such paint unless the manufacture is in compliance. Requires an assessment and provides for a related account. Provides civil penalties for noncompliance.
STATUS:
 09/28/2010 Signed by GOVERNOR.
 09/28/2010 **Chaptered by Secretary of State.** Chapter no. 420 [Effective Rule]

<u>BOARD.PACKET</u>	<u>Subject</u>	<u>Lobbyist</u>	<u>Position</u>	<u>Staff</u>
9.24.10	ESJPA	Paul	Support	Larry Mary

CA AB 2139 **AUTHOR:** Chesbro (D)
TITLE: Solid Waste: Product Stewardship
LAST AMEND: 06/01/2010
LOCATION: ASSEMBLY
SUMMARY:
Creates the Product Stewardship Act. Requires the Department of Resources Recycling and Recovery to submit a report to the Legislature recommending that one or more consumer products be included as a covered product under the act. Requires the producer of a covered product or a product stewardship organization to submit a product stewardship plan to the department containing specified elements. Prohibits the sale of the product unless the plan is approved. Requires public knowledge of unplanned products.
STATUS:
06/03/2010 In ASSEMBLY. Read third time. **Failed to pass ASSEMBLY.**

<u>BOARD.PACKET</u>	<u>Lobbyist</u>	<u>Position</u>	<u>Staff</u>
APRIL2010	Paul	Support	Larry
June2010			Mary
<u>Subject</u>			
ESJPA			
Solid.Waste			

CA AB 2398 **AUTHOR:** Perez J (D)
TITLE: Product Stewardship: Carpet
LAST AMEND: 08/27/2010
LOCATION: Signed by Governor
SUMMARY:
Amends the Integrated Waste Management Act. Requires a manufacturer of carpets sold in the state to submit a carpet stewardship plan which would be required to include specified elements, including a fee that provides funding of the plan. Prohibits the sale of carpet not in compliance. Requires the payment of an annual plan administrative fee when submitting the plan for approval. Provides a civil penalty for a violation. Relates to state procurement policies. Relates to chemicals of concern.
STATUS:
09/30/2010 **Signed by GOVERNOR.**

<u>Lobbyist</u>	<u>Position</u>	<u>Staff</u>	<u>Subject</u>
Paul	Support	Larry Mary	ESJPA Solid Waste

CA SB 228 **AUTHOR:** DeSaulnier (D)
TITLE: Compostable or Marine Degradable Plastic Bags
LAST AMEND: 08/18/2010
LOCATION: Chaptered
SUMMARY:
Requires a manufacturer of a compostable plastic bag to ensure that the bag is readily and easily identifiable as defined in this law, from other bags. Prohibits a compostable plastic bag sold in the state from displaying a chasing arrow resin identification code or recycling type of symbol in any form. Requires a manufacturer to comply with these requirements only to the extent that labeling requirements do not conflict with federal requirements.
STATUS:
09/28/2010 Signed by GOVERNOR.
09/28/2010 **Chaptered by Secretary of State.** Chapter No. 406 [Effective Rule]

<u>Position</u>	<u>Staff</u>	<u>Subject</u>
Pending	Mary	ESJPA

CA SB 390 **AUTHOR:** Kehoe (D)
TITLE: Solid Waste: Recycling Market Development
LAST AMEND: 08/20/2010
LOCATION: Chaptered
SUMMARY:
 Relates to the Integrated Waste Management Program which provides for loans for purposes of the Recycling Market Development Revolving Loan Program. Prohibits the Department of Resources Recycling and Recovery from funding a loan until it determines the applicant has obtained all significant permits. Extends the operation of the program and continuous appropriations thereto. Relates to a funding transfer for anticipated loan demand under the program.
STATUS:
 09/23/2010 SIGNED by GOVERNOR.
 09/24/10 Chaptered by Secretary of State. Chapter No. 275 {Effective Rule}

<u>Lobbyist</u>	<u>Position</u>	<u>Staff</u>	<u>Subject</u>
Paul	Support	Larry Mary	ESJPA

CA SB 1100 **AUTHOR:** Corbett (D)
TITLE: Product Stewardship: Household Batteries
LAST AMEND: 06/15/2010
LOCATION: Assembly Rules Committee
SUMMARY:
 Relates to the disposal of household batteries. Requires a producer or household battery stewardship organization to submit a household battery stewardship plan which would be required to include specified elements to include the collection rate for such batteries. Requires approval of the plan within a specified time period. Prohibits the sale of such batteries unless the plan is deemed complete. Requires the payment of a fee for plan review and approval. Creates a related account for the fees.
STATUS:
 08/31/2010 Withdrawn from ASSEMBLY Committee on APPROPRIATIONS.
 08/31/2010 Re-referred to ASSEMBLY Committee on RULES.

<u>BOARD.PACKET</u>	<u>Lobbyist</u>	<u>Position</u>	<u>Subject</u>
June2010	Mary Paul	Support	ESJPA

CA SB 1326 **AUTHOR:** Oropeza (D)
TITLE: Solid Waste: Tires
LAST AMEND: 06/23/2010
LOCATION: Assembly Appropriations Committee
SUMMARY:
 Requires a public entity that submits an application for a grant from the Local Government Waste Tire Cleanup and Amnesty Event Grant Program to ask the local community conservation corps if it wishes to assist with cleanup or amnesty events in the event the entity receives a grant. Requires the entity to include with its application a statement that it has complied with that requirement and a statement of whether the corps wishes to participate. Requires a statement that there is no such local corps.
STATUS:
 06/28/2010 From ASSEMBLY Committee on NATURAL RESOURCES: Do pass to Committee on APPROPRIATIONS.

<u>Lobbyist</u>	<u>Position</u>	<u>Subject</u>
Mary Paul	Oppose	ESJPA

2010 Legislation

Position Letters Sent by RCRC on Solid Waste Related Bills

- AB 737 Chesbro Solid waste: diversion (Request for Signature 9/8/10)
Plus Governor's VETO message
- AB 1343 Huffman Household hazardous waste: collection: small quantity
(support 6/21/10)

Alpine Amador Butte Calaveras Colusa
Del Norte El Dorado Glenn Imperial
Inyo Lake Lassen Madera Mariposa



Merced Modoc Mono Napa Nevada Placer
Plumas San Benito Shasta Sierra Siskiyou
Sutter Tehama Trinity Tuolumne Yuba

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Chief Financial Officer - Karl Dolk

September 8, 2010

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: Assembly Bill 737 (Chesbro) – REQUEST FOR SIGNATURE

Dear Governor Schwarzenegger:

The Regional Council of Rural Counties (RCRC) respectfully requests your signature on Assembly Bill 737 by Assembly Member Wes Chesbro. This measure addresses a number of aspects to improving California's effort to divert solid waste from landfills.

RCRC is comprised of members of the Boards of Supervisors from thirty California counties. In addition, twenty-two RCRC member counties have formed the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) to provide assistance to solid waste managers in rural counties. These solid waste managers have been charged with ensuring that their respective counties meet state-imposed requirements to reduce the amount of solid waste that is disposed in California.

Local jurisdictions have made significant strides in implementing programs for the diversion of solid waste from landfills. Collectively, our state exceeds the required 50% goal that was established many years ago. Despite these efforts, we still need to find better ways to divert waste materials. One of the components of AB 737 requires CalRecycle to report on potential strategies to increase our state's solid waste diversion rate.

In addition, AB 737 includes a provision to mandate commercial recycling. In recent months, the staff of CalRecycle has been working with municipal governments to craft regulatory efforts to increase recycling from the state's businesses. During those discussions, we have impressed upon regulatory officials that these regulations contain flexibility in ways to increase recycling from businesses. Furthermore, the regulatory package should be sensitive to the current business climate. We believe the current

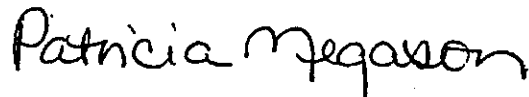
draft achieves several goals: flexibility, economic sensitivity, and increasing the amount of solid waste diverted from landfills.

AB 737, as recently amended, mirrors the current efforts of CalRecycle. While a mandatory commercial recycling effort will be imposed, the structure it provides will ensure flexibility to both local governments and businesses. We believe this approach will have long-term benefits to both sectors in the form of increased diversion for cities and counties, and a reduction in waste collection costs for businesses that reduce the amount of waste generated

RCRC recognizes that these are difficult times for businesses located throughout the state. Nevertheless, AB 737 and the regulations now being crafted at CalRecycle reflect an understanding that efforts to reducing waste disposed in landfills must contain flexibility. For these reasons, RCRC encourages you to sign this measure into law.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Patricia Megason". The signature is written in a cursive, flowing style.

Patricia Megason
Executive Vice President

cc: The Honorable Wes Chesbro, Member of the State Assembly

BILL NUMBER: AB 737
VETOED DATE: 09/28/2010

To the Members of the California State Assembly:

I am returning Assembly Bill 737 without my signature.

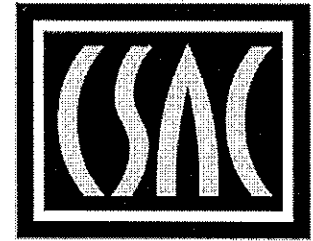
This bill mandates commercial recycling on private businesses producing more than four cubic yards of waste a week; modifies existing local permitting requirements; and requires the Department of Resource Recycling and Recovery (CalRecycle) to provide the Legislature with a report on the progress being made by the state towards a 75 percent diversion goal.

This bill is unnecessary and duplicative of actions already being undertaken by state agencies. Under the authority of AB 32 and the AB 32 Scoping Plan, CalRecycle is currently in the process of developing mandatory commercial recycling regulations through an open process of workshops and hearings that rely upon stakeholder input and participation. Furthermore, CalRecycle's regulations will apply to both the public and private sectors. Consequently, I believe CalRecycle's more inclusive approach towards meeting the state's ambitious waste diversion goals will better serve California economically and environmentally.

For this reason, I am unable sign this bill.

Sincerely,

Arnold Schwarzenegger



FLOOR ALERT

To: Members, California State Senate

From: Paul A. Smith, RCRC Karen Keene, CSAC Kyra Ross, League
Senior Legislative Advocate Legislative Representative Legislative Representative

Re: **Assembly Bill 737 (Chesbro) – Support**

On behalf of the Regional Council of Rural Counties (RCRC), the California State Association of Counties (CSAC), and the League of California Cities (the League), we urge your "AYE" vote on Assembly Bill 737 (Chesbro).

Local jurisdictions have made significant strides in implementing programs for the diversion of solid waste from landfills. Collectively, our state exceeds the required 50% goal that was established many years ago. Despite these efforts, we still need to find better ways to divert waste materials. AB 737 requires CalRecycle to report on potential strategies to increase our state's solid waste diversion rate.

In addition, AB 737 includes a provision to mandate commercial recycling. In recent months, the staff of CalRecycle has been working with municipal governments to craft regulatory efforts to increase recycling from the state's businesses. During those discussions, we have impressed upon regulatory officials that these regulations contain flexibility in ways to increase recycling from businesses. Furthermore, the regulatory package should be sensitive to the current business climate. We believe the current draft achieves several goals: flexibility, economic sensitivity, and increasing the amount of solid waste diverted from landfills.

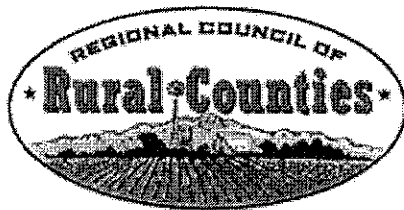
AB 737, as recently amended, mirrors the current efforts of CalRecycle. While a mandatory commercial recycling effort will be imposed, the structure it provides will ensure flexibility to both local governments and businesses. We believe this approach will have long-term benefits to both sectors in the form of increased diversion for cities and counties, and a reduction in waste collection costs for businesses that reduce the amount of waste generated.

It is for these reasons that we urge your "AYE" vote on AB 737.

cc: The Honorable Wesley Chesbro, Member, California State Assembly

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September 8, 2010

The Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Re: Assembly Bill 1343 (Huffman) – REQUEST FOR SIGNATURE

Dear Governor Schwarzenegger:

The Regional Council of Rural Counties (RCRC) respectfully requests your signature on Assembly Bill 1343 by Assembly Member Jared Huffman. This measure creates an Extended Producer Responsibility (EPR) program for unwanted paint in California.

RCRC is comprised of members of the Boards of Supervisors from thirty California counties. In addition, twenty-two RCRC member counties have formed the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) to provide assistance to solid waste managers in rural counties. These solid waste managers have been charged with handling a variety of products classified as "household hazardous waste", including unwanted/unused paint.

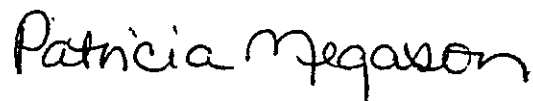
Paint is the largest and costliest waste stream item managed by local government household hazardous waste programs, costing millions of dollars annually in taxes and refuse rates. RCRC believes we need to shift California's management system of household hazardous waste products from one focused on government-funded and ratepayer-financed collection to one that more equitably distributes the responsibility and costs to the manufacturer, retailer, and consumer. This will reduce public costs and drive improvements in product design that promote environmental sustainability.

AB 1343 establishes a paint stewardship program to manage unused paint by having retailers collect an assessment on each container of paint at the time of sale. Proceeds would fund a stewardship plan as put forth by manufacturers and/or distributors of paint. These plans must be reviewed and approved by the Department of Resources Recycling and Recovery (CalRecycle), including the assessment

component. Of significance to local government, the measure requires stewardship plans to coordinate with local household hazardous waste programs. Finally, AB 1343 imposes annual reporting requirements to gauge the recovery of unused paint products.

AB 1343 represents an EPR program that carefully addresses the needs and goals of all affected parties, including consumers, local governments, manufacturers, and retailers. We view this bill as one of the most important solid waste items now before you for consideration as local governments have shouldered 100% of the responsibility for managing leftover paint for far too long. For these reasons, RCRC urges you to sign this much-needed measure into law. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink that reads "Patricia Megason". The signature is written in a cursive, flowing style.

Patricia Megason
Executive Vice President

cc: The Honorable Jared Huffman, Member of the State Assembly