
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 1359 **Hearing Date:** April 23, 2024
Author: Wilk
Version: March 18, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Illegal dumping*

HISTORY

Source: Author

Prior Legislation: AB 659 (Mathis, 2022), not heard in Assembly Public Safety
AB 2374 (Bauer-Kahan), Ch. 784, Stats. of 2022
SB 409 (Wilk, 2019), held in Assembly Appropriations
AB 215 (Mathis, 2019) held in Assembly Appropriations
AB 1216 (Bauer-Kahan, 2019) held in Assembly Appropriations
AB 144 (Mathis, 2015), vetoed by the Governor
AB 1992 (Canciamilla), Chapter 416, Stats of 2006
AB 1802 (Bogh), Chapter 137, Stats of 2004
AB 1799 (Migden), Chapter 50, Stats of 1998

Support: Rural County Representatives of California

Opposition: ACLU California Action; California Public Defenders Association

PURPOSE

The purpose of this bill is to prohibit the dumping of waste matter on private property even with the owner's consent if a permit or license was required and not obtained, to prohibit the transport of waste matter for the purpose of illegal dumping, and to increase penalties for existing illegal dumping offenses.

Existing law states that it is unlawful to dump or cause to be dumped waste matter in or upon a public or private highway or road, including any portion of the right-of-way thereof, or in or upon private property into or upon which the public is admitted by easement or license, or upon private property without the consent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property. (Penal Code § 374.3 (a).)

Existing law provides it is unlawful to place, deposit, or dump, or cause to be placed, deposited, or dumped, rocks, concrete, asphalt, or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or private property, without the consent of the owner or a contractor under contract with the owner for the materials, or in or

upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property. (Penal Code § 374.3 (b).)

Existing law states that a person violating dumping provisions is guilty of an infraction. Each day that waste is placed, deposited, or dumped in violation the law is a separate violation. (Penal Code § 374.3 (c).)

Existing law provides that illegal dumping prohibitions do not restrict a private owner in the use of their own private property, unless the placing, depositing, or dumping of the waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies. (Pen. Code § 374.3 (d).)

Existing law punishes a person convicted of dumping shall by a mandatory fine of not less than \$250 nor more than \$1,000 upon a first conviction, by a mandatory fine of not less than \$500 nor more than \$1,500 upon a second conviction, and by a mandatory fine of not less than \$750 nor more than \$3,000 upon a third or subsequent conviction. If the court finds that the waste matter placed, deposited, or dumped was used tires, the fine prescribed in this subdivision shall be doubled. (Penal Code § 374.3 (e).)

Existing law provides that the court may require, in addition to any fine imposed upon a conviction, that the person convicted remove, or pay the cost of removing, any waste matter which the convicted person dumped or caused to be dumped upon public or private property. (Penal Code § 374.3 (f).)

Existing law states that the court may, in addition to the fine imposed upon a conviction, require that a person convicted of a violation described above pick up waste matter at a time and place within the jurisdiction of the court for not less than 12 hours. (Penal Code § 374.3 (g).)

Existing law provides that a person who places, deposits, or dumps, or causes to be placed, deposited, or dumped, waste matter in violation of the provisions above in commercial quantities shall be guilty of a misdemeanor punishable by imprisonment in a county jail for not more than six months and by a fine. The fine is mandatory and shall amount to not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than six thousand dollars (\$6,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than ten thousand dollars (\$10,000) upon a third or subsequent conviction. (Penal Code § 374.3 (h)(1).)

Existing law provides that if a person convicted for a violation above illegal dumping in commercial quantities per the immediately preceding provision is the owner or operator of the business involved in the illegal dumping, and that business employs more than 10 full-time employees, the fine shall amount to not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) upon a first conviction, not less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000) upon a second conviction, and not less than six thousand dollars (\$6,000) nor more than twenty thousand dollars (\$20,000) upon a third or subsequent conviction. (Penal Code § 374.3 (h)(2).)

Existing law states that the court shall require, in addition to the fine imposed upon a conviction, that a person convicted for illegal dumping in commercial quantities remove, or pay the cost of

removing, any waste matter which the convicted person dumped or caused to be dumped upon the public or private property. (Penal Code § 374.3 (h)(3).)

Existing law specifies that if a person convicted for illegal dumping in commercial quantities holds a license or permit to conduct business that is substantially related to the illegal dumping for which the person was convicted, the court shall notify the applicable licensing or permitting entity subject to the jurisdiction of the Department of Consumer Affairs of the conviction, as specified. (Penal Code § 374.3 (h)(4)(A).)

Existing law requires the licensing or permitting entity implicated by the provision above to record and post the offense on the public profile of the license or permit holder on the internet website of the entity. (Penal Code § 374.3 (h)(4)(B).)

Existing law defines “commercial quantities” as an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This subdivision does not apply to the dumping of household waste at a person’s own residence. (Penal Code § 374.3 (h)(5).)

Existing law provides that when setting fines pursuant to the above violations, the court shall consider the defendant’s ability to pay, including consideration of several specified factors. (Penal Code § 374.3 (j).)

This bill provides that it is unlawful to transport for the purpose of dumping any waste matter in or upon a public or private highway or road, as specified, or in or upon private property, as specified, or upon private property without the consent of the owner or an agent of the owner, or in or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property.

This bill provides that the illegal dumping activity proscribed by Penal Code §374, subdivision (a), including transporting waste for the purpose of dumping, that occurs upon private property is not unlawful if the activity is being undertaken with the consent of an agent of the owner of the property.

This bill provides, however, that it is unlawful to dump, cause to be dumped, or transport for the purpose of dumping, any waste matter upon private property with the consent of the owner or an agent of the owner, if a permit or license is required by a state or local agency and was not obtained.

This bill provides that it is unlawful for a property owner or an agent of the property owner to receive any waste matter if a permit or license is required from a state or local agency and was not obtained prior to receiving the waste matter.

This bill provides that it is unlawful to transport for the purpose of placing, depositing or dumping any rocks, concrete, asphalt or dirt in or upon a private highway or road, including any portion of the right-of-way of the private highway or road, or upon private property, without the consent of the owner, an agent of the owner, or a contractor under contract with the owner for the materials, or in or upon a public park or other public property, without the consent of the state or local agency having jurisdiction over the highway, road, or property.

This bill provides that the illegal dumping activity proscribed by Penal Code §374.3, subdivision (b), including transporting waste for the purpose of placing, depositing, or dumping, that occurs upon private property is not unlawful if the activity is being undertaken with the consent of an agent of the owner of the property.

This bill makes it unlawful to place, deposit, or dump, to cause to be placed, deposited, or dumped, or to transport for the purpose of placing, depositing, or dumping, any rocks, concrete, asphalt, or dirt upon private property with the consent of the owner or an agent of the owner if a permit or license is required by a state or local agency and was not obtained.

This bill makes it unlawful for a property owner or an agent of the property owner to receive any rocks, concrete, asphalt, or dirt if a permit or license is required from a state or local agency and was not obtained prior to receiving the rocks, concrete, asphalt, or dirt.

This bill increases the penalty for all illegal dumping crimes under Penal Code § 374.3 from an infraction to a misdemeanor.

This bill provides that each day that waste unlawfully transported for the purpose of dumping in violation of the above provisions remains is a separate violation.

This bill provides that the illegal dumping provisions outlined above do not restrict a private owner in the use of their own property unless the placing, depositing, or dumping of the waste matter on the property requires a permit or license from a state or local agency and is not obtained.

This bill increases the range of fines that may be charged for violations of the above illegal dumping provisions as follows:

- For a first conviction, between \$500 and \$1000.
- For a second conviction, between \$1,000 and \$2,500
- For a third or subsequent conviction, between \$2,500 and \$4,000

This bill provides that a person who transports for the purpose of dumping any commercial quantities of waste matter is guilty of a misdemeanor punishable pursuant to the provision of existing law regarding illegal dumping of commercial quantities of waste, to be fined in accordance with that provision.

COMMENTS

1. Need for This Bill

According to the Author:

For too long, High Desert residents have dealt with trucks from Los Angeles driving through their neighborhood, dumping tons of broken concrete and other waste materials into their communities. In just one year, 896 tons of trash - almost 2 million - was collected. Residents and local government invest their time volunteering to clean up their communities, but feel like they do not have support from the state. One tragic example of the dangerous of illegal dumping, is when a 21-year-old woman

was killed after she was thrown from the back of a motorcycle and landed on an illegally dumped TV beside the road.

Current laws only address situations where property owners do not consent to dumping on their property. However, a loophole exists as the statute does not address situations in which landowners do provide consent for dumping. This loophole also exempts them from permitting requirements. Those property owners are able to make a profit under the table, while truck haulers avoid high costs associated with licensed dumpsites. Unfortunately, law enforcement has no ability to stop this. SB 1359 will provide much-needed support to the High Desert and increase penalties against bad actors who continue to pollute our environment and our communities.

2. The Problem of Illegal Dumping

Illegal dumping is the unauthorized disposal of solid waste matter – commonly mattresses, tires, appliances, and construction debris – on public or private property. Often done out of convenience or for economic gain, illegal dumping generates significant social, environmental, and economic costs statewide. Illegal dumping issues are primarily the responsibility of local governments, which spend tens of millions of dollars each year to remove illegally disposed materials; private property owners also incur significant costs for the removal of illegally dumped waste. In recent years, several more urban areas have experienced an increase in illegal dumping activity: in Los Angeles, there was a 450% rise in requests between 2016 and 2020 to remove debris, and L.A. Sanitation and Environment workers picked up nearly 16,000 tons of illegally dumped waste in 2019 compared with 8,900 tons in 2015.¹ During the COVID-19 pandemic, Oakland was plagued by unprecedented illegal dumping, with the total number of illegal dumping service requests in 2020-2021 more than tripling since 2011-2012, though those numbers have moderated somewhat in the past couple years.²

However, urban areas are not the only ones grappling with illegal dumping issues:

Rural land and roadsides have become dumping grounds. Old mattresses, sofas, appliances, tires and household garbage are routinely dumped along the sides of rural roadways, causing an unsightly mess and bringing added cost for the farmer or the county, who must pay to have the mess cleared or taken to the dump. Louie Bandoni, who farms almonds in Merced County, said the issue of illegal dumping in rural areas has been going on forever—and that some farmers have trash dumped on their properties as often as every week.³

Though the story above was published almost 5 years ago, the Author argues that illegal dumping still plagues rural communities, and has submitted several photos to committee staff

¹ *L.A.'s illegal dumping problem is worsening, controller's report says*, Los Angeles Times, 24 March 2021. [L.A.'s illegal dumping problem is worsening, controller's report says - Los Angeles Times \(latimes.com\)](https://www.latimes.com)

² *Oakland's illegal trash-dumping crisis is worse than ever. Here's why*, San Francisco Chronicle, 24 August, 2021. [Oakland's illegal trash-dumping crisis is worse than ever. Here's why | UC Berkeley Graduate School of Journalism](https://www.sfgate.com) For more current numbers, see [City of Oakland | Illegal Dumping Program Data \(oaklandca.gov\)](https://www.oaklandca.gov)

³ *Illegal dumping plagues rural California*, The Sun-Gazette, 1 May 2019. [Illegal dumping plagues rural California - The Sun-Gazette Newspaper \(thesungazette.com\)](https://www.thesungazette.com)

depicting dumping activities, presumably illegal, which are “common sights throughout the High Desert communities in the Senator’s district.”

Responses to illegal dumping vary greatly statewide in terms of legal approach and which government agencies are involved. Local code enforcement plays a lead role in some communities, while public works departments have primary responsibility in others, and while local and state law enforcement agencies will cite people caught illegal dumping, those agencies are usually not responsible for coordinating cleanup efforts. At a statewide level, CalRecycle is responsible for investigation, cleanup, and enforcement of illegal solid waste disposal sites and shares this responsibility with local enforcement agencies.⁴

3. Effect of This Bill and Policy Implications

Under existing law, it is a crime to dump waste matter upon a public or private road, on private property accessible to the public by easement, on private property without the consent of the owner, or in a public park or other public property other than property designated for the purpose of dumping. Existing law also explicitly prohibits dumping rocks, concrete, asphalt and dirt on those types of property. Illegal dumping is punishable as an infraction, with increasing fines for a second, third and subsequent offense, and current law states that each day waste is placed, deposited, or dumped in violation of the provisions above constitutes a separate violation.⁵ Existing law imposes a misdemeanor and higher fines for the illegal dumping of “commercial quantities” of waste matter.⁶

Illegal Dumping on Private Property

Local government tends to view illegal dumping as a litter/nuisance abatement issue rather than a solid waste issue. Existing law makes clear that prohibitions on illegal dumping do not restrict a private owner in the use of their own personal property unless the dumping of waste matter on the property creates a public health and safety hazard, public nuisance or a fire hazard as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection.⁷ This bill expands the authority to declare a public nuisance, or a health and safety or fire hazard for the purpose of curbing dumping on private property to any other state or local agency with jurisdiction over the property, such as a department of public works or other code enforcement agency.

As referenced above, existing law prohibits dumping on private property without the consent of the owner, but as the Author points out in Comment 1, “a loophole exists as the statute does not address situations in which landowners do provide consent for dumping [which] also exempts them from permitting requirements. Accordingly, this bill prohibits the dumping of waste matter (including rocks, concrete, asphalt or dirt) on private property with the consent of the owner or an agent of the owner as well as the receipt of waste matter by a property owner or an agent of the owner if a permit or license required by a state or local agency was not obtained.

⁴ *Illegal Dumping Resources*. CalRecycle. [Illegal Dumping Resources - CalRecycle Home Page](#)

⁵ Penal Code §374.3 (a), (b), (c), (e).

⁶ Penal Code §374.3(h). “Commercial quantities” is defined as an “amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard.”

⁷ Penal Code § 374.3 (d).

Transport for the Purpose of Dumping

Under existing illegal dumping statutes, the conduct proscribed includes dumping, placing or depositing waste matter, or causing waste matter to be placed, deposited or dumped in or on specified types of property. This bill additionally makes it a crime to transport waste for the purpose of dumping with regard to those specified types of property, and adds transport for the purpose of dumping to the conduct proscribed when the waste is to be dumped on private property with the consent of the owner, per the provisions of this bill described above.

The criminalization of “transport for the purpose of dumping” raises several policy questions and possible due process concerns. First, what specific criminal conduct is being prohibited here? That is, is true crux of the crime of illegal dumping the movement of the waste material or the final destination and placement of the material? What constitutes reasonable suspicion or probable cause that someone is transporting something for the purpose of dumping it illegally? Couldn’t any motorist driving with items of any kind in their car be a possible suspect? How does a prosecutor prove the crime of transport for the purpose of dumping? By prohibiting the mere transport of waste material for the purpose of dumping illegally, the bill runs the risk of ensnaring a vast number of innocent motorists in the net of criminal suspicion and establishing remarkably broad grounds for law enforcement to conduct traffic stops (which may be pretextual in nature) and make arrests with little evidence beyond a person driving a vehicle with items in it. The Author and Committee may wish to consider adding specificity (or additional elements) to the crime of transport for the purpose of dumping, or simply removing it from the bill altogether.

New Misdemeanors and Repeated Violations

As indicated above, existing law makes the penalty for illegal dumping an infraction, with each day that the waste placed, deposited, or dumped remains in the prohibited location constituting a separate violation, and punishable by a mandatory fine that increases for each new offense. Currently, the only illegal dumping conduct that is punished as a misdemeanor is dumping waste matter in “commercial quantities,” a conviction for which is punishable by imprisonment in county jail for not more than 6 months and a prescribed fine.⁸

This bill provides that existing non-commercial illegal dumping crimes currently punishable as infractions, as well as the new illegal dumping crimes the bill establishes in relation to private property, shall be punishable as misdemeanors, and subject to an increased fine schedule (see section below), yet no jail time. As a result of imposing a misdemeanor penalty, this legislation would permit persons accused of dumping non-commercial amounts on private property to apply for the aid of a public defender and to demand a jury trial in Superior Court. However, it is unusual to have a misdemeanor with no jail time.

With this increased misdemeanor penalty, the Author and Committee may wish to consider amending the provision of existing law making each day that the waste remains in the prohibited location a separate offense. Rendering an individual liable for a new misdemeanor every 24 hours, especially when those subsequent misdemeanors accrue without any affirmative conduct beyond the original dumping, may be overly punitive.

⁸ Penal Code §374.3(h)(1).

Fee Increases and Penalty Assessments

Under existing law, the fines for the first and subsequent infraction offenses fall within a range and may be set at the court's discretion. Because each day the item is dumped constitutes a separate violation, these fines can be assessed daily. The current fine schedule is as follows:

- First offense → \$250 - \$1000
- Second offense → \$500 - \$1500
- Third and subsequent offenses → \$750 - \$3000⁹

This bill increases the penalty schedule for each offense, as follows:

- First offense → \$500 - \$1000
- Second offense → \$1000 - \$2500
- Third and subsequent offenses → \$2500 - \$4000

The amount spelled out in statute as a fine for violating a criminal offense are base figures, as these amounts are subject to statutorily-imposed penalty assessments, such as fees and surcharges. The fines in this section have not been increased since 2006, however the penalty assessments have increased approximately 40% since 2006 thus increasing the fine that a person actually pays. Current penalty assessments total roughly 310% of the initial fine, so a fine of \$1000 for a first offense, for instance, will actually cost an individual \$3,100.¹⁰ While increased financial penalties may be a necessary deterrent for serious and serial offenders, they also run the risk of being financially ruinous to less nefarious individuals who dump a non-commercial amount of waste and simply leave it unattended for an extended period of time.

For instance, consider an individual seeking to dispose of an old chair, for instance, who places that chair at the end of their street where there are some empty lots, thinking it may be out of the way and intending to collect it 3 days later and take it to a proper disposal site. Technically, under this bill, that individual has committed 3 separate misdemeanors and could be fined a maximum of \$7,500, which, with penalty assessments, totals approximately \$23,250.¹¹ To minimize the possibility of such an outcome, the Author and Committee may wish to maintain a broader range of penalties, such as keeping the infraction and lower financial penalty for the first and possibly the second offense, but making a second or third and subsequent offense a misdemeanor with a higher financial penalty.

4. Prior Legislation

This bill is substantially similar to SB 409 (Wilk, 2019), which ultimately died in Assembly Appropriations. Similar to this bill, SB 409 made all illegal dumping violations in Penal Code § 374.3 a misdemeanor; amendments taken in this committee reverted the language back to the infraction for dumping in non-commercial amounts, yet retained the higher fine amounts.

⁹ Penal Code §374.3(e); the fines in this subdivision are doubled if the waste dumped was used tires.

¹⁰ Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine; the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104,7)

¹¹ Granted, if charged with these misdemeanors, this individual would have strong defenses at trial, but the purpose of hypothetical is merely to test the limits of the law's application.

5. Argument in Support

According to the Rural County Representatives of California:

Senate Bill 1359 increases penalties for illegal dumping; makes violation of illegal dumping laws a misdemeanor; and closes a loophole to allow prosecution of those who are engaged in, or allow the illegal dumping of, waste matter upon property where a permit or license for those activities was required by a state or local agency but was not obtained. Illegal dumping continues to be a serious problem in many parts of the state, especially in unincorporated rural areas. Local governments spend a considerable amount of money each year responding to and cleaning up illegally disposed waste. Illegal dumping is not confined to local government rights-of-way and private lands; increasingly it has become more of a problem on state and federal lands. SB 1359 seeks to address this situation by increasing the penalties for illegal dumping, making those crimes a misdemeanor, and closing loopholes in who can be prosecuted. Existing penalties, which are long overdue for even inflation-related increases since they were last adjusted in 2006, are low enough for violators to consider it cheaper to offend the law than comply with it.

6. Argument in Opposition

According to the California Public Defenders Association:

SB 1359 is unnecessary as the law already criminalizes both the act of illegal dumping and appropriate levels responsibility for that at the feet of the individual engaging in the act of dumping, or doing so knowingly in an area not designed therefore, or without the owner's consent. SB 1359 would criminalize any individual who transports the prohibited material. Such an expansion would have the consequence of ensnaring individuals who were unknowingly transporting material that could/or could not ultimately end up in a prohibited location. This would authorize law enforcement to stop and search individuals for transporting waste or another prohibited material and play havoc in the courts in determining appropriate probable cause/reasonable suspicion.

SB 1359 is also problematic in that it will criminalize the act of dumping or transporting to dump in a location where the owner receiving the material does not have the appropriate licensure to allow for the disposal of the same material. This would place an onerous burden on individuals who are merely working as contractors or employees of contractors or even day laborers to research the law regarding whatever they are transporting or offloading is legally permitted. This would again ensnare many well-meaning or simply unknowing individuals. SB 1359 will disproportionately impact poor and working individuals in the black and brown communities who depend on contractors for their livelihood. Many day laborers come from a pool of limited English speaking individuals who gather at Home Depot and other lumber supply stores seeking daily work which can often be dangerous and underpaid. They will be an easy target for this law. Although well-intentioned in seeking to prevent illegal dumping, SB 1359 is unduly harsh and would have a disparate impact on individuals who little or no power to ensure that their employers have complied with state law.