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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 1985  
**Author:** Robert Rivas  
**Version:** 6/13/2022  
**Urgency:** No  
**Consultant:** Jacob O'Connor

**Hearing Date:** 6/29/2022  
**Fiscal:** Yes

**SUBJECT:** Organic waste: recovered organic waste product procurement targets: list of available products

**DIGEST:** Creates a delayed and ramping enforcement timeline for penalties for local jurisdictions to meet their organic waste procurement targets, allows jurisdictions to utilize waste reduction programs to meet procurement targets, and allows jurisdictions to use organic waste processed out of state for the purposes of meeting procurement targets. Directs the Department of Resources Recycling and Recovery to compile and maintain a list of producers of organic waste products on their internet website.

**ANALYSIS:**

Existing law:

- 1) Establishes within the California Environmental Protection Agency the Department of Resources Recycling and Recovery (CalRecycle) to administer and oversee the Integrated Waste Management Act of 1989 (IWMA), the Beverage Container Recycling and Litter Reduction Act, and related laws pertaining to solid waste management. (Public Resources Code (PRC) §40400)
- 2) Under IWMA establishes a state recycling goal of 75% of solid waste generated to be diverted from landfill disposal through source reduction, recycling, and composting by 2020. (PRC § 41780.01)
- 3) Under SB 1383 (Lara, Chapter 395, Statutes of 2016), as part of a broader short-lived climate pollutant reduction strategy, establishes targets to achieve a 50% reduction in the level of statewide disposal of organic waste from the 2014 level by 2020, and a 75% reduction by 2025. (HSC § 39730.6)
- 4) Requires CalRecycle, in consultation with the California Air Resources Board (ARB), to adopt regulations to reach these waste reduction goals by: (PRC 42652.5)

- a) Requiring local jurisdictions to impose requirements on generators and authorize them to impose penalties for noncompliance.
  - b) Including requirements that not less than 20 percent of edible food that is currently disposed of is recovered for human consumption by 2025.
  - c) Including different levels of requirements and phased timelines for local jurisdictions based on its determination of progress on relevant factors.
  - d) Creating a process for local jurisdictions facing penalties for violations of these requirements to obtain relief by submitting a notice of intent to comply that includes an explanation of why they were unable to comply and description of the proposed actions to come into compliance in a timely manner.
- 5) Alongside other important strategies to reach these goals, sets an annual procurement target for recovered organic waste projects for jurisdictions equal to 0.08 tons of organic waste per resident per year. The recovered organic waste products that can be procured to comply with this requirement are:
- a) Compost that is produced at a permitted compostable material handling operation or facility or a permitted large volume in-vessel digestion facility;
  - b) Renewable gas used for fuel for transportation, electricity, or heating applications;
  - c) Electricity from biomass conversion; or
  - d) Mulch, provided that the jurisdiction has an enforceable ordinance requiring procured mulch to comply with health and safety standards and the mulch is produced at a permitted compostable material handling operation, transfer processing facility, or solid waste landfill.
- 6) Requires state departments and agencies to give purchase preference to compost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, if the products meet all applicable state standards and regulations. (Public Contract Code 12183)

This bill:

- 1) Establishes a delayed and ramping timeline for the imposing of civil penalties on local jurisdictions for failing to reach its organic waste procurement target on the following schedule:
  - a) After January 1, 2023, a local jurisdiction shall only be subject to penalties if it fails to reach less than 25 percent of its procurement target;

- b) After January 1, 2024, a local jurisdiction shall only be subject to penalties if it fails to reach less than 50 percent of its procurement target; and
  - c) After January 1, 2025, a local jurisdiction shall only be subject to penalties if it fails to reach less than 75 percent of its procurement target.
- 2) Allows a local jurisdiction to fulfill their procurement requirements with products made from California, landfill diverted recovered organic waste processed at a permitted or authorized operation or facility, including facilities that are out of state.
  - 3) Allows a local jurisdiction to fulfill their procurement requirements by instead engaging in projects that will contribute to a reduction in the level of organic waste disposed that is equivalent to the reduction achieved by meeting its procurement target, as determined by CalRecycle. Such reduction activities include but are not limited to: edible food recovery and prevention, carbon farming, healthy soils, landscaper trainings, and green building measures.
  - 4) Requires CalRecycle to compile and maintain on its internet website a list of persons or entities that produce organic waste products and send the department a written request to be included along with specified information. This list shall be organized by ZIP Code to allow local governments to quickly search for nearby organic waste products.

## Background

- 1) *Solid waste in California.* For three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the IWMA. Under IWMA, the state has established a statewide 75% reduction, recycling, and composting goal by 2020. Additionally, the state has established a target of a 75% reduction in the level of disposal of organic waste from the 2014 level by 2025. According to CalRecycle's State of Disposal and Recycling Report for Calendar Year 2020, published in December 2021, approximately 77.4 million tons of material was generated in 2020; with about 52% sent to landfills; 17% exported as recyclables; 12% composted, anaerobically digested or mulched; and 13% either recycled or source reduced. According to the report: "We are falling far short of our 75 percent recycling goal and face clear evidence that an economy driven by resource extraction and single-use disposable products continues to endanger our people and imperil our planet."
- 2) *Something's rotten in the state of California.* CalRecycle's most recent waste characterization study, based on data from 2018, found that 55.5% of disposed

waste is organic waste. Of that, nearly 15% of disposed waste was food, and approximately 7% was yard and tree waste.

Diverting organic waste provides significant greenhouse gas (GHG) reductions over landfilling. Composting and other organics processing technologies reduce GHGs by avoiding the emissions that would be generated by the material's decomposition in the landfill. Landfill gas is generated by the decomposition of organic materials such as food, paper, wood, and yard waste. Fifty percent of landfill gas is methane, a GHG that is 21 times more efficient at trapping heat than carbon dioxide. While most modern landfills have systems in place to capture methane, significant amounts continue to escape into the atmosphere. According to ARB's GHG inventory, approximately 8.5 million tons of carbon dioxide equivalent were released by landfills in 2020.

SB 1383 required ARB to approve and implement the comprehensive short-lived climate pollutant strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level. In order to achieve these goals, California's waste management infrastructure is going to have to recycle much higher quantities of organic material.

- 3) *Turning waste into wealth requires state support.* While preventing unnecessary organic waste wherever possible is an important component to addressing the waste problem so is recovering and recycling the waste that cannot be prevented. We will not be able to reach our organic waste reduction goals and associated GHG emission targets without a robust recycling infrastructure.

Unfortunately setting up and operating the technology to recycle large amounts of organic waste can be expensive. Organic waste is primarily recycled by composting the material, which generates compost that can be used in gardening and agricultural as a soil amendment and engineering purposes for things like slope stabilization. Anaerobic digestion is also widely used to recycle organic wastes. This technology uses bacteria to break down the material in the absence of oxygen and produces biogas, which can be used as fuel, and material that can be used as a soil additive. Tree trimmings and pruning can also be mulched.

Like all recycling, organic waste recycling can only succeed if there is a market for the recycled materials. In spite of the many beneficial uses for these products, production of compost and other organic waste products exceeds demand. In order to address this problem, under the direction of SB 1383, CalRecycle has developed a requirement for local governments to procure minimum amounts of organic waste products. Existing law also requires state agencies, like the Department of Transportation, to use these materials in their projects.

## Comments

- 1) *Purpose of Bill.* According to the author, “In 2016, California set organic waste diversion goals of 50% by 2020 and 75% by 2025 in order to reduce methane emissions and other short-lived climate pollutants. This has led to local governments adopting practices like composting to reduce the amount of organic waste going into landfills. Due to a historically limited amount of organic waste products available, local governments have struggled to find a market for their organic waste products.

“AB 1985 will help local governments in reaching organic waste goals by providing a way to connect with local farmers and community members in need of organic waste products, and expand procurement options for local jurisdictions to provide innovation solutions that will help reach out California’s climate goals.”

- 2) *Another extension?* This is not the first time local jurisdictions have raised concerns about the implementation timelines of SB 1383. Even though the goals under that bill had been known since 2016, the final draft of regulations was not adopted until November 2020. Local jurisdictions have pointed out that the lack of infrastructure for recycling organic waste makes it difficult to comply with the procurement goals. To that end the Legislature passed SB 619 (Laird, Chapter 508, Statutes of 2021), which allowed local jurisdictions to submit a notice of intent to comply with CalRecycle in order to be eligible for relief from penalties for the 2022 calendar year.
- 3) *Removing procurement requirements risks destabilizing the market.* This bill seeks to give local jurisdictions flexibility in meeting ambitious requirements set by SB 1383. One of the key provisions of this bill is to allow jurisdictions to compensate for failing to meet procurement targets by implementing programs designed to reduce waste. While waste reduction is an essential component to meeting our overall goals, it will take both reduction and procurement requirements for the state to meet its goals. Allowing one strategy

to occur at the expense of the other will damage the markets that are building up the organic waste recycling infrastructure in the state. To meet the goal of giving jurisdictions more flexibility in how they reach procurement targets ***the committee may wish to amend the bill to remove the allowance for local jurisdictions to meet procurement targets with reduction programs.***

- 4) *Allowing out-of-state processing may undercut the goal of building Californian recycling infrastructure.* This bill allows local jurisdictions to meet procurement requirements by purchasing Californian waste that has been processed out-of-state. By allowing material processed outside of the state to count towards procurement in the state, AB 1985 removes an incentive for infrastructure to be built within the state necessary to process all of the organic waste the state will produce. Additionally, out of state processors of organic waste are not subject to the same quality standards and allowing this material would likely undercut the market for material processed in the state. California does not have the authority to mandate that out of state processors create a separate stream for California-derived material. However out-of-state processing may make more sense for border jurisdictions where transportation of materials to or from an in-state processing facility may be more costly than a nearby out-of-state facility. ***The author may wish to consider continuing to work with CalRecycle to ensure that while adding flexibility for border jurisdictions to utilize out-of-state processing they do not significantly undercut incentives to build in-state infrastructure.***
- 5) *Ramping enforcement never peaks.* Currently this bill proposes creating a ramping enforcement of penalties for jurisdictions for failing to meet procurement targets in 25% increments of the original penalties. However, this ramping timeline currently stops at 75%, making it so that the full penalties shall never be enforced. The goal of this bill is to provide some relief from the ambitious goals of SB 1383 and not create a permanent reduction in penalties. ***The committee may wish to amend the bill to modify the phase-in for penalties to increment from 33 to 66 to 100 percent.***
- 6) *The compiling of entities that produce organic waste products may be duplicative.* The intent of this bill is to provide help for jurisdictions to meet ambitious procurement targets. This was originally achieved by the creation of a database of vendors of recycled waste, but is now achieved through the other provisions of the bill. Given the change in strategy the previous method is no longer as necessary. ***The committee may wish to amend the bill to remove the requirement for CalRecycle to compile a list of recycled organic waste vendors.***

7) *Staff recommends the committee adopt the bolded amendments contained in comments 3, 5, and 6 above.*

**Related/Prior Legislation**

SB 45 (Portantino) would require CalRecycle in consultation with ARB, to provide assistance to local jurisdictions, including any funding appropriated by the Legislature, for purposes of assisting local jurisdictions with complying with specified organic waste recycling programs. This bill has been referred to the Assembly Appropriations Committee.

SB 619 (Lairs, Chapter 508, Statutes of 2021) authorized a local jurisdiction facing continuous violations of the regulations adopted pursuant to SB 1383 to submit a notice of intent to comply (NOI) to CalRecycle. If approved by CalRecycle, the jurisdiction is eligible for administrative civil penalty relief for the 2022 calendar year and a corrective action plan.

**SOURCE:** Californians Against Waste, League of California Cities, and Rethink Waste.

**SUPPORT:**

California State Association of Counties (CSAC)  
Californians Against Waste  
League of California Cities  
Northern California Recycling Association  
Republic Services - Western Region  
Rural County Representatives of California (RCRC)  
South Bayside Waste Management Authority (sbwma ) Db a Rethinkwaste

**OPPOSITION:**

None received

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