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## AB-1985 Organic waste: recovered organic waste product procurement targets. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

### ASSEMBLY BILL

### NO. 1985

Introduced by Assembly Member Robert Rivas

February 10, 2022

An act to amend Section 42652.5 ~~of of, and to add Section 42652.6 to~~, the Public Resources Code, relating to organic waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1985, as amended, Robert Rivas. Organic waste: recovered organic waste product procurement targets.

Existing law requires, no later than January 1, 2018, the State Air Resources Board to approve and begin implementing a comprehensive short-lived climate pollutant strategy to achieve a reduction in statewide emissions of methane by 40%, hydrofluorocarbon gases by 40%, and anthropogenic black carbon by 50% below 2013 levels by 2030. Existing law requires the methane emissions reduction goals to include a 50% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75% reduction by 2025. Existing law requires the Department of Resources Recycling and Recovery, in consultation with the state board, to adopt regulations to achieve these organic waste reduction goals that include, among other things, requirements intended to meet the goal that not less than 20% of edible food that is currently disposed of be recovered for human consumption by 2025 and that may include penalties to be imposed by the department for noncompliance, as provided. The department's regulations provide for, among other things, the calculation by the department of recovered organic waste product procurement targets for each local jurisdiction.

This ~~bill would require the department's regulations to allow a local jurisdiction to procure a product made from California, landfill-diverted recovered organic waste, as provided, to comply with these recovered organic waste product procurement target requirements. The bill would allow a local jurisdiction, in procuring recovered organic waste products, to utilize California-derived recovered organic waste that is processed outside of the state.~~ The bill would require any penalties imposed by the department on a local jurisdiction that fails to meet its recovered organic waste procurement target to be imposed pursuant to a specified schedule based on the percentage of

the local jurisdiction's recovered organic waste product procurement target achieved. *The bill would exempt jurisdictions in possession of a specified rural exemption from these requirements until December 31, 2026. Beginning January 1, 2027, the bill would authorize the department, in its discretion, to provide rural counties and jurisdictions located within rural counties that are exempt from organic waste collection requirements an extended recovered organic waste product procurement target schedule. The bill would also authorize the department, in its discretion, to create an adjusted recovered organic waste product procurement target schedule.*

*Existing regulations permit renewable gas procured from a publicly owned treatment works (POTW) to count toward a jurisdiction's recovered organic waste product procurement target only if certain conditions are met for the applicable procurement compliance year, including that the POTW transported less than 25% of the biosolids it produced to activities that constitute landfill disposal.*

*This bill would make that condition inapplicable until January 1, 2025, as long as the other conditions specified in the regulation are fully met and no more than 50% as an annual average of the biosolids produced during the prior calendar year are transported to activities constituting landfill disposal before January 1, 2025.*

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 42652.5 of the Public Resources Code is amended to read:

**42652.5.** (a) The department, in consultation with the State Air Resources Board, shall adopt regulations to achieve the organic waste reduction goals for 2020 and 2025 established in Section 39730.6 of the Health and Safety Code. The regulations shall comply with all of the following:

(1) May require local jurisdictions to impose requirements on generators or other relevant entities within their jurisdiction and may authorize local jurisdictions to impose penalties on generators for noncompliance.

(2) Shall include requirements intended to meet the goal that not less than 20 percent of edible food that is currently disposed of is recovered for human consumption by 2025.

(3) Shall not establish a numeric organic waste disposal limit for individual landfills.

(4) May include different levels of requirements for local jurisdictions and phased timelines based upon their progress in meeting the organic waste reduction goals for 2020 and 2025 established in Section 39730.6 of the Health and Safety Code. The department shall base its determination of progress on relevant factors, including, but not limited to, reviews conducted pursuant to Section 41825, the amount of organic waste disposed compared to the 2014 level, per capita disposal rates, the review required by Section 42653, and other relevant information provided by a local jurisdiction.

(5) (A) May include penalties to be imposed by the department for noncompliance. If penalties are included, they shall not exceed the amount authorized pursuant to Section 41850.

(B) Notwithstanding any other law, administrative civil penalties for a local jurisdiction that fails to procure a quantity of recovered organic waste products that meets or exceeds its recovered organic waste product procurement target established by the department pursuant to Section 18993.1 of Title 14 of the California Code of Regulations shall be imposed pursuant to the following schedule:

(i) On or after January 1, 2023, ~~no local jurisdiction shall be subject to an administrative civil penalty unless it fails to~~ *each jurisdiction shall* procure a quantity of recovered organic waste products that meets or exceeds ~~33~~ *30* percent of its recovered organic waste product procurement target.

(ii) On or after January 1, 2024, ~~no local jurisdiction shall be subject to an administrative civil penalty unless it fails to~~ *each jurisdiction shall* procure a quantity of recovered organic waste products that meets or exceeds ~~66~~ *65* percent of its recovered organic waste product procurement target.

(iii) On or after January 1, 2025, ~~no local jurisdiction shall be subject to an administrative civil penalty unless it fails to~~ *each jurisdiction shall* procure a quantity of recovered organic waste products that meets or exceeds 100 percent of its recovered organic waste product procurement target.

(6) Shall take effect on or after January 1, 2022, except the imposition of penalties pursuant to paragraph (1) shall not take effect until two years after the effective date of the regulations.

~~(7) Shall allow a local jurisdiction to procure a product made from California, landfill-diverted recovered organic waste processed at a permitted or otherwise authorized operation or facility, as well as the recovered organic waste products identified in subdivision (f) of Section 18993.1 of Title 14 of the California Code of Regulations, to comply with the requirements of Article 12 (commencing with Section 18993.1) of Title 14 of the California Code of Regulations. In procuring recovered organic waste products, a local jurisdiction may utilize California-derived recovered organic waste that is processed outside of the state.~~

*(7) Jurisdictions in possession of a rural exemption pursuant to subdivision (c) of Section 18984.12 of Title 14 of the California Code of Regulations, as that section read on January 1, 2022, are exempt from the procurement requirement of this subdivision until December 31, 2026. Beginning January 1, 2027, the department may, in its discretion, provide rural counties and jurisdictions located within rural counties that are exempt from organic waste collection requirements an extended recovered organic waste product procurement target schedule similar to the schedule set forth in this subdivision, which shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).*

*(8) The department may, in its discretion, create an adjusted recovered organic waste product procurement target schedule, not to exceed the requirements of the schedule set forth in this subdivision, which shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).*

(b) A local jurisdiction may charge and collect fees to recover the local jurisdiction's costs incurred in complying with the regulations adopted pursuant to this section.

(c) A local jurisdiction facing continuing violations of the regulations adopted pursuant to subdivision (a) that commence during the 2022 calendar year may submit to the department a notification of intent to comply, as described in this section. Upon approval by the department, and implementation by the local jurisdiction, of a notification of intent to comply that meets the requirements of subdivision (e), a local jurisdiction may be eligible for both of the following:

(1) Administrative civil penalty relief for the 2022 calendar year pursuant to subdivision (d).

(2) A corrective action plan pursuant to Section 18996.2 of Title 14 of the California Code of Regulations.

(d) (1) For violations of the regulations that are disclosed in a notification of intent to comply that is approved by the department as meeting the requirements of subdivision (e), the department shall waive administrative civil penalties under paragraph (5) of subdivision (a) during the 2022 calendar year if, and administrative civil penalties shall not accrue under paragraph (5) of subdivision (a) during the 2022 calendar year if, the local jurisdiction implements the proposed actions according to the schedule proposed pursuant to paragraph (4) of subdivision (e).

(2) For violations that commence during the 2022 calendar year and continue into the 2023 calendar year, administrative civil penalties may begin accruing as of January 1, 2023. Those administrative civil penalties accruing on and after January 1, 2023, shall be waived upon complete compliance with the terms of a corrective action plan pursuant to Section 18996.2 of Title 14 of the California Code of Regulations.

(3) If a local jurisdiction fails to adhere to the proposed actions and schedule described in a notification of intent to comply pursuant to paragraph (4) of subdivision (e), the department may revoke its approval of the notification of intent to comply and impose administrative civil penalties for violations occurring during the 2022 calendar year retroactive to the date of violation.

(4) Notwithstanding any proposed actions and schedule provided by a local jurisdiction in an approved notification of intent to comply pursuant to paragraph (4) of subdivision (e), the department may instead address through a corrective action plan any violations disclosed in that notification that may take more than 180 days to correct. Under those circumstances, the proposed actions and schedule provided pursuant to an approved notification of intent to comply pursuant to paragraph (4) of subdivision (e) shall control until a corrective action plan is finalized.

(e) The department shall approve a notification of intent to comply if the department determines the notification meets the requirements of this subdivision. A notification of intent to comply shall be in writing, adopted by

formal resolution by the governing body of the local jurisdiction, and filed with the department no later than March 1, 2022. The notification of intent to comply shall include, at a minimum, all of the following:

- (1) A description, with specificity, of the continuing violations.
  - (2) A detailed explanation of the reasons, supported by documentation, why the local jurisdiction is unable to comply.
  - (3) A description of the impacts of the COVID-19 pandemic on compliance.
  - (4) A description of the proposed actions the local jurisdiction will take to remedy the violations within the timelines established in Section 18996.2 of Title 14 of the California Code of Regulations with a proposed schedule for doing so. The proposed actions shall be tailored to remedy the violations in a timely manner.
- (f) The department shall respond in writing to a local jurisdiction within 45 business days of receiving a notification of intent to comply with an approval, disapproval, request for additional information, or timeline for a decision on approval or disapproval. If the department disapproves the notification of intent to comply due to the notification not meeting the requirements of subdivision (e), the department shall include in the response a justification for the disapproval.
- (g) Notwithstanding Section 18996.2 of Title 14 of the California Code of Regulations, the department may establish any maximum compliance deadline in a corrective action plan that it determines to be necessary and appropriate under the circumstances for the correction of a violation of the regulations adopted pursuant to subdivision (a).
- (h) (1) The department may adopt regulations it determines to be necessary to implement and enforce the changes made to this section by ~~Senate Bill 619 of the 2021–22 Regular Session~~ [Chapter 508 of the Statutes of 2021](#) as emergency regulations.
- (2) Emergency regulations adopted pursuant to paragraph (1) shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department pursuant to paragraph (1) shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until January 1, 2024.

**SEC. 2.** *Section 42652.6 is added to the Public Resources Code, to read:*

*42652.6. Paragraph (5) of subdivision (h) of Section 18993.1 of Title 14 of the California Code of Regulations, as that section read on January 1, 2022, does not apply until January 1, 2025, as long as the conditions in paragraphs (1) to (4), inclusive, of subdivision (h) of Section 18993.1 of Title 14 of the California Code of Regulations are fully met and no more than 50 percent as an annual average of the biosolids produced during the prior calendar year are transported to activities constituting landfill disposal before January 1, 2025.*