

AMENDED IN ASSEMBLY APRIL 10, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2346

Introduced by Assembly Member Lee

February 12, 2024

An act to amend Section 42652.5 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL’S DIGEST

AB 2346, as amended, Lee. Organic waste reduction regulations: procurement of recovered organic waste products.

Existing law requires the State Air Resources Board to complete, approve, and implement a comprehensive strategy to reduce emissions of short-lived climate pollutants in the state to reduce the statewide methane emissions by 40% below 2013 levels by 2030. Existing law requires the Department of Resources Recycling and Recovery, in consultation with the state board, to adopt regulations that achieve specified targets for reducing organic waste in landfills, as provided. The department’s organic waste regulations require local jurisdictions to annually procure a quantity of recovered organic waste products and to comply with their procurement targets by directly procuring recovered organic waste products for use or giveaway or by requiring, through a written agreement, that a direct service provider to the jurisdiction procure recovered organic waste products, or both. Those regulations specify the types of recovered organic waste products that a jurisdiction may procure, including compost that is produced at a compostable material handling operation or facility, or a specified digestion facility that composts onsite. Other regulations of the department require all compostable materials handling activities to obtain a facility permit

from the department prior to commencing operations and meet other specified requirements, but exclude from those requirements certain activities that the regulations state do not constitute a compostable material handling operation or facility, including the composting of green material, agricultural material, food material, and vegetative food material, and the handling of compostable materials under certain conditions, as provided.

This bill would authorize local jurisdictions to be credited for the procurement of recovered organic waste products through an agreement with a direct service provider, as defined, and would allow the direct service provider agreement to include the procurement of recovered organic waste products on a prospective or retrospective basis as long as the purchase of those products occurs during the year for which the local jurisdiction seeks credit. The bill would also authorize local jurisdictions to count towards their procurement targets, compost produced and procured from specified compost operations, as defined, and, until 2030, investments made for the expansion of the capacity of compostable materials handling operations or community composting operations, as provided.

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

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

1 SECTION 1. Section 42652.5 of the Public Resources Code
2 is amended to read:
3 42652.5. (a) The department, in consultation with the State
4 Air Resources Board, shall adopt regulations to achieve the organic
5 waste reduction goals for 2020 and 2025 established in Section
6 39730.6 of the Health and Safety Code. The regulations shall
7 comply with all of the following:
8 (1) May require local jurisdictions to impose requirements on
9 generators or other relevant entities within their jurisdiction and
10 may authorize local jurisdictions to impose penalties on generators
11 for noncompliance.
12 (2) Shall include requirements intended to meet the goal that
13 not less than 20 percent of edible food that is currently disposed
14 of is recovered for human consumption by 2025.
15 (3) Shall not establish a numeric organic waste disposal limit
16 for individual landfills.

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

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

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

20 (i) On or after January 1, 2023, each jurisdiction shall procure
21 a quantity of recovered organic waste products that meets or
22 exceeds 30 percent of its recovered organic waste product
23 procurement target.

24 (ii) On or after January 1, 2024, each jurisdiction shall procure
25 a quantity of recovered organic waste products that meets or
26 exceeds 65 percent of its recovered organic waste product
27 procurement target.

28 (iii) On or after January 1, 2025, each jurisdiction shall procure
29 a quantity of recovered organic waste products that meets or
30 exceeds 100 percent of its recovered organic waste product
31 procurement target.

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

35 (7) Jurisdictions in possession of a rural exemption pursuant to
36 subdivision (c) of Section 18984.12 of Title 14 of the California
37 Code of Regulations, as that section read on January 1, 2022, are
38 exempt from the procurement requirement of this subdivision until
39 December 31, 2026. Beginning January 1, 2027, the department
40 may, in its discretion, provide rural counties and jurisdictions

1 located within rural counties that are exempt from organic waste
2 collection requirements an extended recovered organic waste
3 product procurement target schedule similar to the schedule set
4 forth in this subdivision, which shall be exempt from the
5 Administrative Procedure Act (Chapter 3.5 (commencing with
6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
7 Code).

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

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

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

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

27 (2) A corrective action plan pursuant to Section 18996.2 of Title
28 14 of the California Code of Regulations.

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

38 (2) For violations that commence during the 2022 calendar year
39 and continue into the 2023 calendar year, administrative civil
40 penalties may begin accruing as of January 1, 2023. Those

1 administrative civil penalties accruing on and after January 1,
2 2023, shall be waived upon complete compliance with the terms
3 of a corrective action plan pursuant to Section 18996.2 of Title 14
4 of the California Code of Regulations.

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

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

20 (e) The department shall approve a notification of intent to
21 comply if the department determines the notification meets the
22 requirements of this subdivision. A notification of intent to comply
23 shall be in writing, adopted by formal resolution by the governing
24 body of the local jurisdiction, and filed with the department no
25 later than March 1, 2022. The notification of intent to comply shall
26 include, at a minimum, all of the following:

27 (1) A description, with specificity, of the continuing violations.

28 (2) A detailed explanation of the reasons, supported by
29 documentation, why the local jurisdiction is unable to comply.

30 (3) A description of the impacts of the COVID-19 pandemic
31 on compliance.

32 (4) A description of the proposed actions the local jurisdiction
33 will take to remedy the violations within the timelines established
34 in Section 18996.2 of Title 14 of the California Code of
35 Regulations with a proposed schedule for doing so. The proposed
36 actions shall be tailored to remedy the violations in a timely
37 manner.

38 (f) The department shall respond in writing to a local jurisdiction
39 within 45 business days of receiving a notification of intent to
40 comply with an approval, disapproval, request for additional

1 information, or timeline for a decision on approval or disapproval.
2 If the department disapproves the notification of intent to comply
3 due to the notification not meeting the requirements of subdivision
4 (e), the department shall include in the response a justification for
5 the disapproval.

6 (g) Notwithstanding Section 18996.2 of Title 14 of the California
7 Code of Regulations, the department may establish any maximum
8 compliance deadline in a corrective action plan that it determines
9 to be necessary and appropriate under the circumstances for the
10 correction of a violation of the regulations adopted pursuant to
11 subdivision (a).

12 (h) A local jurisdiction may be credited for the procurement of
13 recovered organic waste products, pursuant to Section 18993.1 of
14 Title 14 of the California Code of Regulations, through an
15 agreement with a direct service provider, as defined in Section
16 18982 of Title 14 of the California Code of Regulations. The direct
17 service provider agreement may include the procurement of
18 recovered organic waste products on a prospective or retrospective
19 basis, as long as the purchase of recovered organic waste products
20 occurs during the year for which the local jurisdiction seeks
21 procurement credit.

22 (i) Notwithstanding the excluded activities listed in Section
23 17855 of Title 14 of the California Code of Regulations, in addition
24 to the compostable material handling operation or facilities listed
25 in paragraph (1) of subdivision (f) of Section 18993.1 of Title 14
26 of the California Code of Regulations, a local jurisdiction may
27 count compost produced and procured from the following compost
28 operations towards its procurement target established pursuant to
29 Section 18993.1 of Title 14 of the California Code of Regulations:

30 (1) Community composting operations. “Community
31 composting” has the same meaning as defined in Section 18982
32 of Title 14 of the California Code of Regulations.

33 (2) On-farm compost operations. “On-farm compost operation”
34 means an operation located on an agricultural operation that
35 composts organic material collected from the farm in which it is
36 located. “Agricultural operation” has the same meaning as
37 “agricultural activity, operation, or facility, or appurtenances
38 thereof,” as defined in subdivision (e) of Section 3482.5 of the
39 Civil Code.

1 ~~(3) Home compost operations. “Home compost operation”~~
2 ~~means an operation that composts organic material from the~~
3 ~~residence on which it is located.~~

4 (j) (1) Until 2030, a local jurisdiction may count an investment
5 made within the jurisdiction’s geographic boundaries for the
6 expansion of the capacity of compostable materials handling
7 operations or community composting operations toward its
8 recovered organic waste procurement target established pursuant
9 to Section 18993.1 of Title 14 of the California Code of
10 Regulations, including, but not limited to, an investment made to
11 establish or expand a compostable materials handling operation,
12 community composting operation, or onsite composting operation.

13 (2) For an investment made pursuant to paragraph (1), a local
14 jurisdiction may obtain procurement credit using the following
15 conversion factors, as applicable:

16 (A) If the local jurisdiction invests in the creation of a new
17 compostable materials handling operation, community composting
18 operation, or onsite composting operation, for the year in which
19 the investment was made, the local jurisdiction may claim
20 procurement credit based on the percentage of the total cost of the
21 project that the local jurisdiction funded, multiplied by the
22 estimated annual compost production capacity.

23 (B) If the local jurisdiction invests in the expansion of an
24 existing compostable materials handling operation, community
25 composting operation, or onsite composting operation, for the year
26 in which the investment was made, the local jurisdiction may claim
27 procurement credit based on the percentage of the total cost of the
28 project that the local jurisdiction funded, multiplied by the
29 estimated additional annual compost production capacity.

30 (3) For purposes of this subdivision, “compostable materials
31 handling operation” has the same meaning as defined in paragraph
32 (12) of subdivision (a) of Section 18982 of Title 14 of the
33 California Code of Regulations, “community composting” has the
34 same meaning as defined in paragraph (8) of subdivision (a) of
35 Section 18982 of Title 14 of the California Code of Regulations,
36 and “onsite composting operation” means a composting operation
37 that generates compost from organic materials generated onsite.

38 (k) (1) The department may adopt regulations it determines to
39 be necessary to implement and enforce the changes made to this

1 section by Chapter 508 of the Statutes of 2021 as emergency
2 regulations.
3 (2) Emergency regulations adopted pursuant to paragraph (1)
4 shall be adopted in accordance with Chapter 3.5 (commencing
5 with Section 11340) of Part 1 of Division 3 of Title 2 of the
6 Government Code, and for purposes of that chapter, including
7 Section 11349.6 of the Government Code, the adoption of these
8 regulations is an emergency and shall be considered by the Office
9 of Administrative Law as necessary for the immediate preservation
10 of the public peace, health, safety, and general welfare.
11 Notwithstanding Chapter 3.5 (commencing with Section 11340)
12 of Part 1 of Division 3 of Title 2 of the Government Code,
13 emergency regulations adopted by the department pursuant to
14 paragraph (1) shall be filed with, but not be repealed by, the Office
15 of Administrative Law and shall remain in effect until January 1,
16 2024.

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