



## AB-2902 Organic waste: reduction regulations: exemptions. (2023-2024)

SHARE THIS:



Date Published: 02/15/2024 09:00 PM

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

### ASSEMBLY BILL

**NO. 29**

**Introduced by Assembly Member Wood  
(Principal coauthor: Senator Dahle)**

**February 15, 2024**

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

### LEGISLATIVE COUNSEL'S DIGEST

AB 2902, as introduced, Wood. Organic waste: reduction regulations: exemptions.

(1) 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 methane emissions reduction goals to include specified targets to reduce the landfill disposal of organics. Existing law requires the Department of Resources, Recycling and Recovery, in consultation with the state board, to adopt regulations that achieve those targets by reducing organic waste in landfills, as provided. The department's organic waste regulations provide different organic waste procurement targets for local jurisdictions based on population and provide waivers and exemptions from collection and procurement requirements for rural, low-population, and high-elevation jurisdictions. Existing law provides that the exemption for rural jurisdictions is valid until December 31, 2026, as specified.

This bill would extend the rural jurisdiction exemption indefinitely, except as provided, and would require, commencing January 1, 2027, those jurisdictions to take specific actions to help reduce, divert, or recycle organic waste. The bill would require the department to exclude residents included in department-issued low population and high elevation waivers from the population in determining a local jurisdiction's organic waste procurement target. The bill would require a jurisdiction that no longer qualifies for a rural exemption due to an increase in population to have a plan in place within a certain number of years from the date of that population increase to comply with the organic waste collection services procurement requirements, as specified. The bill also would authorize nonexempt counties that generate less than 200,000 tons of solid waste annually to request the department's approval of a different organic waste diversion and recycling program. The bill would authorize a nonexempt jurisdiction to request a waiver from the department

from a requirement to separate and recover food waste and food-soiled paper if there are significant public safety issues associated with food waste collection as a result of local bear populations, as provided.

(2) Existing law requires the department, in consultation with the state board, to analyze the progress made in achieving the reduction targets for the amounts of organic waste disposed of in landfills and authorizes the department to provide incentives to facilitate progress toward the reduction targets, as provided.

This bill would require the department to develop training and technical assistance materials to assist local governments in expanding community composting operations, to create a model ordinance and franchise provisions that exempt small-scale community composting operations from specific regulatory and exclusivity provisions, to evaluate ways to incentivize local carbon farming efforts, maximize the local benefits of edible food recovery programs, and explore circumstances in which recovered food may be more suitable for use in local animal feed operations.

This bill would authorize the department, in conjunction with the California Pollution Control Financing Authority and the California Infrastructure and Economic Development Bank, to provide information to the owners and operators of landfill and composting operations that may be a potential source of methane emissions about financing that fund facility improvements to increase the capture or reduce the escape of methane emissions.

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) (A) 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.

*(B) The department shall evaluate ways to incentivize local carbon farming efforts, maximize the local benefits of edible food recovery programs, and explore circumstances in which recovered food may be more suitable for use in local animal feed operations.*

(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 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 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, each jurisdiction shall procure a quantity of recovered organic waste products that meets or exceeds 30 percent of its recovered organic waste product procurement target.

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

(iii) On or after January 1, 2025, 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 shall not take effect until two years after the effective date of the regulations.

*(7) For purposes of determining a jurisdiction's recovered organic waste procurement target pursuant to Section 18993.1 of Title 14 of the California Code of Regulations, the jurisdiction's population shall not include the number of residents included in low population or elevation waivers granted by the department pursuant to Section 18984.12 of Title 14 of the California Code of Regulations.*

#### ~~(7) Jurisdictions~~

*(8) (A) Recognizing the continued economic and logistical challenges of organic waste recycling and procurement in rural jurisdictions, subject to subparagraph (D), a jurisdiction 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 exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 3, Division 2 of Title 2 of the Government Code). 2024, shall remain exempt from complying with the organic waste collection services requirements specified in Article 3 (commencing with Section 18984) of, and the procurement requirements specified in Article 12 (commencing with Section 18993.1) of, Chapter 12 of Division 7 of Title 14 of the California Code of Regulations.*

*(B) A rural jurisdiction shall develop and provide green waste collection and self-haul opportunities commensurate with the jurisdiction's needs and capabilities. Beginning January 1, 2027, a rural jurisdiction shall do all of the following:*

*(i) Work with representatives of state, regional, and local governments to identify opportunities where an exempt jurisdiction may be able to help nonexempt jurisdictions achieve the state's organic waste diversion and recycling goals, including through facilitating the application of compost or mulch in appropriate areas within the rural jurisdiction.*

*(ii) Facilitate independent backyard and community composting programs to increase the use of small-scale composting in order to reduce organic waste. This collaboration may include, but is not limited to, working with representatives from solid waste management organizations, the Department of Food and Agriculture, University of California Cooperative Extension farm advisors, master gardener programs, Future Farmers of America, and schools.*

*(iii) Identify opportunities to sustain and increase the diversion of organic materials for animal use, including opportunities for collaboration with the Department of Food and Agriculture, the University of California Cooperative Extension farm advisors, a cattlemen's association, agricultural associations, Future Farmers of America, and 4-H programs.*

*(iv) Work with other local jurisdictions and joint powers authorities to explore shared opportunities for or expanded existing regional organic waste facilities and markets.*

*(v) Continue public education and outreach to reduce organic waste generation and disposal, increase onsite organic waste recycling, facilitate community and backyard composting opportunities, and increase*

*edible food recovery.*

*(C) Nothing in this paragraph shall relieve a rural jurisdiction of any other requirements contained in Chapter 12 (commencing with Section 18981.1) of Division 7 of Title 14 of the California Code of Regulations.*

*(D) A jurisdiction that no longer qualifies for a rural exemption because the jurisdiction's population increased beyond the limit specified in subdivision (h) of Section 42649.8 shall have three years from the the jurisdiction's population exceeds 70,000 persons to comply with the organic waste collection and recycling requirements specified in Article 3 (commencing with Section 18984) of, and the procurement requirements specified in Article 12 (commencing with Section 18993.1) of, Chapter 12 of Division 7 of Title 14 of California Code of Regulations.*

*(9) A county that does not qualify for a rural exemption pursuant to subdivision (c) of Section 18984.12 of 14 of the California Code of Regulations, but that generates less than 200,000 tons of solid waste annually, request the department's approval of an alternative or modified organic waste diversion and recycling program that provides increased flexibility to the jurisdiction for diverting and recycling organic waste. A county request an alternative or modified organic waste diversion and recycling program for those unincorporated areas within the county, not including census designated places with a population of 10,000 or greater. In considering alternative or modified organic waste diversion and recycling programs, the department shall give consideration to the extent to which the jurisdiction diverts organic waste generated from agricultural and wildfire risk reduction projects from landfill disposal.*

*(10) Upon request by a local jurisdiction that does not otherwise qualify for an elevation exemption pursuant to subdivision (d) of Section 18994.12 of Title 14 of the California Code of Regulations, the department may issue a waiver from a requirement to separate and recover food waste and food-soiled paper for all or part of the jurisdiction where there are significant public safety issues associated with food waste collection as a result of local bear populations. Requests for waivers shall include information about the number of generators that will be included in the waiver, local bear populations, and food waste-related incidents that may be corroborated by local, state, or federal public safety or wildlife officials. Residential and small commercial generators within the area granted a waiver pursuant to this subdivision may deposit food waste and food-soiled paper in a municipal solid waste disposal container. Nothing in this paragraph exempts a local jurisdiction from any other obligation to provide collection services for other types of organic waste.*

~~(8)~~

*(11) 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 exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 2, 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) may commence during the 2022 calendar year may submit to the department a notification of intent to comply with the requirements described in this section. Upon approval by the department, and implementation by the local jurisdiction, 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 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 (c).

(2) For violations that commence during the 2022 calendar year and continue into the 2023 calendar 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 resolution by the governing body of the local jurisdiction, and filed with the department no later than March 31, 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 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 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.

*(i) To reduce barriers for the expansion of community composting operations, the department shall develop training and technical assistance materials to assist local governments in promoting the expansion of community composting operations.*

*composting operations. The materials developed by the department shall include a model ordinance and franchise provisions that exempt small-scale community composting operations from the regulatory and exclusivity provisions applied by the local jurisdiction to other solid waste haulers and establish a specialized local regulatory framework for those operations.*

*(j) In order to reduce emissions from landfills and composting operations that may be a potential source of methane emissions, the department, in conjunction with the California Pollution Control Financing Authority and the California Infrastructure and Economic Development Bank, may provide information to the owners and operators of those facilities about financing that may be available to fund facility improvements to increase the capture and reduce the escape of methane emissions.*

*(k) Consistent with the decisions in Scott v. Bd. of Equalization (1996) 50 Cal.App.4th 1597 and Schettler v. County of Santa Clara (1977) 74 Cal.App.3d 990, the free provision, or granting of incentive payments for use, of compost or mulch by a jurisdiction constitutes a public purpose resulting in the public benefits of reducing greenhouse gas emissions, increasing soil productivity and water retention, and facilitating diversion of organic waste and so shall not be construed to be gifts of public funds in violation of Section 6 of Article XVI of the California Constitution. This section does not constitute a change in, but is declaratory of, existing law.*