

COUNTY OF EL DORADO

330 Fair Lane
Placerville, CA 95667
(530) 621-5390
(530) 622-3645 Fax

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Clerk of the Board



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January 9, 2024

Senator Marie Alvarado-Gil
1021 O Street, Suite 7240
Sacramento, CA 95814
Via email

Re: Support for RCRC sponsored legislation on SB 1383

Dear Senator Alvarado-Gil,

The El Dorado County Board of Supervisors is requesting that you introduce legislation regarding CalRecycle's SB 1383 organic waste recycling regulations on behalf of the Rural County Representatives of California (RCRC) as outlined in the attached RCRC SB 1383 Legislative Proposal 2024.

As a member county of the ESJPA, El Dorado has been participating in the ESJPA's efforts to right-size and gain flexibility in implementing SB 1383, which has been burdensome and costly to many of the RCRC ESJPA member counties. To date, El Dorado County has committed hundreds of thousands of general fund dollars to implementing SB 1383, with no certainty that those efforts will result in compliance with CalRecycle's requirements and avoid hefty fines. The RCRC Legislative Proposal will provide many counties much needed relief and flexibility to implement SB 1383 in ways that make sense for their local jurisdictions.

Additionally, the detailed recommendations in the attached RCRC SB 1383 Legislative Proposal 2024 align with many of the findings of the Little Hoover Commission after their series of public hearings and publication of their report entitled, *Reducing California's Landfill Methane Emissions: SB 1383 Implementation* (<https://bit.ly/3J0TKo2>).

Your support and responsiveness to your district has been outstanding and we are fortunate to have a working relationship with you as our State Senator. It is in that spirit of collaboration that we ask you to introduce the RCRC SB 1383 Legislative Proposal 2024.

Thank you,

Wendy Thomas
Chair, El Dorado County Board of Supervisors

Attachment
cc: Lauren Hernandez, District Director to Senator Alvarado-Gil
John Kennedy, RCRC Senior Policy Advocate

Rural County Representatives of California Legislative Proposal: SB 1383 Organic Waste Recycling Right-Sizing and Flexibility

Synopsis

This proposal right-sizes and increases flexibility for smaller and rural local governments to comply with the state's SB 1383 organic waste recycling regulations, facilitates smaller scale community composting programs, calls on CalRecycle to recognize local government efforts to keep forest and agricultural waste out of landfills, and increases local benefits of edible food recovery programs.

Problem

SB 1383 (Lara, Chapter 395, 2016) requires the state to reduce landfill disposal of organic waste 75 percent below 2014 levels by 2025. CalRecycle estimates that these far-reaching SB 1383 regulations could cost as much as \$40 billion to implement over a ten-year period and will require the construction of as many as 100 new organic waste recycling facilities.

CalRecycle's SB 1383 regulations impose a host of costly new requirements on local governments and are increasing refuse rates. The greatest implementation challenges and highest anticipated rate increases will occur in rural and sparsely populated areas of the state. While the regulations are generally tailored to dovetail within the solid waste collection system that exists in urban areas, they are poorly suited and provide little flexibility to deal with the needs and challenges of lower-population and rural areas.

Under the existing regulations, California's 19 rural counties (those with populations under 75,000 and which are collectively home to 600,000 residents) and the cities within those counties are exempt from collection and procurement obligations through 2026. Unlike another exemption that exists for low-population areas, the rural exemption is not renewable. CalRecycle has not indicated that it will reopen the regulations to repeal or extend the rural exemption. Many rural counties are located along California's borders with Oregon and Nevada and obtain many vital services from out-of-state providers. CalRecycle refuses to allow out-of-state materials to satisfy local procurement obligations, which will leave far-flung rural areas with no choice but to truck compost and mulch from several hours and over a hundred miles away. Because traditional collection methods are not realistically implementable in these areas and since procurement obligations will impose comparatively high and regressive burdens on rural counties, the existing rural exemption should be extended.

Unfortunately, there is little flexibility built into the existing regulations to let smaller, rural jurisdictions and low population counties develop innovative alternative compliance methods that will contribute towards the state's organic waste reduction objectives at far lower cost. These smaller, rural jurisdictions and low population counties are often economically disadvantaged and have low population densities that make achieving these ambitious requirements even more challenging. California should create a pathway for smaller counties to submit alternative organic waste management plans to CalRecycle for approval.

CalRecycle's existing SB 1383 regulations include an exemption for high altitude elevations (over 4,500') to avoid public safety impacts associated with food waste collection and recovery impacts in bear country. Unfortunately, bear populations aren't confined to only areas above 4,500' and the regulations fail to offer similar relief for those communities with nearby bear populations below that altitude. This presents a significant risk to both public safety and animal welfare and CalRecycle should create a pathway for other communities with legitimate bear challenges to throw their food waste into their trash can.

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In its recent evaluation of SB 1383, the Little Hoover Commission recommended creating pathways for development of smaller-scale independent community composting operations. These types of businesses can plug gaps that may exist in existing organic waste collection systems and may be more suitable in smaller, rural areas where traditional collection and larger-scale processing are not realistic. CalRecycle has occasionally developed model ordinances that can be adopted by local governments and statewide guidance could be helpful, especially for smaller and less-resourced jurisdictions.

SB 1383 requires the state to increase the amount of edible food recovered for human consumption. An unanticipated result is that some larger generators are no longer donating their foods to local food assistance and animal feed operations. Instead, larger generators now often backhaul edible food to warehouses several hours away where it is separated into what can be donated to food assistance programs and what should go to the landfill. The unfortunate result is a significant erosion of local benefits. CalRecycle should evaluate and refocus its edible food recovery requirements to increase local benefits and facilitate the use of appropriate materials for animal feed operations.

Landfills can emit significant quantities of methane. While most landfills are required to install methane capture and control infrastructure, some emissions continue and leaks can develop. California's Pollution Control Financing Authority and the Infrastructure and Economic Development Bank can provide low-interest loans and financial tools to assist public and private landfill owners further reduce emissions at their facilities; however, it is not clear how well known those programs are.

Solution

- Extends the existing SB 1383 exemption for 19 rural counties¹ with populations below 70,000 residents (and cities within those counties) (roughly 600,000 residents statewide and only exempts jurisdictions from SB 1383 procurement and collection services requirements).
 - Rural jurisdictions will still have to implement edible food recovery programs, water efficiency requirements, and provide green waste and self-haul opportunities.
 - Beginning 1/1/27 (when the existing exemption sunsets), rural jurisdictions must:
 - Identify opportunities in which the rural jurisdiction may be able to help non-exempt jurisdictions achieve the state's organic waste goals.
 - Facilitate backyard and community composting programs.
 - Identify ways to sustain and increase diversion of organic materials for animal feed.
 - Explore opportunities for new or expanded existing regional organic waste facilities and markets.
 - Continue public education and outreach programs.
- Provides that jurisdictions that no longer qualify for the rural exemption because the county's population has exceeded 70,000 residents shall have three years to comply with organic waste procurement and collection requirements.
- Allows 12 counties² that generate less than 200,000 tons of solid waste annually to request CalRecycle's approval of an alternative or modified organic waste diversion and recycling program applicable only to unincorporated areas of the county (excluding the census designated places that

¹ Lake, San Benito, Tehama, Tuolumne, Calaveras, Siskiyou, Amador, Lassen, Glenn, Del Norte, Colusa, Inyo, Plumas, Mariposa, Trinity, Mono, Modoc, Sierra, and Alpine Counties.

² El Dorado, Humboldt, Imperial, Kings, Mendocino, Madera, Napa, Nevada, Shasta, Yuba, Sutter, and Yolo Counties.

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have a population of greater than 10,000 residents³), that may include consideration of diversion of agricultural and forest-derived organic waste.

- Provides that a jurisdiction's recovered organic waste procurement targets shall not include those residents who live in areas that have been granted a low population or elevation waiver by CalRecycle.
- Allows local jurisdictions that have significant public safety issues associated with food waste collection as a result of local bear populations to apply to CalRecycle for a waiver allowing them to deposit food waste and food-soiled paper in the trash container.
- Promotes small-scale community composting by requiring CalRecycle to develop training, technical assistance, and a model ordinance that creates a local regulatory framework for those operations outside of traditional franchise arrangements.
- Requires CalRecycle to evaluate ways to incentivize local carbon farming efforts and to maximize local benefits of edible food recovery programs, including circumstances in which recovered food may be more suitable for use in local animal feed operations.
- Allows CalRecycle, in conjunction with the California Pollution Control Financing Authority and the California Infrastructure and Economic Development Bank to provide information to landfill owners about financing opportunities to fund facility improvements that increase the capture or reduce the escape of methane emissions.
- Clarifies that local compost and mulch give aways and rebates are not a gift of public funds.

Likely Support (unconfirmed)

RCRC, California State Association of Counties (CSAC), League of California Cities (CalCities), Solid Waste Association of North America (SWANA) individual counties and cities

Likely Neutral (unconfirmed)

Solid waste haulers, California Compost Coalition, Californians Against Waste

³ El Dorado County – El Dorado Hills, Cameron Park, and Diamond Springs; Humboldt County – McKinleyville; Yuba County - Olivehurst

**Rural County Representatives of California Legislative Proposal:
SB 1383 Organic Waste Recycling Right-Sizing and Flexibility
Draft Language**

Public Resources Code Section 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. **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 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, 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 (1) 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 established pursuant to Section 18993.1 of Title 14 of the California Code of Regulations, that 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.

(8)(A) Recognizing the continued economic and logistical challenges of organic waste recycling and procurement in rural jurisdictions, those 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, shall remain exempt from complying with the organic waste collection requirements specified in Article 3 and

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procurement requirements specified in Article 12 of Chapter 12 of Division 7 of Title 14 of the California Code of Regulations.

(B) Rural jurisdictions shall develop and provide green waste collection and self-haul opportunities commensurate with the jurisdiction's needs and capabilities. Beginning January 1, 2027, rural jurisdictions shall:

(1) Work with representatives of state, regional, and local governments to identify opportunities where the exempt jurisdiction may be able to help non-exempt 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.

(2) 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, representatives from solid waste management organizations, the Department of Food and Agriculture, the University of California Cooperative Extension farm advisors, Master Gardener programs, Future Farmers of America, and schools.

(3) Identify opportunities to sustain and increase the diversion of organic materials for animal feed, 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 4H programs.

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

(5) 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.

(6) Nothing in this paragraph shall relieve a rural jurisdiction of any other requirements contained in Chapter 12 of Division 7 of Title 14 of the California Code of Regulations.

(C) Jurisdictions that no longer qualify for the rural exemption because their population has increased beyond the limit specified in Section 42649.8(h) shall have three years from the date their population exceeds 70,000 to comply with the organic waste collection services and procurement requirements specified in Articles 3 and 12 of Chapter 12 of Division 7 of Title 14 of the California Code of Regulations.

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).

(9) Counties that do not qualify for the rural exemption pursuant to subdivision (c) of Section 18984.12 of Title 14 of the California Code of Regulations, but which generate less than 200,000 tons of solid waste annually, may 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 may 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 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.

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(10) Upon request by a local jurisdiction that does not otherwise qualify for an elevation exemption pursuant to Section 18994.12(d) 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 must include information about the number of generators that will be included in the waiver, local bear populations, and food waste-related incidents which may be corroborated by local, state, or federal public safety or wildlife officials. Residential and small commercial generators within an 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 subdivision exempts a local jurisdiction from any other obligations 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 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

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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 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. 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.

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(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 or reduce the escape of methane emissions.

(k) Consistent with the decisions of Scott v. Board of Equalization (50 Cal. App. 4th 1597) and Schettler v. County of Santa Clara (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 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.