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CHAPTER 727

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INTRODUCED BY Assembly Member Chesbro

(Coauthors: Assembly Members Gordon, Skinner, Ting, Wieckowski,  
and Williams)

FEBRUARY 18, 2014

An act to add Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1826, Chesbro. Solid waste: organic waste.

(1) The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, establishes an integrated waste management program that requires each county and city and county to prepare and submit to the department a countywide integrated waste management plan. The act requires a business, which is defined as a commercial or public entity, that generates more than 4 cubic yards of commercial solid waste per week or is a multifamily residential dwelling of 5 units or more, to arrange for recycling services. Existing law also requires jurisdictions to implement a commercial solid waste recycling program meeting specified elements.

This bill would, commencing April 1, 2016, require a business that generates a specified amount of organic waste per week to arrange for recycling services for that organic waste in a specified manner. The bill would decrease the amount of organic waste under which a business would be subject to those requirements from 8 cubic yards or more to 4 cubic yards or more on January 1, 2017. The bill would also require a business that generates 4 cubic yards or more of commercial solid waste per week, on and after January 1, 2019, to arrange for organic waste recycling services and, if the department makes a specified determination, would decrease that amount to 2 cubic yards, on or after January 1, 2020.

This bill would require the contract or work agreement between a business and a gardening or landscaping service to require the organic waste generated by those services to comply with the requirements of this act.

This bill would require each jurisdiction, on and after January 1,

2016, to implement an organic waste recycling program to divert organic waste from the businesses subject to this act, except as specified with regard to rural jurisdictions, thereby imposing a state-mandated local program by imposing new duties on local governmental agencies. The bill would require each jurisdiction to report to the department on its progress in implementing the organic waste recycling program, and the department would be required to review whether a jurisdiction is in compliance with this act.

This bill would authorize a local governmental agency to charge and collect a fee from an organic waste generator to recover the local governmental agency's costs incurred in complying with this act.

This bill would require the department to identify and recommend actions to address permitting and siting challenges and to encourage the continued viability of the state's organic waste processing and recycling infrastructure, in partnership with the California Environmental Protection Agency and other specified state and regional agencies. The bill also would require the department to cooperate with local jurisdictions and industry to provide assistance for increasing the feasibility of organic waste recycling and to identify certain state financing mechanisms and state funding incentives and post this information on its Internet Web site.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Chapter 12.9 (commencing with Section 42649.8) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 12.9. RECYCLING OF ORGANIC WASTE

42649.8. For purposes of this chapter, the following terms shall apply:

(a) "Business" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity, or a multifamily residential dwelling.

(b) "Commercial waste generator" means a business subject to subdivision (a) of Section 42649.2.

(c) "Organic waste" means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

(d) "Organic waste generator" means a business subject to subdivision (a) of Section 42649.81.

(e) "Rural jurisdiction" means a jurisdiction that is located entirely within one or more rural counties, or a regional agency comprised of jurisdictions that are located within one or more rural counties.

(f) "Rural county" means a county that has a total population of

less than 70,000 persons.

(g) "Self-hauler" means a business that hauls its own waste rather than contracting for that service and "self-haul" means to act as a self-hauler.

42649.81. (a) (1) On and after April 1, 2016, a business that generates eight cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste in the manner specified in subdivision (b).

(2) On and after January 1, 2017, a business that generates four cubic yards or more of organic waste per week shall arrange for recycling services specifically for organic waste in the manner specified in subdivision (b).

(3) On and after January 1, 2019, a business that generates four cubic yards or more of commercial solid waste, as defined in Section 42649.1, per week, shall arrange for recycling services specifically for organic waste in the manner specified in subdivision (b).

(4) On or after January 1, 2020, if the department determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specified in paragraph (3), unless the department determines that this requirement will not result in significant additional reductions of organics disposal.

(5) A business located in a rural jurisdiction that is exempted pursuant to paragraph (2) of subdivision (a) of Section 42649.82 is not subject to this chapter.

(b) A business subject to subdivision (a) shall take at least one of the following actions:

(1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste.

(2) Recycle its organic waste onsite or self-haul its own organic waste for recycling.

(3) Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste.

(4) Make other arrangements consistent with paragraph (3) of subdivision (b) of Section 42649.84.

(c) A business that is a property owner may require a lessee or tenant of that property to source separate their organic waste to aid in compliance with this section.

(d) A business generating organic waste shall arrange for the recycling services required by this section in a manner that is consistent with state and local laws and requirements, including a local ordinance or local jurisdiction's franchise agreement, applicable to the collection, handling, or recycling of solid and organic waste.

(e) When arranging for gardening or landscaping services, the contract or work agreement between a business subject to this section and a gardening or landscaping service shall require that the organic waste generated by those services be managed in compliance with this chapter.

(f) (1) A multifamily residential dwelling that consists of fewer than five units is not a business for purposes of this chapter.

(2) A business that is a multifamily dwelling is not required to arrange for the organic waste recycling services specified in

subdivision (b) for food waste that is generated by the business.

(g) If separate organic waste collection and recycling services are not offered through a local ordinance or local jurisdiction's franchise agreement, a business generating organic waste may arrange for separate organic waste collection and recycling services, until the local ordinance or local jurisdiction's franchise agreement includes organic waste recycling services.

42649.82. (a) (1) In addition to the requirements of Section 42649.3, on and after January 1, 2016, each jurisdiction shall implement an organic waste recycling program that is appropriate for that jurisdiction and designed specifically to divert organic waste generated by businesses subject to Section 42649.81, whether or not the jurisdiction has met the requirements of Section 41780.

(2) (A) A county board of supervisors of a rural county may adopt a resolution, as prescribed in this paragraph, to make the rural county exempt from the requirements of this section. If a rural jurisdiction is a city, the city council may adopt a resolution, as prescribed in this paragraph, to make the rural jurisdiction exempt from this section. If a rural jurisdiction is a regional agency comprised of jurisdictions that are located entirely within one or more rural counties, the board of the regional agency may adopt a resolution, as prescribed in this paragraph, to make the rural jurisdiction is exempt from the requirements of this section.

(B) A resolution adopted pursuant to subparagraph (A) shall include findings as to the purpose of and need for the exemption.

(C) A resolution to exempt a rural jurisdiction pursuant to subparagraph (A) shall be submitted to the department at least six months before the operative date of the exemption.

(D) On or after January 1, 2020, if the department determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during the 2014 calendar year, all exemptions authorized by this paragraph shall terminate unless the department determines that applying this chapter to rural jurisdictions will not result in significant additional reductions of disposal of organic waste.

(b) If a jurisdiction, as of January 1, 2016, has in place an organic waste recycling program that meets the requirements of this section, it is not required to implement a new or expanded organic waste recycling program.

(c) The organic waste recycling program required by this section shall be directed at organic waste generators and may include, but is not limited to, one or more of the following:

(1) Implementing a mandatory commercial organic waste recycling policy or ordinance that addresses organic waste recycling.

(2) Requiring a mandatory commercial organic waste recycling program through a franchise contract or agreement.

(3) Requiring organic waste to go through a source separated or mixed processing system that diverts material from disposal.

(d) (1) The organic waste recycling program shall do all of the following:

(A) Identify all of the following:

(i) Existing organic waste recycling facilities within a reasonable vicinity and the capacities available for materials to be accepted at each facility.

(ii) Existing solid waste and organic waste recycling facilities within the jurisdiction that may be suitable for potential expansion or colocation of organic waste processing or recycling facilities.

(iii) Efforts of which the jurisdiction is aware that are underway to develop new private or public regional organic waste recycling facilities that may serve some or all of the organic waste recycling needs of the commercial waste generators within the jurisdiction subject to this chapter, and the anticipated timeframe for completion of those facilities.

(iv) Closed or abandoned sites that might be available for new organic waste recycling facilities.

(v) Other nondisposal opportunities and markets.

(vi) Appropriate zoning and permit requirements for the location of new organic waste recycling facilities.

(vii) Incentives available, if any, for developing new organic waste recycling facilities within the jurisdiction.

(B) Identify barriers to siting new or expanded compostable materials handling operations, as defined in paragraph (12) of subdivision (a) of Section 17852 of the Title 14 of the California Code of Regulations, and specify a plan to remedy those barriers that are within the control of the local jurisdiction.

(C) Provide for the education of, outreach to, and monitoring of, businesses. The program shall require the jurisdiction to notify a business if the business is not in compliance with Section 42649.81.

(2) For purposes of subparagraph (A) of paragraph (1), an "organic waste recycling facility" shall include compostable materials handling operations, as defined in paragraph (12) of subdivision (a) of Section 17852 of Title 14 of the California Code of Regulations, and may include other facilities that recycle organic waste.

(e) The organic waste recycling program may include any one or more of the following:

(1) Enforcement provisions that are consistent with the jurisdiction's authority, including a structure for fines and penalties.

(2) Certification requirements for self-haulers.

(3) Exemptions, on a case-by-case basis, from the requirements of Section 42649.81 that are deemed appropriate by the jurisdiction for any of the following reasons:

(A) Lack of sufficient space in multifamily complexes or businesses to provide additional organic material recycling bins.

(B) The current implementation by a business of actions that result in the recycling of a significant portion of its organic waste.

(C) The business or group of businesses does not generate at least one-half of a cubic yard of organic waste per week.

(D) Limited-term exemptions for extraordinary and unforeseen events.

(E) (i) The business or group of businesses does not generate at least one cubic yard of organic waste per week, if the local jurisdiction provides the department with information that explains the need for this higher exemption than that authorized by subparagraph (C).

(ii) The information described in clause (i) shall be provided to the department with the information provided pursuant to subdivision (f).

(iii) This subparagraph shall not be operative on or after January 1, 2020, if the department, pursuant to paragraph (4) of subdivision (a) of Section 42649.81, determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during the 2014 calendar year.

(f) (1) Each jurisdiction shall provide the department with information on the number of regulated businesses that generate organic waste and, if available, the number that are recycling organic waste. The jurisdiction shall include this information as part of the annual report required pursuant to Section 41821.

(2) On and after August 1, 2017, in addition to the information required by paragraph (1), each jurisdiction shall report to the department on the progress achieved in implementing its organic waste recycling program, including education, outreach, identification, and monitoring, on its rationale for allowing exemptions, and, if applicable, on enforcement efforts. The jurisdiction shall include this information as part of the annual report required pursuant to Section 41821.

(g) (1) The department shall review a jurisdiction's compliance with this section as part of the department's review required by Section 41825.

(2) The department also may review whether a jurisdiction is in compliance with this section at any time that the department receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, an organic waste recycling program.

(h) During a review pursuant to subdivision (g), the department shall determine whether the jurisdiction has made a good faith effort to implement its selected organic waste recycling program. For purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement its organic waste recycling program. During its review, the department may include, but is not limited to, consideration of the following factors in its evaluation of a jurisdiction's good faith effort:

(1) The extent to which businesses have complied with Section 42649.81, including information on the amount of disposal that is being diverted from the businesses, if available, and on the number of businesses that are complying with Section 42649.81.

(2) The recovery rate of the organic waste from the material recovery facilities that are utilized by the businesses, all information, methods, and calculations, and any additional performance data, as requested by the department from the material recovery facilities pursuant to Section 18809.4 of Title 14 of the California Code of Regulations.

(3) The extent to which the jurisdiction is conducting education and outreach to businesses.

(4) The extent to which the jurisdiction is monitoring businesses and notifying those businesses that are not in compliance.

(5) The appropriateness of exemptions allowed by the jurisdiction.

(6) The availability of markets for collected organic waste recyclables.

(7) Budgetary constraints.

(8) In the case of a rural jurisdiction, the effects of small geographic size, low population density, or distance to markets.

(9) The availability, or lack thereof, of sufficient organic waste processing infrastructure, organic waste recycling facilities, and other nondisposal opportunities and markets.

(10) The extent to which the jurisdiction has taken steps that are under its control to remove barriers to siting and expanding organic waste recycling facilities.

42649.83. (a) If a jurisdiction adds or expands an organic waste

recycling program to meet the requirements of Section 42649.82, the jurisdiction shall not be required to revise its source reduction and recycling element or obtain the department's approval pursuant to Article 1 (commencing with Section 41800) of Chapter 7 of Part 2.

(b) If an addition or expansion of a jurisdiction's organic waste recycling program is necessary, the jurisdiction shall include this information in the annual report required pursuant to Section 41821.

42649.84. (a) This chapter does not limit the authority of a local governmental agency to adopt, implement, or enforce a local organic waste recycling requirement, or a condition imposed upon a self-hauler, that is more stringent or comprehensive than the requirements of this chapter.

(b) This chapter does not modify, limit, or abrogate in any manner any of the following:

(1) A franchise granted or extended by a city, county, city and county, or other local governmental agency.

(2) A contract, license, or permit to collect solid waste previously granted or extended by a city, county, city or county, or other local governmental agency.

(3) The existing right of a business to sell or donate its recyclable organic waste materials.

(c) Notwithstanding any other requirement of this chapter, nothing in this chapter modifies, limits, or abrogates the authority of a local jurisdiction with respect to land use, zoning, or facility siting decisions by or within that local jurisdiction.

42649.85. A local governmental agency may charge and collect a fee from an organic waste generator to recover the local governmental agency's costs incurred in complying with this chapter.

42649.86. (a) The department shall identify and recommend actions to address, with regard to both state agencies and the federal government, the permitting and siting challenges associated with composting and anaerobic digestion, and to encourage the continued viability of the state's organic waste processing and recycling infrastructure, in partnership with the California Environmental Protection Agency and other state and regional agencies. These other state and regional agencies shall include, but are not limited to, the State Air Resources Board, the State Energy Resources Conservation and Development Commission, the Public Utilities Commission, the Department of Food and Agriculture, the State Water Resources Control Board, California regional water quality control boards, and air pollution control and air quality management districts.

(b) The department shall cooperate with local governmental agencies and industry to provide assistance for increasing the feasibility of organic recycling by promoting processing opportunities and the development of new infrastructure of sufficient capacity to meet the needs of generators, and developing sufficient end-use markets throughout the state for the quantity of organic waste required to be diverted.

(c) The department shall identify and post on its Internet Web site state financing mechanisms and state funding incentives that are available for in-state development of organic waste infrastructure to help the state achieve its greenhouse gas reduction goals and waste reduction goals.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service

charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.