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**AB-1572 Integrated waste management plans: source reduction and recycling element: review schedule.** (2017-2018)

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**Assembly Bill No. 1572**

**CHAPTER 155**

An act to amend Section 41825 of the Public Resources Code, relating to solid waste.

[ Approved by Governor July 31, 2017. Filed with Secretary of State July 31, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1572, Aguiar-Curry. Integrated waste management plans: source reduction and recycling element: review schedule.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. Those entities are required to divert 50% of all solid waste subject to the element through source reduction, recycling, and composting, except as specified. A city, county, or regional agency is required to submit an annual report to the department summarizing its progress in reducing solid waste. Existing law requires the department, until January 1, 2018, to review a jurisdiction's compliance with those diversion requirements every 2 or 4 years, with the frequency conditioned upon the department finding in the prior review that the jurisdiction was or was not in compliance with those diversion requirements, as specified. Existing law repeals this conditional review schedule on January 1, 2018, and, as of that date, requires the department to review each jurisdiction's source reduction and recycling element and household hazardous waste element for compliance with those diversion requirements at least once every 2 years.

This bill would postpone the repeal of that conditional review schedule, and postpone the corresponding operation of the department's 2-year review schedule, to January 1, 2022.

Existing law requires the department to adopt regulations to achieve landfill disposal reductions of organic waste from 2014 levels of 50% by 2020 and 75% by 2025,

This bill would authorize the department, in consultation with stakeholders, to make recommendations to the Legislature, by January 1, 2022, on necessary revisions to the review process described above to ensure consistency with the regulations adopted to achieve those organic waste disposal reduction goals.

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

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

**SECTION 1.** Section 41825 of the Public Resources Code, as amended by Section 159 of Chapter 140 of the Statutes of 2009, is amended to read:

**41825.** (a) Using the information in the report submitted to the department by the jurisdiction pursuant to Section 41821 and any other relevant information, the department shall make a finding whether each jurisdiction was in compliance with Section 41780 for calendar year 2006 and shall review a jurisdiction's compliance with Section 41780 in accordance with the following schedule:

(1) If the department makes a finding that the jurisdiction was in compliance with Section 41780 for calendar year 2006, the department shall review, commencing January 1, 2012, and at least once every four years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(2) If the department makes a finding that the jurisdiction made a good faith effort to implement its source reduction and recycling element and household hazardous waste element, the department shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(3) If the department makes a finding that the jurisdiction was not in compliance with Section 41780 for calendar year 2006 or for any subsequent calendar year, the department shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(4) If, after determining that a jurisdiction is subject to paragraph (2), or, if, after determining that a jurisdiction is not in compliance with Section 41780 and is subject to paragraph (3), the department subsequently determines that the jurisdiction has come into compliance with Section 41780, the department shall review, at least once every four years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (1).

(5) If, after determining that a jurisdiction is in compliance with Section 41780 and is subject to paragraph (1), the department subsequently determines that the jurisdiction is not in compliance with Section 41780, the department shall review, at least once every two years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (2) or (3).

(b) In addition to the requirements of subdivision (a), the department may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the department receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the department shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The department shall issue a notice of intent to issue an order of compliance not less than 30 days before the department holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the department recommends are necessary for the jurisdiction to complete to implement its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the department.

(3) The department shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the department finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the department determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the department shall consider both of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the department shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The department shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the department concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the department may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The department shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

**SEC. 2.** Section 41825 of the Public Resources Code, as added by Section 14 of Chapter 343 of the Statutes of 2008, is amended to read:

**41825.** (a) At least once every two years, the department shall review each jurisdiction's source reduction and recycling element and household hazardous waste element for compliance with Section 41780.

- (b) In addition to the requirements of subdivision (a), the department may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the department receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.
- (c) (1) Before issuing a compliance order pursuant to subdivision (d), the department shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.
- (2) The department shall issue a notice of intent to issue an order of compliance not less than 30 days before the department holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:
- (A) The proposed basis for issuing an order of compliance.
  - (B) The proposed actions the department recommends are necessary for the jurisdiction to complete the implementation of its source reduction and recycling element or household hazardous waste element.
  - (C) The proposed recommendations to the department.
- (3) The department shall consider any information provided pursuant to subdivision (c) of Section 41821, if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.
- (d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the department finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall issue an order of compliance with a specific schedule for achieving compliance.
- (2) The compliance order shall include those conditions that the department determines to be necessary for the jurisdiction to implement its diversion programs.
- (3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the department shall consider all of the following factors in determining whether or not to issue a compliance order:
- (A) Whether an exceptional growth rate may have affected compliance.
  - (B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.
- (e) For purposes of making a determination pursuant to this section as to whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the department shall consider all of the following criteria:
- (1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.
  - (2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.
  - (3) In determining whether a jurisdiction has made a good faith effort, the department shall also consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.
  - (4) The department shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:
    - (A) Natural disasters.
    - (B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.
    - (C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the department concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the department may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The department shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall become operative on January 1, 2022.

**SEC. 3.** On or before January 1, 2022, the Department of Resources Recycling and Recovery, in consultation with stakeholders, including, but not limited to, local governments, may make recommendations to the Legislature on necessary revisions to the local government review process required pursuant to Section 41825 of the Public Resources Code to ensure consistency with the regulations adopted pursuant to Section 42652.5 of the Public Resources Code.