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AB-504 Solid waste: commercial and organic waste: recycling bins. (2021-2022)

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Date Published: 07/12/2021 09:00 PM

Assembly Bill No. 504

CHAPTER 56

An act to amend Sections 42649.1, 42649.2, 42649.8, 42649.81, and 42649.82 of the Public Resources Code, relating to solid waste.

[Approved by Governor July 09, 2021. Filed with Secretary of State July 09, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 504, McCarty. Solid waste: commercial and organic waste: recycling bins.

Existing law requires a business that generates 4 cubic yards or more of commercial solid waste, as defined, to arrange for recycling services, as specified. Existing law requires a business that is subject to that requirement that provides customers access to that business, including a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility, to provide customers with a recycling bin or container for that waste stream that complies with prescribed requirements. Existing law exempts full-service restaurants, as defined, from the requirement to provide customers with a recycling bin or container if the full-service restaurant provides its employees a recycling bin or container for that waste stream to collect material purchased on the premises and implements a program to collect that waste stream.

This bill would, for a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility, restrict the requirement to provide customers with a recycling bin or container to permanent, nonmobile food service facilities with dedicated seating areas that are not full-service restaurants. The bill would authorize those facilities, instead of providing an organic recycling bin or container, to implement a process for recycling organic waste that yields results comparable to or greater in volume and quality to results attained by providing an organic waste recycling bin or container. The bill would also make other revisions to these provisions, including revising the definition of "full-service restaurant," deleting obsolete provisions, and making conforming changes.

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

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

SECTION 1. Section 42649.1 of the Public Resources Code is amended to read:

42649.1. For purposes of this chapter, the following definitions 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 solid waste" includes all types of solid waste generated by a store, office, or other commercial or public entity source, including a business or a multifamily dwelling of five or more units.

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

(d) "Full-service restaurant" means an establishment with the primary business purpose of serving food, where food may be consumed on the premises, and an employee of the establishment takes all of the following actions:

- (1) The consumer is escorted or assigned to an assigned eating area. The employee may choose the assigned eating area or may seat the consumer according to the consumer's need for accommodation or other request.
- (2) The consumer's food and beverage orders are taken after the consumer has been seated at the assigned seating area.
- (3) The food and beverage orders are delivered directly to the consumer, unless the establishment is buffet style or self-service.
- (4) Any requested items associated with the consumer's food or beverage order are brought to the consumer, unless the establishment is buffet style or self-service.
- (5) The check is delivered directly to the consumer at the assigned eating area.

(e) "Park" means a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility.

(f) "Self-hauler" means a business that hauls its own waste rather than contracting for that service.

SEC. 2. Section 42649.2 of the Public Resources Code is amended to read:

42649.2. (a) A business that generates four cubic yards or more of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services, consistent with state or local laws or requirements, including a local ordinance or agreement, applicable to the collection, handling, or recycling of solid waste, to the extent that these services are offered and reasonably available from a local service provider.

(b) A commercial waste generator shall take at least one of the following actions:

- (1) Source separate recyclable materials from solid waste and subscribe to a basic level of recycling service that includes collection, self-hauling, or other arrangements for the pickup of the recyclable materials.
- (2) Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

(c) (1) A business subject to subdivision (a) and that provides customers access to the business shall provide customers with a commercial solid waste recycling bin or container to collect material purchased on the premises and that fulfills all of the following requirements:

(A) Is in the same area as a bin or container for trash other than recyclable commercial solid waste, except in restrooms.

(B) Is visible and easily accessible.

(C) Is clearly marked with educational signage indicating what is appropriate to place in the commercial solid waste recycling bin or container in accordance with state law and the local jurisdiction's solid waste ordinances and practices.

(2) Full-service restaurants are exempt from the requirements of this subdivision if the full-service restaurant provides its employees a commercial solid waste recycling bin or container to collect material purchased on the premises and implements a program to collect recyclable commercial solid waste.

(3) With respect to a park that is subject to subdivision (a), this subdivision only applies to permanent, nonmobile food service facilities with dedicated seating areas that are not full-service restaurants.

(4) The department shall develop model signage that businesses may use in implementing paragraph (1).

(5) For a park that is subject to subdivision (a), this subdivision shall apply on and after January 1, 2022.

(d) A property owner of a multifamily residential dwelling may require tenants to source separate their recyclable materials to aid in compliance with this section.

SEC. 3. Section 42649.8 of the Public Resources Code is amended to read:

42649.8. For purposes of this chapter, the following definitions 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) "Full-service restaurant" means an establishment with the primary business purpose of serving food, where food may be consumed on the premises, and an employee of the establishment takes all of the following actions:
- (1) The consumer is escorted or assigned to an assigned eating area. The employee may choose the assigned eating area or may seat the consumer according to the consumer's need for accommodation or other request.
 - (2) The consumer's food and beverage orders are taken after the consumer has been seated at the assigned seating area.
 - (3) The food and beverage orders are delivered directly to the consumer, unless the establishment is buffet style or self-service.
 - (4) Any requested items associated with the consumer's food or beverage order are brought to the consumer, unless the establishment is buffet style or self-service.
 - (5) The check is delivered directly to the consumer at the assigned eating area.
- (d) "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.
- (e) "Organic waste generator" means a business subject to subdivision (a) of Section 42649.81.
- (f) "Park" means a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility.
- (g) "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.
- (h) "Rural county" means a county that has a total population of less than 70,000 persons.
- (i) "Self-hauler" means a business that hauls its own waste rather than contracting for that service. "Self-haul" means to act as a self-hauler.

SEC. 4. Section 42649.81 of the Public Resources Code is amended to read:

42649.81. (a) (1) 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).

(2) 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 (1), unless the department determines that this requirement will not result in significant additional reductions of organics disposal.

(3) 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) (1) A business subject to subdivision (a) and that provides customers access to the business shall provide customers with an organic waste recycling bin or container to collect material purchased on the premises for immediate consumption and that fulfills all of the following requirements:

- (A) Is in the same area as a bin or container for trash other than recyclable organic waste, except in restrooms.
- (B) Is visible and easily accessible.

(C) Is clearly marked with educational signage indicating what is appropriate to place in the organic waste recycling bin or container in accordance with state law and the local jurisdiction's solid waste ordinances and practices.

(2) Full-service restaurants are exempt from the requirements of this subdivision if the full-service restaurant provides its employees an organic waste recycling bin or container to collect material purchased on the premises for immediate consumption and implements a program to collect recyclable organic waste.

(3) With respect to a park that is subject to subdivision (a), both of the following apply:

(A) This subdivision only applies to permanent, nonmobile food service facilities with dedicated seating areas that are not full-service restaurants.

(B) In lieu of providing an organic waste recycling bin or container as required by paragraph (1), a facility identified in this paragraph may implement a process for recycling organic waste from customers that yields results comparable to or greater in volume and quality to results attained by providing an organic waste recycling bin or container.

(4) The department shall develop model signage that businesses may use in implementing paragraph (1).

(5) For a park that is subject to subdivision (a), this subdivision shall apply on and after January 1, 2022.

(e) 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.

(f) 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.

(g) (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.

(h) 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.

SEC. 5. Section 42649.82 of the Public Resources Code is amended to read:

42649.82. (a) (1) In addition to the requirements of Section 42649.3, 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 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 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 (2) 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) 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 used 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.