



Contra
Costa
County

To: Board of Supervisors
From: LEGISLATION COMMITTEE
Date: June 23, 2020

Subject: AB 2959 (Calderon): Solid Waste: Byproducts from Processing Food

RECOMMENDATION(S):

ADOPT a position of "Support" on AB 2959 (Calderon): Solid Waste: Byproducts from Processing of Food, a bill that reauthorizes local government entities to exercise authority with regard to the hauling of byproducts from the processing of food or beverages if those byproducts originate from a supermarket, grocer, restaurant, or other retail food establishment, as recommended by the Legislation Committee.

The Legislation Committee (Chair Mitchoff, Vice Chair Burgis) considered AB 2959 at its June 8, 2020 meeting and voted unanimously to recommend to the Board of Supervisors a position of "Support."

FISCAL IMPACT:

No fiscal impact to the County related to advocacy for the bill.

BACKGROUND:

AB 2959 (Calderon): Solid Waste: Byproducts from Processing of Food

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR

☒ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/23/2020** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 23, 2020

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney,
925-335-1097

cc:

BACKGROUND:
(CONT'D)

Author: Ian C. Calderon (D-057)
Title: Solid Waste: Byproducts from Processing of Food
Fiscal Committee: no
Introduced: 02/21/2020
Last Amend: 05/05/2020
Disposition: Pending
Location: SENATE
Summary: Reauthorizes local governmental entities to exercise authority with regard to the hauling of byproducts from the processing of food or beverages if those byproducts originate from a supermarket, grocer, restaurant, or other retail food establishment.
Status: 06/08/2020 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (47-16)
Full Status
02/21/2020 INTRODUCED.
03/05/2020 To ASSEMBLY Committee on NATURAL RESOURCES.
05/05/2020 From ASSEMBLY Committee on NATURAL RESOURCES with author's amendments.
05/05/2020 In ASSEMBLY. Read second time and amended. Re-referred to Committee on NATURAL RESOURCES.
05/13/2020 From ASSEMBLY Committee on NATURAL RESOURCES: Do pass. (7-2)
05/18/2020 In ASSEMBLY. Read second time. To third reading.
06/08/2020 In ASSEMBLY. Read third time. Passed ASSEMBLY. *****To SENATE. (47-16)

The text of the bill is available at:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2959

The bill analysis from the Assembly Floor is as follows:

2019 CA A 2959: Bill Analysis - 05/22/2020 - Assembly Floor

ASSEMBLY THIRD READING

AB 2959

(Calderon)

As Amended May 5, 2020

Majority vote

SUMMARY:

Clarifies the entities that are exempted from solid waste franchise agreements for the hauling of food byproducts.

Major Provisions

This bill specifies that an "industrial source" excludes supermarkets, grocers, restaurants, and other retail food establishments.

COMMENTS:

1) Meeting the state's recycling goals. An estimated 35 million tons of waste are disposed of in California's landfills annually, of which 32% is compostable organic materials, 29% is construction and demolition debris, and 17% is paper. CalRecycle is tasked with diverting at least 75% of solid waste from landfills statewide by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro), Chapter 476, Statutes of 2011, requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro), Chapter 727, Statutes of 2014, requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep the material out of the landfill.

SB 1383 (Lara), Chapter 395, Statutes of 2016, required the California Air Resources Board to approve and implement the comprehensive short-lived climate pollutant strategy to achieve, from 2013 levels, a 40% reduction in methane, a 40% reduction in hydrofluorocarbon gases, and a 50% reduction in anthropogenic black carbon, by 2030. In order to accomplish these goals, the bill specified that the methane emission reduction goals include targets to reduce the landfill disposal of organic waste 50% by 2020 and 75% by 2025 from the 2014 level.

The purpose of the state's organic recycling goals is to divert material that is going to landfill to better purposes. However, some actions taken by solid waste local enforcement agencies to comply with the state's organics recycling requirements have resulted in material from agricultural operations that have historically been recycled into animal feed, soil amendments, and mulch and have never gone to landfill being pulled into the traditional waste management system. These agricultural recycling systems have been taking place for decades and serve a number of beneficial purposes that are consistent with the US Environmental Protection Agency's food recovery hierarchy, which sets priorities for food waste management: a) source reduction; b) feed hungry people; c) feed animals; d) industrial uses (i.e., rendering, fuel conversion, anaerobic digestion, and composting); and, e) disposal.

2) Whose waste? The current definition of solid waste includes materials that never make it into the waste stream. Agricultural operations have historically managed their own waste materials in environmentally beneficial ways. For example, fruit and vegetable growers may send their waste materials to a rancher to be used as cattle feed. Wineries may operate their own on-site composting operations to manage trimmings and generate compost to improve the quality of their soil. These practices keep costs down and comply with the state's waste management goals by keeping the material out of landfills. Traditionally, these practices have operated outside of the solid waste management system.

Most jurisdictions in the state operate with some form of "franchise," or contract, that limits solid waste hauling within the jurisdiction to one or more companies. Franchises are often, but not always, accompanied by a local ordinance. Exclusive franchises specify one hauler within a jurisdiction. Non-exclusive franchises allow for more than one hauler, but establish specific requirements for hauling within the jurisdiction. Franchises can apply to residential, commercial, or industrial solid waste hauling and any combination thereof. Not all communities in California have franchise agreements. In 1994, the California Supreme Court ruled that franchises do not prohibit individuals within the franchise area from selling recyclable materials, as those materials are not waste because they have value. Additionally, state law specifies that individuals have the right to donate or sell recyclable materials.

Enforcement of franchises is determined at the local level and varies by jurisdiction. In most cases, franchise waste haulers pursue direct legal action against unauthorized haulers.

4) Clarifying the law. AB 3036 (Cooley), Chapter 832, Statutes of 2018, prohibits a local government's franchise agreement to manage solid waste from including the handling of byproducts from the processing of food or beverages,

as specified. AB 3036 was focused on agricultural material that has traditionally been managed outside of the solid waste stream. According to the Assembly Floor analysis:

This bill attempts to provide clarity how this agricultural material can be handled. Agricultural operations have historically managed their own waste materials in environmentally beneficial ways. For example, fruit and vegetable growers may send their waste materials to a rancher to be used as cattle feed. Wineries may operate their own on-site composting operations to manage trimmings and generate compost to improve the quality of their soil. These practices keep costs down and comply with the state's waste management goals by keeping the material out of landfills.

Over the last two years, AB 3036 has been interpreted by some to mean that any facility that generates food waste is exempt from local solid waste franchise agreements. That was not the intent of the bill. This bill seeks to clarify the law to conform to the intent of AB 3036.

This bill does not change how agricultural materials are managed, nor does it limit the use of agricultural materials used for animal feed. This bill removes supermarkets, grocers, restaurants, and other retail food establishments from the existing prohibition on the inclusion of "industrial sources" in local solid waste franchises, which would allow local jurisdictions to determine whether or not to include those facilities in their franchise agreements and whether or not to allow those materials to be used as animal feed.

According to the Author:

The basic purpose of this measure is to enable farm-to-farm transfers of agricultural byproducts from a grower to another farmer, for use as animal feed. Waste sectors agreed that this limited and narrow practice could occur outside of an exclusive solid waste handling franchise. The creation of PRC 40059.4 was not intended to apply to agricultural byproducts generated at a retail store or restaurant.

Arguments in Support:

Californians Against Waste states:

AB 3036 [(Cooley), Chapter 832, Statutes of 2018] established conditions under which an industrial generator of food scraps may be able to send their food scraps to animal feed operations, even if animal feed and industrial food processing were not contemplated in the original solid waste franchise adopted by a local jurisdiction. This was intentionally a narrowly-crafted piece of legislation designed to ensure that businesses could maximize their organic waste recycling without running afoul of local ordinances. However, this legislation has been incorrectly, and disingenuously, misinterpreted by some to create a much broader exemption beyond that which was intended in the original bill.

Solid waste franchises are one of the most important tools that local governments have to not only protect public health and safety, but also to achieve the ambitious recycling goals established by the legislature. These franchises are the backbone of California's entire curbside recycling system and will be an indispensable instrument for rolling out new composting programs around the state. Franchise agreements also serve to ensure worker protections, cleaner fleets, and less congested streets.

While we strongly disagree with those who claim that AB 3036 eliminated these important protections, this bill provides further clarity to the original legislation.

Arguments in Opposition:

A coalition of opponents, including the California Farm Bureau, state:

AB 3036 (Cooley), Chapter 832, Statutes of 2018, addressed the challenge of defining byproducts that are allowable to be diverted to animal feed. As the sponsors and supporters of AB 3036 (Cooley), AB 2959 (Calderon) would undue much of the clarity the original bill sought to provide and would remove the ability to divert such byproducts...

California is the largest agricultural state in the nation, producing more than \$50 billion in value from the production of over 400 different commodities. Many of these commodities are packed, processed, or combined into a wide variety of food and beverage products that produce byproducts that serve as valuable nutrition for animal feed. These byproducts include but are not limited to fruit and vegetable peelings, tomato and grape pomace, citrus pulp, nut hulls, spent grain and malt sprouts, milk byproduct, rice husks or hulls from milling, bakery waste, sunflower meal, etc. As a perspective

of the scale of byproduct use, California's wine production produces approximately 400,000 tons of grape pomace annually of which 50-80% is fed to livestock. In 2018, California produced nearly 4.6 billion pounds of almond hulls, almost all of which went to feed.

Feeding these byproducts to the State's livestock industry provides nutrient-dense feed which allows for healthy animals and maximizes production. Its availability also prevents farms and ranches from having to depend upon imported feed, thereby reducing potential environmental impacts. This traditional diversion paradigm also provides a market for this byproduct to be kept out of landfills, helping ensure nothing goes to waste. It is for these reasons, that the undersigned organizations supported AB 3036 (Cooley) which clarified that these byproducts going to animal feed are not defined as waste and therefore not subject to the conditions governing waste management. AB 3036 even went a step further by requiring the byproduct meet specific conditions. AB 2959, however, would restrict many of the types of facilities specified under AB 3036 that traditionally divert byproducts for animal feed. These types of facilities would include supermarkets, grocers, restaurants, and other retail food establishments.

FISCAL COMMENTS:

None

VOTES:

ASM NATURAL RESOURCES: 7-2-2

YES: Friedman, Chau, Cristina Garcia, Limon, McCarty, Muratsuchi, Mark Stone

NO: Flora, Mathis

ABS, ABST OR NV: Brough, Eggman

UPDATED:

VERSION: May 5, 2020

CONSULTANT: Elizabeth MacMillan / NAT. RES. / (916) 319-2092 FN: 0002752

The Board of Supervisors' Legislation Committee considered this bill at its June 8, 2020 meeting and recommends to the Board a position of "Support."