
UNFINISHED BUSINESS

Bill No: SB 54
Author: Allen (D), Hertzberg (D), Luz Rivas (D), Skinner (D), Stern (D) and Wiener (D), et al.
Amended: 6/26/22
Vote: 27

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-1, 4/26/21
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NOES: Bates
NO VOTE RECORDED: Dahle

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 29-7, 1/24/22
AYES: Allen, Archuleta, Atkins, Becker, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Borgeas, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk
NO VOTE RECORDED: Bates, Bradford, Dahle, Min

ASSEMBLY FLOOR: 67-2, 6/29/22 - See last page for vote

SUBJECT: Solid waste: reporting, packaging, and plastic food service ware

SOURCE: Author

DIGEST: This bill establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which would cover certain single-use packaging and plastic single-use food service ware and would require producers, through a producer responsibility organization, to (1) source reduce plastic covered material, (2) ensure covered material sold, offered for sale, distributed, or imported in or into the state after January 1, 2032, is recyclable or compostable, and (3) ensure that

plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates.

Assembly Amendments delete its contents and insert the Plastic Pollution Prevention and Packaging Producer Responsibility Act.

ANALYSIS: Existing law establishes, under the Integrated Waste Management Act of 1989 (IWMA), a state recycling goal of 75% of solid waste generated to be diverted from landfill disposal through source reduction, recycling, and composting. Requires each state agency and each large state facility to divert at least 50% of all solid waste through source reduction, recycling, and composting activities.

This bill enacts the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act). Specifically, this bill:

- 1) Defines the following terms for purposes of the Act:
 - a) “Covered material” as both of the following, except as specified:
 - i) Single-use plastic packaging that is routinely recycled, disposed of, or discarded after its contents have been used or unpackaged, and typically not refilled or otherwise reused by the producer.
 - ii) Plastic single-use food service ware, including, but not limited to, plastic-coated paper or plastic-coated paperboard, paper or paperboard with plastic intentionally added during the manufacturing process, and multilayer flexible material. “Single-use food service ware” includes trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws, and wraps or wrappers and bags sold to food service establishments.
 - b) “Recycle” or “recycling” as the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet quality standards necessary to be used in the market place. “Recycle” or “recycling” does not include combustion, incineration, energy generation, fuel production, except for anaerobic digestion of source separated organic material, or other forms of disposal.
- 2) Requires producers, as defined by the bill, of covered material to achieve all of the following with respect to the materials for which they are producers:
 - a) All plastic covered material is source reduced, as specified.

- b) Ensure that all covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable or compostable.
 - c) Ensure that all plastic covered material achieves specified recycling rates which increase over time. Commencing in 2026 and every two years thereafter, requires CalRecycle to review and assess whether the required recycling rate should be adjusted.
- 3) Requires, by January 1, 2024, producers of covered material to form a Producer Responsibility Organization (PRO) for purposes of complying with the Act and requires the PRO to submit a producer responsibility plan (plan) and budget to an advisory board for review and to CalRecycle for approval. Permits a producer to comply with the Act individually, without participating in the PRO's plan, if the producer can demonstrate that certain source reduction or recycling rates have been achieved. Requires the plan to include, among other things:
- a) Actions and investments that the PRO will implement to meet the requirements of the Act and address the needs and investments identified in the needs assessment.
 - b) A source reduction plan, as specified.
 - c) Objective and measurable criteria, including descriptions of, among others, how the PRO will provide for the necessary infrastructure and viable responsible end markets to ensure covered material will meet the requirements of the Act and how postconsumer recycled content will be incorporated into covered materials.
 - d) A fee for participants of the PRO sufficient to ensure the requirements of the Act are met and the plan is fully implemented.
 - e) Efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems.
 - f) A closure or transfer plan to settle the affairs of the PRO, as specified.
 - g) A process for determining and paying the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under the Act.
 - h) Source reduction data, as specified.
 - i) A budget to fund the costs necessary to implement the Act, as specified.
 - j) Specific measures to ensure that producers participating in the plan comply with requirements of the plan and the Act.
- 4) Requires that plan implementation avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural

areas and vulnerable communities outside the state.

- 5) Requires a PRO to annually submit to CalRecycle and post on its internet website an annual report, as specified.
- 6) Requires a PRO to annually submit the following information on behalf of each member producer:
 - a) Aggregate quantities in total weight and the number of plastic components of covered material, by covered material category and by type of plastic component, manufactured, sold, distributed, or imported in or into the state.
 - b) Aggregate quantities in total weight and number of plastic components, of covered material by covered material category recycled.
 - c) For covered material not collected through a curbside collection program, requires the PRO to collect, validate, and submit to the system data demonstrating take-back and dropoff and alternative collection and recycling program performance, including the amount and type of covered materials collected.
 - d) Any additional information CalRecycle deems necessary.
- 7) Requires a PRO to pay CalRecycle a California circular economy administrative fee, as set by CalRecycle at an amount adequate to cover CalRecycle's and any other state agency's costs of implementing and enforcing the Act, and prohibits the total amount of fees collected from exceeding the state's actual and reasonable costs to implement and enforce the Act.
- 8) Requires the PRO to develop a fee schedule, upon which the fee paid by participants of the PRO's plan is based. Prohibits the fee from being passed on to consumers as a separate item on a receipt or invoice and requires the fee schedule to include among others, specified assessments, adjustments, the California circular economy administrative fee, environmental mitigation fees or surcharges, and costs of administering the PRO.
- 9) Requires a PRO to develop and implement a plan to achieve the 25 percent reduction by weight and 25 percent by plastic component source reduction requirement, as specified. Requires CalRecycle, by January 1, 2025, to establish a baseline for the 25 percent reduction based on the amount of plastic covered material that as sold, offered for sale, or distributed in the state for the 2023 calendar year.
 - a) Requires the PRO to source reduce no less than 10 percent by January 1, 2027, and 20 percent by January 1, 2030.

- b) Requires producer members to submit to the PRO individual source reduction plans and requires the source reduction plan that is a part of the PRO's plan to be based on the individual producer source reduction plans.
 - c) Requires CalRecycle, beginning in the 2030 calendar year and every five years thereafter, to conduct an evaluation of the plastic covered material subject to the source reduction requirements to determine if actions to secure greater source reductions are necessary.
- 10) Prohibits producers of expanded polystyrene food service ware from selling, offering for sale, distributing, or importing in or into the state expanded polystyrene food service ware unless all expanded polystyrene meets a 25 percent recycling rate by January 1, 2025, 30 percent by 2028, 50 percent by 2030, and 65 percent by 2032, and annually thereafter.
- 11) Prohibits a producer, upon approval of a plan, or commencing January 1, 2027, whichever is sooner, from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is a part of an approved plan. If an entity is not a producer and is not subject to the Act before January 1, 2027, but subsequently becomes a producer, the producer is required, within six months, to become a participant of the PRO and to comply with the Act.
- 12) Requires CalRecycle, among other things, to do the following:
- a) Prepare one or more initial statewide needs assessments to determine the necessary steps and investment needed for covered material, by covered material category, to achieve the requirements of the Act. Requires needs assessments to be updated every five years or as necessary to ensure the requirements of the Act are met.
 - b) Establish a producer responsibility advisory board, with a prescribed membership of representatives from specified stakeholder groups, to identify barriers and solutions to creating a circular economy and to advise CalRecycle, producers, and PROs in the implementation of the Act.
 - c) By January 1, 2024, publish a list of covered material categories that are recyclable and a list of covered material categories that are compostable. Requires CalRecycle to determine a process to update these lists.
 - d) By July 1, 2024, establish and post on its internet website a list of covered material categories. Requires CalRecycle to conduct and publish on its internet website a characterization of covered material categories that are disposed of in California landfills and to complete its first material characterization study by July 1, 2025. Requires CalRecycle to update the study in 2028, 2030, 2032, and at least every four years thereafter.

- e) By January 1, 2025, adopt regulations necessary to implement and enforce the Act and to ensure the requirements of the Act are met, as specified.
 - f) By January 1, 2026, calculate and publish the current recycling rates being achieved in the state for each covered material category.
 - g) Post on its internet website, and update at least every six months, a list of covered material categories, including by material form if applicable, by producer, that is not in compliance with the Act.
 - h) Report to the Legislature every two years its progress in implementing the Act.
- 13) Requires a PRO to remit \$500,000,000 each year to the California Department of Tax and Fee Administration to be deposited into the California Plastic Pollution Mitigation Fund, commencing in 2027 and until 2037. Requires 40 percent of the moneys in the California Plastic Pollution Mitigation Fund to be expended by specified state agencies to monitor and reduce the environmental impacts of plastics on terrestrial, aquatic, and marine life and human health. Requires 60 percent to be expended by specified state entities to monitor and reduce the historical and current environmental justice and public health impacts of plastics.
- a) Requires the PRO to establish and impose on its participants an environmental mitigation surcharge in the amount necessary to remit the \$500,000,000 based on each producer's market share of plastic covered material, accounting for both number of plastic components and weight.
 - b) For producers that are not part of a PRO's plan, requires CalRecycle to determine the amount of the environmental mitigation surcharge the producer will pay based on the number and weight of plastic covered material the producer offers for sale, sells, distributes, or imports in or into the state.
- 14) Authorizes CalRecycle to issue a notice of violation to, and impose an administrative civil penalty not to exceed \$50,000 per day per violation on any entity not in compliance with the Act or any regulations adopted to implement the Act, except that for certain entities, the civil penalty cannot exceed \$25,000 per day per violation. Requires CalRecycle to consider certain factors when determining the penalty amount and whether to assess a penalty. Also allows a producer to submit corrective action plan, as specified. Requires penalties be deposited into the Circular Economy Penalty Account.
- 15) Allows producers to offer for sale, sell, distribute, or import covered material in a covered material category that does not meet the required recycling rate if

the producer demonstrates to CalRecycle that the producer has achieved the applicable rate for an amount equal to the producer's market share of that covered material category in the state.

- 16) Requires CalRecycle to adopt regulations, if CalRecycle determines that a PRO or producer has not achieved the specified targets established pursuant to the Act, that would place requirements on the PRO or producers to achieve the recycling rates and requirements on producers to source reduce to meet the source reduction requirements.

Comments

- 1) *Purpose of this bill.* According to the author, "Every day, single-use packaging and food service ware such as forks, spoons, cups, and lids generate tons of non-recyclable and non-compostable waste with impacts on public health, the natural environment, and city and county budgets. Prior to 2017, exporting material overseas had allowed cities and counties to keep it out of landfills and even generate revenue to help local government budgets. Since then, however, cities and counties have struggled to manage the mounting waste. A survey released this year by the League of California Cities found more than seven out of 10 cities anticipate having to increase waste collection rates by as much as 20 percent to cover the cost of managing the additional waste.

"As the world's fifth-largest economy, California must take the lead on finding a solution to the growing plastic pollution crisis. SB 54 will ensure California is on the forefront of reducing pollution and the ratepayer costs associated with single-use, disposable packaging and food serviceware. The bill requires producers of material covered under the bill to form a Producer Responsibility Organization (PRO) to organize and fund industry's efforts to comply with this measure.

"SB 54 requires all covered material to be recyclable or compostable within 10 years, includes specific rates and dates for plastic material to ensure the development of robust end-markets, and requires producers to reduce the amount of plastic covered material coming onto the market by 25 percent within a decade. The bill also creates the California Plastic Pollution Mitigation Fund which will generate \$500 million a year for 10 years, paid by plastic producers and manufacturers, to fund the monitoring and mitigation of plastic pollution primarily in disadvantaged, low-income, and rural communities."

- 2) *California Recycling and Plastic Pollution Reduction Act of 2020.* The initiative, which was developed by a coalition of environmental organizations,

has qualified for the November 8, 2022, General Election. If approved by the voters, the initiative would require CalRecycle to adopt regulations that reduce the use of single-use plastic packaging and foodware, including:

- Requiring producers to ensure that single-use plastic packaging and foodware is recyclable, reusable, refillable, or compostable by 2030;
- Requiring producers to reduce or eliminate single-use plastic packaging or foodware that CalRecycle determines is unnecessary for product or food item delivery;
- Requiring producers to reduce the amount of single-use packaging and foodware sold in California by at least 25 percent by 2030;
- Requiring producers to use recycled content and renewable materials in the production of single-use plastic packaging and foodware;
- Establishing “mechanisms for convenient consumer access to recycling,” including take-back programs and deposits;
- Establishing and enforcing labeling standards to support the sorting of discarded single-use plastic packaging and foodware; and
- Prohibiting food vendors from distributing expanded polystyrene food service containers.

The initiative would also enact the California Plastic Pollution Reduction Fee for single-use plastic packaging and foodware, to be determined by CalRecycle but not to exceed 1-cent, per item. Revenue from the fee would be used to fund recycling and plastic pollution mitigation programs.

Similar to SB 54, the initiative also establishes penalties of up to \$50,000 per day for violations. The initiative could be withdrawn from the ballot by its signatories, no later than June 30, 2022.

- 3) *The Plastic Pollution Prevention and Packaging Producer Responsibility Act.* This measure is intended to reduce the amount of single-use packaging and food ware generated in the state and significantly increase the recycling of covered materials by creating an EPR program that requires producers to take responsibility for the materials they produce. This bill was developed over a long stakeholder process that included environmental organizations, producers, local governments, and recycling service providers.

SB 54 establishes stringent recycling requirements, increasing from 30% to 65%, and requires plastic covered materials to be source reduced by 25%, by 2032. The bill establishes extensive requirements, criteria, guidelines, and

procedures on producers and the PRO to achieve these goals, and requires CalRecycle to promulgate regulations to implement and enforce the Act.

This bill is intended to ensure that the material that is collected is actually recycled into new products. The definition of recycling specifically excludes combustion, incineration, energy generation, fuel production, and other forms of disposal. Additionally, CalRecycle is required to develop regulations that exclude plastic recycling technologies that generate significant amounts of hazardous waste. This definition is intended to exclude technologies, such as gasification, pyrolysis, and solvent-based technologies. The bill authorizes CalRecycle to adopt regulations to define guidelines and verification requirements to ensure that covered material that is shipped out of state or exported is recycled in a manner consistent with the requirements of the bill.

Unlike earlier EPR programs in California, which require CalRecycle to revoke an approved plan prior to pursuing other enforcement measures, this bill authorizes CalRecycle to pursue enforcement against a PRO or individual producers who are in violation of the Act with, or without, revoking the plan. Additionally, this bill includes an additional regulatory “backstop” for CalRecycle if the PRO or a producer fails to meet the recycling and source reduction targets established by the bill. This provision would allow CalRecycle to adopt regulations to require producers or the PRO to take the actions necessary to achieve the recycling rates or source reduction requirements.

Finally, this bill requires producers, via the PRO, to pay \$500 million annually for 10 years (of which the PRO may recoup up to \$150 million per year from resin manufacturers), for a total of \$5 billion, which, upon appropriation by the Legislature, will be used to monitor and reduce the impact of plastics in the environment, restoring the natural environment, and monitoring and reducing the historical and current environmental justice and public health impacts of plastics.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

“1) This bill includes several new duties for CalRecycle, including developing and issuing reports, undertaking public processes prior to issuing reports, developing complicated regulations, building reporting systems, and developing web resources. Overall, staffing and contracting needs will be significant, including needed staffing for this budget year in order to meet statutory timelines.

“CalRecycle estimates costs of approximately \$3.6 million and 22 new positions in fiscal year (FY) 2022-23 (General Fund or Special Fund.) These costs are expected to increase to approximately \$5.1 million and 32 positions in FY 2023-24 and FY 2024-25. CalRecycle expects costs to increase in out-years for enforcement and updated reporting. In addition, CalRecycle estimate costs of \$1 million in FY 2022-23 and \$1 million in FY 2024-25 to develop the waste characterization studies.

“Regulated parties will ultimately reimburse CalRecycle’s costs. However, CalRecycle will need resources from an as-yet-unidentified source to cover its start-up costs until reimbursement funds are available to it. The bill requires, on or before the end of FY 2026-27, and once every three months thereafter, the PRO to pay to CalRecycle a California circular economy administrative fee, which will be funded by the producers that make up the PRO. The bill requires CalRecycle to set the fee at an amount adequate to cover the department and any other state agency’s full costs of implementing and enforcing this bill, and to deposit PRO administrative fees into the California Circular Economy Fund. Upon appropriation by the Legislature, moneys in the fund may be expended by CalRecycle for the department’s activities pursuant to this bill and to reimburse any outstanding loans made from other funds used to finance the initial costs of the department’s activities pursuant to this bill.

“2) By requiring, among other things, local jurisdictions and recycling service providers to include covered material in their collection and recycling programs, this bill imposes a state-mandated local program. Regulated parties will ultimately reimburse local jurisdictions for these costs; however, the state may need to initially reimburse local jurisdictions for any costs incurred as a result of this bill until PRO reimbursement funds become available.

“3) Annual state revenue of \$500 million, from January 1, 2027, through January 1, 2037, totaling \$5 billion over the ten-year period. Upon appropriation by the Legislature, 40% of these funds shall be expended by the Department of Fish and Wildlife, the Wildlife Conservation Board, the State Coastal Conservancy, the California Coastal Commission, the Ocean Protection Council, the Department of Parks and Recreation, the Natural Resources Agency, and the California Environmental Protection Agency to monitor and reduce the environmental impacts of plastics on terrestrial, aquatic, and marine life and human health, including to restore, recover, and protect the natural environment. Upon appropriation by the Legislature, 60% of these funds shall be expended by the Strategic Growth Council, the California Environmental Protection Agency, the Natural Resources Agency, and the Department of Justice to monitor and reduce

the historical and current environmental justice and public health impacts of plastics, including to mitigate the historical and current impact of plastics on disadvantaged or low-income communities or rural areas.”

SUPPORT: (Verified 6/29/22)

350 Bay Area Action

350 Sacramento

350 Silicon Valley

Active San Gabriel Valley

Amp Robotics

Azul

California Alliance of Nurses for Healthy Environments

California Association of Professional Scientists

California Catholic Conference

California Fish & Game Warden Supervisors and Managers Association

California Fish and Game Wardens Association

California League of Conservation Voters

California Park & Recreation Society

California Public Interest Research Group

California State Association of Counties

California State Parks Peace Officer Manager’s Association

Californians Against Waste

CALPIRG Students

Center for Biological Diversity

City of Agoura Hills

City of Carlsbad

City of El Segundo

City of Pleasanton

City of Santa Monica

City of Thousand Oaks

Climate Reality Project, Los Angeles Chapter

Climate Reality Project, San Fernando Valley

Elders Climate Action, Norcal and Socal Chapters

Endangered Habitats League

Environment California

Environmental Working Group

Friends Committee on Legislation of California

Heal the Bay

Indivisible CA Statestrong

Leading Scientists

League of California Cities
League of Women Voters of California
Los Angeles County Democratic Party
Monterey Bay Aquarium
Monterey Bay Aquarium Foundation
Mountain Lion Foundation
Northern California Recycling Association
Ocean Conservancy
Oceana
Plastic Oceans International
Plastic Pollution Coalition, a Project of Earth Island Institute
Republic Services Inc.
Rural County Representatives of California
Santa Barbara Women's Political Committee
Santa Barbara Zoo
Save Our Shores
Seventh Generation Advisors
Sierra Business Council
Silicon Valley Democratic Club
Smart Planet Technologies
South Bay Cities Council of Governments
South Yuba River Citizens League
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education
The Nature Conservancy
Tomra North America, Inc.
Trinity Respecting Earth and Environment
Upstream
Western Growers Association
Wholly H2o
Wishtoyo Chumash Foundation
Zero Waste USA
Several individuals

OPPOSITION: (Verified 6/29/22)

California Food Producers
Pet Food Institute
Sierra Club California

ASSEMBLY FLOOR: 67-2, 6/29/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Gray, Salas

NO VOTE RECORDED: Chen, Cunningham, Fong, Gallagher, Kiley, Lackey, Nguyen, Seyarto, Smith, Voepel, Waldron

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6/29/22 23:24:58

**** END ****