

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 54 (Allen) – As Amended June 26, 2022

Policy Committee: Natural Resources

Vote: 9 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act), which imposes minimum content requirements for single-use packaging and food service ware and source reduction requirements for plastic single-use packaging and food service ware, to be achieved through an extended producer responsibility (EPR) program.

Specifically, this bill:

- 1) By January 1, 2024, requires producers of covered material to form and join the producer responsibility organization (PRO), subject to specified requirements and CalRecycle approval, to carry out the requirements of the Act. Prohibits a producer of covered material from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in the PRO.
- 2) Requires all covered material offered for sale, distributed, or imported into the state on and after January 1, 2032, to be recyclable in the state or eligible to be labeled “compostable.”
- 3) Requires all plastic covered material offered for sale, distributed, or imported into the state to meet the following recycling rates:
 - a) Not less than 30% of covered material on and after January 1, 2028.
 - b) Not less than 40% of covered material on and after January 1, 2030.
 - c) Not less than 65% of covered material on and after January 1, 2032.
- 4) Prohibits producers of expanded polystyrene (EPS) food service ware from selling, offering for sale, distributing, or importing EPS food service ware in or into the state unless the producer demonstrates that EPS meets the following recycling rates:
 - a) 25% on and after January 1, 2025.
 - b) 30% on and after January 1, 2028.
 - c) 50% on and after January 1, 2030.
 - d) 65% on and after January 1, 2032.
- 5) Requires the PRO to, among other things:
 - a) By January 1, 2032, develop and implement a plan to achieve a 25% reduction by weight and 25% reduction by plastic component for covered materials sold, offered for sale, or

distributed in the state, as prescribed, including interim targets of 10% by January 1, 2027, and 20% by January 1, 2030.

- b) Develop and submit to CalRecycle for approval a plan that describes how the PRO will comply with the requirements of the Act.
 - c) Submit the plan to the producer responsibility advisory board (advisory board) for comment prior to submitting the plan to CalRecycle for approval, disapproval, or conditional approval, and implement the plan within 90 days of approval or conditional approval.
 - d) Submit an annual report to CalRecycle that describes how the PRO is implementing the plan and how the PRO has complied with the requirements of the Act.
 - e) Register and participate in CalRecycle's disposal reporting system and submit specified information about covered material for each producer in the PRO.
 - f) Establish a fee for its participants that is sufficient to implement the requirements of the Act.
 - g) Pay CalRecycle a quarterly circular economy administrative fee that is sufficient to cover all state agency actual and reasonable costs to implement and enforce the Act.
 - h) Pay \$500 million per year from January 1, 2027, through January 1, 2037, to be deposited into the California Plastic Pollution Mitigation Fund (Fund). Authorizes the PRO to collect up to \$150 million from plastic resin manufacturers. Subject to appropriation, specifies how the Fund shall be allocated.
- 6) Requires CalRecycle to, among other things:
- a) By January 1, 2025, adopt regulations necessary to implement and enforce the Act, and to ensure that the requirements of the Act are met. Requires those regulations to (a) encourage recycling that minimizes hazardous waste generation, greenhouse gas (GHG) emissions, environmental justice impacts, and public health impacts and (b) exclude plastic recycling technologies that generate significant amounts of hazardous waste.
 - b) Review and assess whether to adjust the recycling rates commencing with the 2026 calendar year.
 - c) Establish and post a list of covered material categories by July 1, 2024; conduct specified material characterization studies, beginning on or before July 1, 2025; begin calculating and posting recycling rates for each covered material category by January 1, 2026; and publish a list of covered material categories that are deemed recyclable and compostable as of January 1, 2024.
 - d) Report to the Legislature every two years regarding its progress in implementing this chapter.
 - e) Develop one or more needs assessments to determine the necessary steps and investments necessary to achieve the requirements of the Act, to be updated every five years. Requires the needs assessment to be developed through a public process, including at least one public meeting.
- 7) Authorizes CalRecycle to, among other things:
- a) Adopt regulations to define guidelines and verification requirements for covered material shipped out of state or exported.

- b) Require, by regulation, producers or the PRO to achieve the recycling rates and source reduction requirements, if CalRecycle determines that a producer or the PRO has not achieved the recycling rates or source reduction requirements established by the bill.
- 8) Requires local jurisdictions and recycling service providers to include covered material in their collection and recycling programs, except under specified circumstances. Specifies that exemptions or extensions granted to local jurisdictions and recycling service providers for the collection and recycling of covered material does not relieve a producer of the requirement to comply with the Act.
- 9) Defines various terms, including “recycle” or “recycling”, and specifies that “recycling” does not include combustion, incineration, energy generation, fuels production (as specified), or other forms of disposal.
- 10) Specifies that violations of the Act by the PRO, producer, wholesaler, or retailer shall be subject to penalties. Authorizes CalRecycle to conduct investigations, including inspections and audits, to determine compliance with the Act. Authorizes CalRecycle to issue notices of violation and penalties up to \$50,000 per day per violation, except as specified. Before assessing a penalty, authorizes CalRecycle to allow a producer or PRO to submit a corrective action plan.

FISCAL EFFECT:

- 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.

COMMENTS:

- 1) **Purpose.** According to the author:

Senate Bill 54 will reduce the amount of waste that burdens taxpayers and local governments, plagues human health, and pollutes our natural environment by decreasing single-use packaging and the most problematic plastic food service ware products sold in California and ensuring the remaining items are effectively composted and recycled... Though the state and communities in California have been focusing efforts on reducing the burden from single-use packaging since the 1980s, taxpayers and local governments still spend over \$420 million annually in ongoing efforts to clean up and prevent litter in streets, storm drains, parks and waterways. Existing recycling infrastructure cannot keep pace with the continued exponential growth in single use waste. Less than 9% of plastic is recycled, and that number is dropping since the implementation of China's National Sword policy, which severely restricts the amount of foreign waste China accepts. The cost of recycling exceeds the scrap value of the plastic material so the markets for plastic packaging that were previously considered recyclable have been lost. Experts agree that upstream reduction of single use waste upstream is the most effective and least expensive way to protect human, wildlife, and environmental health. SB 54 would be an important step by significantly reducing California's reliance on single-use packaging and products.

- 2) **Background.**

- a) **California Unlikely to Meet its Ambitious Solid Waste Diversion Goals.** For more than three decades, statute has tasked CalRecycle with achieving the state's waste

diversion goals by reducing disposal of municipal solid waste and promoting recycling. The state has established a goal of reducing, recycling, or composting solid waste generated statewide by 2020. Over the years, the Legislature has enacted various laws to help increase the amount of waste that is diverted from landfills. According to CalRecycle's "State of Disposal and Recycling in California for Calendar Year 2020" report, California's overall waste generation in 2020 was about 77.4 million tons. Of that total, 44.9 million tons went to disposal and disposal-related activities, including about 40 million tons to landfills, and an estimated 32.6 million tons of waste were recycled or diverted, resulting in a statewide recycling rate of 42%. This is up from 37% in 2019 but lower than the peak of 50% in 2014. Based on these trends, it is unlikely that the state will meet its diversion goals.

- b) **Plastic Pollution.** Plastic pollution is a significant and rapidly growing threat to the environment, terrestrial wildlife and marine life, human health, environmental justice communities, local governments and taxpayers. Approximately 150 million metric tons of plastic is already circulating in the marine environment. The International Energy Agency expects production of plastic in 2020 to be triple current production and, by midcentury, drive nearly half of oil demand growth. As plastic circulates in the environment, it breaks down into smaller particles, known as microplastics. Microplastics have become ubiquitous and accumulate in the environment. Plastic, across its entire lifecycle, is also a major contributor to GHG emissions and climate change.
- c) **Recycling Markets.** Historically, a significant portion of the plastic generated in the United States was exported to developing countries that often lacked the infrastructure to properly manage large quantities of plastic waste. Often, this resulted in open disposal or open burning. China, historically the largest importer of recycled plastic, implemented the National Sword policy in 2017 to restrict the material types and contamination rates of allowable recycling imports. This policy, along with subsequent actions by Southeast Asian countries to limit or ban the import of recyclable materials as well as plastic's low scrap value, have led to a significant decline in markets for exported recyclable materials, particularly plastic.
- d) **Source Reduction.** Plastic is primarily landfilled, recycled, or incinerated – each of which produces varying amounts of GHG emissions. Recycling is currently only feasible for some of the more common, and least toxic, forms of plastic. Many forms of plastic are commonly treated with toxic flame retardants and plasticizers, which make them difficult to recycle. The abundance and variety of the types of plastic in our recycling system make it difficult to sort, and high contamination rates in bales of recycled plastic have caused many countries, as mentioned, to stop accepting recycled plastic from the United States unless it meets stringent contamination rates. Some newer technologies, known as "chemical recycling," turn plastic into fuel or chemicals. Chemical recycling technologies cause significant environmental harm, particularly on the surrounding communities, including toxic air emissions, GHG emissions, and hazardous waste generation. Therefore, while recycling plastic into new products is helpful, as it keeps the recycled plastic out of the environment and reduces our dependence on virgin resin, recycling alone is not a solution; we also need plastic source reduction.
- e) **The California Recycling and Plastic Pollution Reduction Act of 2020 (Initiative).** After years of legislative measures failing to reach the Governor's desk, a coalition of

environmental organizations developed the Initiative, which qualified for the November 8, 2022, General Election. If the Initiative is approved by voters, it would require CalRecycle to develop regulations that require producers to ensure that single-use plastic packaging and food ware is reusable, refillable, recyclable, or compostable by 2030, and specifies that “combustion, fuel production, and other forms of disposal” do not constitute recycling. The regulations must also require producers to reduce or prohibit single-use plastic packaging and single-use plastic food ware that CalRecycle determines to be unnecessary for the delivery of a product or food item. The Initiative further requires producers to source reduce, by both weight and number of items, single-use plastic packaging and food ware by 25% by 2030. The regulations would prohibit the distribution of expanded polystyrene food service ware by food vendors. The Initiative establishes a Plastic Pollution Reduction Fee, as determined by CalRecycle, but not to exceed one-cent per item on single-use plastic packaging and food service ware to fund recycling and plastic pollution mitigation programs. Like SB 54, the Initiative establishes penalties of up to \$50,000 per day for violations. The Initiative may be withdrawn from the ballot by its signatories, no later than June 30, 2022.

- f) **The Plastic Pollution Prevention and Packaging Producer Responsibility Act.** According to the author, this bill will 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.

The author indicates discussions with some stakeholders are ongoing to address a handful of outstanding issues. Any additional changes will be reflected in subsequent clean-up legislation.

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