
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 54
Author: Allen, et al.
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Urgency: No
Consultant: Genevieve M. Wong

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Fiscal: Yes

SUBJECT: Plastic Pollution Producer Responsibility Act

DIGEST: Prohibits producers of single-use, disposable packaging or single-use, disposal food service ware producers from offering for sale, selling, distributing, or importing in or into the state those products manufactured after January 1, 2032, unless it is recyclable or compostable.

ANALYSIS:

Existing law:

- 1) Under the Integrated Waste Management Act of 1989 (IWMA), establishes 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. IWMA also requires a state agency and large stage facility, for each office building of the state agency or large state facility, to provide adequate receptacles, signage, education, and staffing, and arrange for recycling services, as specified (PRC §§ 41780.01, 42921, 42924.5)
- 2) Prohibits a state food service facility from dispensing prepared food using a type of food service packaging unless the packaging is on a specified list maintained by CalRecycle and has been determined to be reusable, recyclable, or compostable (PRC §§ 42370 et seq.)
- 3) Requires “full service restaurants” to only provide single-use plastic straws upon request (PRC §42271)

This bill, the Plastic Pollution Producer Responsibility Act, prohibits producers of single-use, disposable packaging or single-use, disposable food service ware products from offering for sale, selling, distributing, or importing in or into the state those packaging or products unless they are recyclable or compostable. Applies this prohibition to packaging or products that are manufactured on or after

January 1, 2032.

Background

- 1) *Solid waste in California.* For over three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the IWMA. Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal by 2020 and over the years the Legislature has enacted various laws relating to increasing the amount of waste that is diverted from landfills. According to CalRecycle's State of Disposal and Recycling in for Calendar Year 2019, published February 12, 2021, 42.2 million tons of material were disposed into landfills in 2019.

According to CalRecycle's report, an estimated 28.9 million tons of waste were recycled or diverted in California in 2019, resulting in a statewide recycling rate of 37%, down from 40% in 2018, and a peak of 50% in 2014. Based on these trends, it is unlikely that the state will meet its diversion goals.

- 2) *Market challenges for recyclable materials.* The U.S. has not developed significant markets for recyclable content materials, including plastic and mixed paper. Historically, China was the largest importer of recyclable materials. In California, approximately one third of recyclable material is exported; and, until recently, 85 percent of the state's recyclable mixed paper has been exported to China. China used to be where the world sent their recyclable material, but beginning in 2017, the country began significantly restricting the types of materials and levels of contamination that would be accepted. However, effective January 1 of this year, China has announced that it would no longer be accepting all waste imports. Before this year's blanket waste ban, China accepted 32 types of scraps for recycling and reuse and limited contamination levels of those materials to 0.5 percent. The initial ban left waste-exporting counties such as the U.S. scrambling to find alternative destinations, including Southeast Asian nations like Thailand, Vietnam, and Indonesia, which quickly became overwhelmed by the volume of refuse received. Soon after, those counties began to impose their own bans and restrictions on waste imports. Without a global market to send these "recyclable" materials, the contents of many blue recycling bins are being diverted to landfills.

Further, many types of packaging and products add to the complex recycling issue by being a combination of materials such as aluminum layered with different plastics to make baby and pet-food pouches. These "hybrid" items are

difficult to recycle, if at all.

- 3) *The cost of plastic pollution.* Nearly every piece of plastic begins as a fossil fuel. New plastic, known as “virgin” material, is less expensive than recycled plastic and weak oil prices have widened the gap. The economic slowdown of the COVID-19 pandemic has punctured demand for oil, which, in turn has cut the price of new plastic. Since COVID-19, even beverage bottles made of recycled plastic, the most commonly recycled plastic item, have become less viable since the recycled plastic to make them is 83% to 93% more expensive than new bottle-grade plastic, according to the report. Since 1950, the world has created 6.3 billion tons of plastic waste, 91% of which has never been recycled, according to *The Plastic Pandemic*, a Reuters Report. Most is hard to recycle.

Environmental costs. Plastic, most of which does not decompose, is a significant driver of climate change. The manufacture of four plastic bottles alone releases the equivalent greenhouse gas emissions of driving one mile in a car, according to the World Economic Forum. The United States burns six times more plastic than it recycles, according to research in April 2019 by Jan Dell, a chemical engineer and former vice chair of the U.S. Federal climate committee.

According to the report, *Plastic & Climate: The Hidden Costs of a Plastic Planet*, greenhouse gases are emitted at each stage of the plastic lifecycle: 1) fossil fuel extraction and transport, 2) plastic refining and manufacture, 3) managing plastic waste, and 4) its ongoing impact to oceans, waterways, and landscape. According to the report, greenhouse gas emissions from the plastic lifecycle threaten the ability of the global community to meet carbon emission targets. In 2019, the production and incineration of plastic will have added more than 850 million metric tons of greenhouse gases into the atmosphere, which is equal to the emissions from 189 five-hundred megawatt coal power plants.

Plastic is primarily landfilled, recycled, or incinerated – each of which produces varying amounts of greenhouse gas emissions. Landfilling emits the least greenhouse gas emissions on an absolute level, although it presents significant other risks. Recycling has a moderate emissions profile but displaces new virgin plastic on the market, making it advantageous from an emissions perspective. Incineration leads to extremely high emissions and is the primary driver of emissions for plastic waste management. Further, plastic packaging represents about 40% of plastic demand. It is estimated that in 2015, incineration of plastic packaging totaled 16 million metric tons of carbon

dioxide equivalents.

Some, however, argue that other packaging products can cause more emissions than plastics; because plastic is light, it is indispensable for the world's consumers and can help reduce emissions. Some say that it is upon the governments to improve waste management infrastructure.

Health costs. In addition to environmental impacts, there is increasing concern on the impacts that plastic has on human health. According to the report *Plastic & Health: The Hidden Cost of a Plastic Planet*, plastic poses distinct risks to human health at every stage of its lifecycle. This includes the extraction and transport of fossil feedstocks for plastic; the refining and production of plastic resins and additives; consumer products and packaging; toxic releases from plastic waste management; fragmenting and microplastics; additional exposure to plastic additives as plastic degrades; and ongoing environmental exposures by contaminating and accumulating in food chain through agricultural soils, terrestrial and aquatic food chains, and water supply.

The report recognizes, however, that there are gaps in knowledge that prevent researchers from being able to fully evaluate the health impacts of plastic. These include not knowing exactly what chemicals are in plastic and its production processes; limited research into the impacts and movement of plastic and microplastics through terrestrial environments, marine ecosystems, and food chains; and limited understanding of the impacts of microfibers and other plastic microparticles that are increasingly being documented in human tissues.

- 4) *California Recycling and Plastic Pollution Reduction Act of 2020.* In December 2019, a ballot initiative, the California Recycling and Plastic Pollution Reduction Act of 2020, was filed with the California Attorney General's office. If approved by the voters, the initiative would require CalRecycle, in consultation with other agencies, 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;
 - Require 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 ballot initiative would also enact a fee, the California Plastic Pollution Reduction Fee, on single-use plastic packaging and foodware, to be determined by CalRecycle. Revenue from the fee would be distributed to CalRecycle, the Natural Resources Agency, and local governments. In order to be placed on the ballot, a certain number of verified voter signatures must be collected. The initiative is currently in the process of signature verification and is required to be completed by April 22, 2021.

Comments

- 1) *Purpose of Bill.* According to the author, “Every day, single-use packaging and food serviceware 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.

“The European Union and other major purchasers of consumer goods are implementing comprehensive frameworks for producers to share responsibility for reducing waste and designing packaging and products to be reusable, recyclable, and/or compostable. As the world’s fifth-largest economy, California must take the lead on finding a solutions 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 will set waste-reduction and recycling goals and establish a framework for packaging producers to keep the most problematic disposable items out of our environment. These actions will help local governments save

millions of dollars in disposal costs.”

- 2) *Scope of bill is unclear.* The title of the Act is the “Plastic Pollution Producer Responsibility Act,” however, the prohibition would apply to all material types unless the material type is recyclable or compostable. While single-use, disposable packaging or food service ware is most likely to be made of either paper or plastic, those products are more than likely made of a type of plastic or, potentially, a mixture of paper and plastic. Given the pervasiveness of plastic and its effect of both human and environmental health, the author may wish to consider limiting the scope of the bill to plastic packaging and plastic food service ware.
- 3) *The return of single-use during a pandemic.* The COVID-19 pandemic has significantly altered people’s lives. To curb community spread of COVID-19, indoor dining stopped for almost a year, leading to many restaurants only providing takeout or delivery. This led to the increased distribution of single-use utensils and to-go containers. Those in the plastics industry began touting the necessity of single-use plastic as a safety issue. For over a year now, grocery stores stopped allowing customers to bring in their own reusable bags, instead automatically providing each customer with new paper or plastic bags. People also turned to the convenience and safety of online shopping, with companies such as Amazon offering 2-day (or less) shipping. Almost anything can be delivered to a person’s doorstep with a click of a button, each time with its own packaging – either a cardboard box or plastic-like shipping pouch. As the entire world continues to navigate through the pandemic, it should be done in a sustainable manner – making sure that addressing one problem does not create another.
- 4) *Senate Bill 54, take two.* In 2019, identical bills Senate Bill 54 (Allen) and Assembly Bill 1080 (Gonzalez) were introduced. Similar to this bill, those bills were aimed at reducing the amount of materials that end up in our landfills. The bills had three main components:
 - Required producers of single-use packaging or priority single-use products to (1) source reduce the packaging and priority products to the maximum extent possible, (2) ensure that the packaging and priority products manufactured on or after January 1, 2032, that are sold, distributed, or imported into the state are recyclable or compostable, and (3) ensure that the packaging or priority products are compostable or recyclable.
 - Required producers of such products to meet certain recycling rates.

- Required CalRecycle to adopt regulations to implement these requirements and to achieve, by 2032, a statewide 75% reduction of the waste generated from single-use packaging and priority single-use products through source reduction, recycling, or composting.

Stakeholder concerns with prior bill. To the extent that this bill, as it develops and might incorporate similar provisions, the author will likely encounter similar concerns from the 2019 version.

5) *Fill in the blank.* This bill, in its current version, lays out a general restriction on packaging and food service ware. More specificity is needed for it to become an implementable bill. To achieve the goals of this proposal and give stakeholders enough direction to know what would be required of them if this bill is enacted, the author will need to consider, at a minimum, all of the following:

- *CalRecycle's role.* Clear parameters of authority under the legislation are necessary for the benefit of both stakeholders and the department.
- *Definition of:* producer, single-use, disposable, packaging, food service ware, and recyclable. Clear definitions are necessary to know who and what will be subject to the bill's provisions.
- *Realistic timeframes.* Whether the scope is all material or just plastic, the author shall ensure that realistic timeframes, given the scope of the bill, are incorporated.
- *Market availability.* As pointed out by stakeholder groups, recycling depends on markets and the lack of those reliable end markets for recyclable materials makes recycling more challenging.
- *Enforcement.* What enforcement mechanisms will be used? If through fines, how much are the fines? Will fines be imposed based on time of noncompliance? Will extent of noncompliance be a factor? Assuming that CalRecycle will be the enforcement agency, as it was with SB 54 (2019), clear direction will have to be given to the department on enforcement.

The author will need to work closely with CalRecycle, stakeholders, and this committee as it is further developed through the legislative process.

Related/Prior Legislation

SB 343 (Allen) prohibits a person from offering for sale, selling, distributing, or importing into the state any product or packaging using a deceptive or misleading claim about its recyclability, including the display of a chasing arrows symbol or any other symbol or statement indicating recyclability, unless CalRecycle has

determined the product or packaging is recyclable. SB 343 passed out of the Senate Environmental Quality Committee with a vote of 5-0 and is currently in the Senate Appropriations Committee.

AJR 4 (C. Garcia) declares that the Legislature supports the goals of the Basal Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) and the May 2019 Amendment to include plastic as a hazardous material. Declares that California is in favor of the United States' ratification of the Basel Convention at the earliest opportunity and requests that the Biden Administration accomplish the ratification as a matter of urgency. AJR 4 has been referred to the Senate Rules Committee.

AB 478 (Ting) requires, commencing January 1, 2024, the total thermoform plastic containers sold by a producer in the state to contain, on average, a specified minimum amount of postconsumer recycled plastic per year, with that amount gradually increasing to require 30 percent postconsumer recycled plastic on and after January 1, 2030. AB 478 has been referred to the Assembly Judiciary Committee.

AB 661 (Bennet) requires state agencies, if fitness and quality are equal, to purchase recycled products instead of nonrecycled products, without regard to cost; and amends the State Agency Buy Recycled Program to modify its product categories and minimum content and recyclability requirements. AB 661 has been referred to the Assembly Accountability and Administrative Review Committee.

AB 842 (C. Garcia) enacts the California Circular Economy and Plastic Pollution Reduction Act which would require producers of single-use packaging and single-use plastic products to, either individually or collectively, form a stewardship organization that will develop, finance, and implement a program to source reduce, recover, and recycle single-use packaging and single-use products discarded in the state. AB 842 would also require CalRecycle to post a list of single-use packaging categories and single-use product categories that are easily recyclable or easily compostable, hard to recycle or hard to compost, or nonrecyclable or noncompostable, and to develop criteria for each. Commencing January 1, 2035, AB 842 would require all single-use packaging and single-use products sold, offered for sale, distributed, or imported to include 75 percent postconsumer recycled content. AB 842 has been referred to the Assembly Natural Resources Committee.

AB 881 (Gonzalez) establishes standards for mixed plastic waste exported for recycling in order to be credited toward a local jurisdiction's solid waste diversion rate. AB 881 has been referred to the Assembly Appropriations Committee.

AB 962 (Kamlager) authorizes processors that are certified under California's Bottle Bill program and approved by CalRecycle to handle reusable beverage containers to satisfy statutory operation requirements by transferring the reusable beverage container to a CalRecycle-approved washer. AB 962 has been referred to the Assembly Natural Resources Committee.

AB 1201 (Ting) prohibits a person from selling a plastic product labeled with the term "compostable," "home compostable," or "soil biodegradable" unless the product meets specified standards and satisfies specified criteria and would authorize CalRecycle to adopt regulations for plastic product labeling. AB 1201 has been referred to the Assembly Appropriations Committee.

AB 1276 (Carrillo) expands and revises the statute that prohibits the distribution of single-use plastic straws, except upon request, to apply to all single-use food accessories and food service ware distributed by food facilities or third party food delivery platforms. Beginning January 1, 2023, requires full service restaurants to provide reusable food service ware, except as specified. AB 1276 has been referred to the Assembly Appropriations Committee.

AB 1371 (Friedman) prohibits online retailers from using single-use plastic packaging that consists of shipping envelopes, cushioning, or void fill to package or transport the products commencing January 1, 2023, for large online retailers and January 1, 2025, for small online retailers; prohibits manufacturers, retailers, producers, and other distributors from using expanded polystyrene packaging to package or transport products; and imposes various requirements to online retailers for the collection of plastic film and expanded polystyrene packaging. AB 1371 establishes the At-Store Recycling Program, which would require operators of stores to establish an at-store recycling program for plastic carryout bags and durable plastic bags, as specified, and requires those bags to have certain information printed on them. AB 1371 has been referred to the Assembly Judiciary Committee.

SOURCE: Author

SUPPORT:

350 Bay Area Action
350 Sacramento
350 Silicon Valley
Active San Gabriel Valley
Azul

California Alliance of Nurses for Healthy Environments
California Catholic Conference
California League of Conservation Voters
Calpirg Students
Calpirg, California Public Interest Research Group
Carlsbad; City of
Center for Biological Diversity
Elders Climate Action, Norcal and SoCal Chapters
Environment California
Environmental Working Group
Friends Committee on Legislation of California
Heal the Bay
Indivisible CA Statestrong
Northern California Recycling Association
Plastic Oceans International
Plastic Pollution Coalition, a Project of Earth Island Institute
Pleasanton; City of
Save Our Shores
Seventh Generation Advisors
Sierra Club California
South Bay Cities Council of Governments
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education
Tomra North America, INC.
Trinity Respecting Earth and Environment (TREE)
Upstream
Wholly H2o
Wishtoyo Chumash Foundation
Zero Waste USA

OPPOSITION:

Air Conditioning, Heating and Refrigeration Institute
American Bakers Association
American Chemistry Council
American Cleaning Institute
American Institute for Packaging and Environment (AMERIPEN)
Auto Care Association
California Chamber of Commerce
California Farm Bureau
California Food Producers
California Manufacturers & Technology Association
California Restaurant Association
Californians for Recycling and The Environment

Cawa
Chemical Industry Council of California
Council for Responsible Nutrition
Dart Container Corporation
Flexible Packaging Association
Foodservice Packaging Institute
Household and Commercial Products Association
National Aerosol Association
National Confectioners Association
Personal Care Products Council
Pet Food Institute
Plastics Industry Association
Western Aerosol Information Bureau
Western Growers Association
Western Plastics Association

ARGUMENTS IN SUPPORT: According to South Bay Cities Council of Governments,

“Plastic waste continues to threaten sensitive ecosystems throughout the world and SB 54 would help the state combat sources of non-recyclable or non-compostable plastics. California continues to lead the country in fighting climate change and reducing greenhouse gas emissions and must lead the fight to increase sustainability and reduce plastic waste.”

ARGUMENTS IN OPPOSITION: According to a coalition letter submitted by, among others, California Chamber of Commerce, Dart Container Corp, and Plastics Industry Association,

“While we do not oppose the mandate in the current bill for all single-use packaging and single-use food service ware to be recyclable or compostable by 2032, we are aware the author intends for the bill to expand significantly. As such, we have taken an opposed unless amended position to highlight the concerns we had with SB 54 (2019) and those we are working diligently to address as an industry and with you.

“The following highlights our main concerns with SB 54 from 2019: ... [infrastructure needs, CalRecycle authority, funding needs, no standardization, lacks definitions, uncapped fees, penalties, flawed source reduction, stewardship programs, and widely varying exemptions.]”