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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** AB 661  
**Author:** Bennett  
**Version:** 6/16/2022  
**Urgency:** No  
**Consultant:** Genevieve M. Wong

**Hearing Date:** 6/29/2022  
**Fiscal:** Yes

**SUBJECT:** Recycling: materials

**DIGEST:** This bill makes numerous changes to the State Agency Buy Recycled Campaign (SABRC) including, among other things, requiring state agencies, if fitness and quality are equal, to purchase recycled products instead of nonrecycled products, whenever recycled products are available at no more than 10% greater total cost than nonrecycled products; substantially revises product categories; requires the Department of Resources Recycling and Recovery (CalRecycle) to update a list of products and minimum recycled content percentages; and, requires the Department of General Services (DGS) to establish procedures for complying with SABCR with regard to the state acquisition of goods and services and information technology (IT) goods and services, as specified.

**ANALYSIS:**

Existing law, under SABRC:

- 1) Requires agencies to purchase products that contain specified minimum amounts of postconsumer recycled content material in 11 reportable product categories defined in statute. (Public Contracts Code (PCC) §12209)
- 2) Requires, fitness and quality being equal, that each state agency purchase recycled products instead of nonrecycled products whenever recycled products are available at the same or lesser total cost that recycled products. (PCC §12201)
- 3) Requires state agencies to ensure that at least 75% of the purchases in the product categories are for recycled products, except for paint, antifreeze, and tires, which require 50% of the purchases are for recycled products. (PCC §12203)
- 4) Requires agencies to report annually to CalRecycle its progress in meeting the recycled product purchasing requirements, as specified. (PCC §12211)

- 5) Require DGS, if a requirement has not been met, in consultation with CalRecycle, to review purchasing policies and make recommendations for immediate revisions to ensure that the recycled product purchasing requirements are met, as specified. (PCC §12217)

This bill:

- 1) Amends the SABRC product categories to include soil amendments and soil toppings, instead of compost, cocompost, or mulch; and adds erosion control products, carpet, pavement surfacing, building finishes, and textiles to the product categories. Updates the list of the identified products of each of these product categories.
- 2) Requires, if fitness and quality are equal, each state agency to purchase recycled products instead of nonrecycled whenever recycled products are available at no more than 10 percent greater cost than nonrecycled products.
- 3) Requires CalRecycle, in consultation with DGS, to update the list of identified products and update the minimum recycled content percentages, as determined to be appropriate, commencing January 1, 2026, and every three years thereafter.
- 4) Specifies that in updating the list of identified products, CalRecycle is required to take into consideration the standards of the United States Environmental Protection Agency Comprehensive Procurement Guidelines for Paper and Paper Products.
- 5) Requires CalRecycle and DGS to incorporate the updated list of identified products and minimum recycled content requirements into the State Contracting Manual, the Financial Information System for California (Fi\$Cal), and the financial system of any department not utilizing Fi\$Cal.
- 6) Requires CalRecycle to maintain an internet website with current SABRC products and minimum recycled content requirements.
- 7) Establishes, effective January 1, 2023, until updated by CalRecycle and DGS, several new product categories with minimum content and recyclability requirements, as specified.
- 8) Requires state agency procurement and contracting officers, or their designees, to participate in annual mandatory training that is conducted by CalRecycle and DGS on the benefits of SABRC purchases, how to locate qualifying

products, how to report information, and how to explain benefits and requirements to other employees making purchasing decisions.

- 9) Requires CalRecycle to report a state agency that does not meet SABRC purchasing requirements in each product category to DGS.
- 10) Requires DGS, in consultation with CalRecycle, to review and revise contract documents, in addition to the purchasing specifications required by existing law, to eliminate restrictive specifications and discrimination against the purchase of remanufactured products and to ensure the contract documents are drafted in a manner that results in the maximum state purchase of remanufactured or recycled products.
- 11) Requires DGS and the Prison Industry Authority to prioritize the use of recycled content products. Requires the Prison Industry Authority, in collaboration with CalRecycle, to make every attempt to procure parts that meet the SABRC postconsumer minimum percentage requirements for the products it creates and sells to state agencies.
- 12) Requires DGS, in collaboration with CalRecycle, to establish a requirement to offer products that meet the SABRC postconsumer minimum percentage requirements to state agencies that utilize statewide contracts.
- 13) Requires DGS to establish procedures for complying with SABRC and for the procedures to include procedures for meeting the minimum recycled content requirements in state contracting, as established by CalRecycle pursuant to this bill, and procedures for complying with reporting requirements, as established by CalRecycle pursuant to this bill.
- 14) Provides that the University of California is not subject to the procurement requirements of SABRC but requires the University of California to report on purchases of the identified products and what percentage of those products meet the minimum recycled content requirements.

## **Background**

- 1) *State Agency Buy Recycled Campaign.* The SABRC is a joint effort between CalRecycle and DGS to implement state laws requiring state agencies and the Legislature to purchase recycled-content products and track those purchases. SABRC requires state agencies to ensure specific percentages of reportable purchases are recycled products from prescribed categories.

Under SABRC, if fitness and quality are equal, each state agency must purchase recycled products instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled products. Each state agency must report annually to CalRecycle its progress in meeting the recycled product purchasing requirements. If DGS determines a requirement has not been met, DGS must, in consultation with CalRecycle, review purchasing policies and recommend immediate revisions to ensure the recycled product purchasing requirements are met. The 11 reportable categories are:

- Paper products;
- Printing and writing papers;
- Mulch, compost, co-compost;
- Glass products;
- Oil products;
- Plastic products;
- Paint;
- Antifreeze;
- Tires;
- Tire-derived products; and
- Metal Products.

Within each of these categories, SABRC also identifies specific products (identified products) that are subject to the program.

## Comments

- 1) *Purpose of Bill.* According to the author, “As the single largest purchaser of goods and contracts in California, the state can create stronger economic incentives for businesses to use more recycled material in their products. AB 661 will ensure that State of California contracts and purchases contain the same amounts of recycled materials as private businesses are currently required to have. With global temperature and ocean pollution rising at an alarming rate, urgent, effective action towards a truly Circular Economy is needed.”
- 2) *Commission on Recycling Markets and Curbside Recycling (Commission).* AB 1583 (Eggman), Chapter 690, Statutes of 2019, required, by July 1, 2020, CalRecycle to convene a statewide Commission consisting of representatives of public agencies, private solid waste enterprises, and environmental organizations with expertise in recycling. AB 1583 requires the Commission, by January 1, 2021, to issue policy recommendations to achieve specified

recycled market development goals, the state's 75% recycling policy goal, and the state's organic waste recycling policy goals, and to identify products that are recyclable or compostable and regularly collected in curbside recycling programs. The Commission issued its preliminary policy recommendations in December 2020.

AB 2287 (Eggman, Chapter 281, Statutes of 2020), extended the Commission's deadline for its final recommendations until July 1, 2021, in order for public review and comment to be considered before the Commission produced its final recommendations. This bill seeks to codify one of the recommendations from the Commission.

- 3) *Tell me where to go.* AB 661 requires CalRecycle, every three years, to update the list of identified products and the minimum recycled content percentages for those products. However, no direction is given to CalRecycle on how to determine the updated minimum recycled content percentages.

***The committee may wish to amend the bill to require CalRecycle, when updating the minimum recycled content percentages, to consider, at a minimum, market conditions, recycling rates, availability of suitable recycled material, and recycling or processing infrastructure capacity.***

Additionally, SABRC requires each state agency to collect and separate recyclable materials. Recognizing that some products may require special handling, management, and disposal considerations, AB 661 gives state agencies the authority to require a vendor to take back the product for proper management after the product has been used. Different state agencies may reach different determinations for the same product, potentially leading to inconsistent treatment of similar products throughout the state.

***To ensure consistent treatment of identified products between state agencies, the committee may wish to amend the bill to require CalRecycle to determine if a vendor should take back the product for proper management.***

- 4) *Pardon my attention to detail.* The committee may wish to make the following nonsubstantive amendments (clean-up amendments):

Amend PCC §12211 as follows:

- (a) A state agency shall report annually to ~~the board~~ CalRecycle its progress in meeting the recycled product purchasing requirements using the SABRC report format provided by ~~the Department of Resources Recycling and Recovery~~ CalRecycle.

(b) On or before October 31 of each year, the department shall provide to ~~the Department of Resources Recycling and Recovery~~ CalRecycle the following information: ...

Amend PCC §12215 as follows:

Each state agency may, at the discretion of the individual agency director of his or her designee, print a statement on recycled products selected by the agency director. This statement shall be determined by the department, in consultation with ~~the board~~, CalRecycle, and shall be similar to the following: “Contains at least \_\_ percent postconsumer material.”

5) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 3 and 4.*

**DOUBLE REFERRAL:**

This measure was heard in Senate Governmental Organization Committee on June 14, 2022, and passed out of committee with a vote of 9-5.

**SOURCE:** Author

**SUPPORT:**

California Environmental Voters (formerly Clcv)  
California Metals Coalition/ccsoj  
Californians Against Waste  
City of Los Angeles  
Northern California Recycling Association  
Small Business California  
Strategic Materials, INC.

**OPPOSITION:**

American Chemistry Council  
California Manufacturers and Technology Association

**ARGUMENTS IN SUPPORT:** According to Northern California Recycling Association, “During the 2017-18 Fiscal Year, state agencies spent a total of \$288 million on [recycled content products (RCPs)] that were included in SABRC’s mandated categories. Of that amount, \$195 million was compliant with [postconsumer recycled product (PCRC)] requirements, just 8% of the estimated \$2.3 billion spent in State purchases.

“Currently, a few problems with SABRC prevent it from being as effective as it could be. One issue with the program is that it does not address all products that have recycling or greenhouse gas associations. Some products are left off the product list, such as minimum RCP standards are outdated, which inhibits the State from reaching its recycled content goals. Entities are currently adhering to standards that do not positively influence the State’s air pollution because they are not aggressive enough.

“SABRC lacks several clarifying and operational aspects as well. The program does not have an enforcement mechanism for noncompliance, mandatory purchasing training, or purchasing for products covered by stewardship programs, and the roles of contractors and subcontractors remains unclear. The University of California is also not covered by SABRC requirements.

“AB 661 would address the State’s recycling goals by requiring State agencies to observe updated recycled product standards when contracting with vendors. Adhering to these standards will result in an increase recycled product purchases that would benefit the State’s recycled product market, and help the State meet its recycling objectives.”

**ARGUMENTS IN OPPOSITION:** According to American Chemistry Council, “AB 661 proposes to expand the various product categories included in SABRC and also set minimum recycled content percentages for those products. Given the increased demand for recycled material, on-going supply chain issues, and potential technical and performance constraints, establishing blanket percentage thresholds for broad product categories may result in some products not being eligible for purchase by the state.

“It is difficult for product manufacturers to design products to meet multiple recycled content requirements. Mirroring the USEPA standards within AB 661 would help to achieve a consistent set of standards for national manufacturers and enable the state to choose from a wide range of product suppliers.

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“As drafted, this provision grants new authority to CalRecycle but does not appear to contain any requirement that the department establish a public process before making changes to the product list or recycled content percentages. Should CalRecycle wish to update the list and/or percentages, it should be required to do so through a transparent public process that enables all stakeholders to provide input thereby allowing the department to make well informed policy.

“Additionally, new language in Section 10, 12217 (e) specifies “if a state agency determines it to be in the best interest of the state, the state agency may require that the vendor take back the product for proper management after it has been used.” This language does not define the elements of a “take back” program, provides no requirement that state agencies initiate formal rulemaking to implement this section, or how an agency will arrive at the conclusion that a “take back” program is “in the best interest of the state.” This open-ended authority leaves vendors and product manufacturers potentially subject to future requirements that could be extremely burdensome and costly without any opportunity for input.

“Finally, some questions have been raised regarding how this bill and program may impact products where the minimum recycled material requirements would be impractical, unachievable, result in negative product performance, or have the opposite environmental impact than intended. For example, pressurized plastic pipe, medical devices, containers for shipping hazardous materials and pharmaceutical packaging may not be able to incorporate the use of recycled materials. It is assumed that in these situations, vendors or product manufacturers would still be able to sell their products to the state. A clarifying amendment would help avoid putting any manufacturers at a competitive disadvantage or inadvertently reducing the pool of potential product suppliers.”

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