
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1897
Author: Boerner Horvath
Version: 8/25/2022
Urgency: No
Consultant: Genevieve M. Wong

Hearing Date: 8/30/2022
Fiscal: Yes

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

DIGEST: Requires the producer advisory board that is established pursuant to the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act) to offer a recommendation for resolution if the advisory board determines that specific actions taken pursuant to the Act are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities; and thereafter authorizes the initiation of nonbinding arbitration.

ANALYSIS:

Existing law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act:

- 1) Requires producers of certain single-use packaging and plastic single-use food service ware (covered material), to source reduce plastic covered material, to ensure that the covered material offered for sale, distributed, or imported into the state on or after January 1, 2032, is recyclable or compostable, and to ensure that plastic covered material offered for sale, distributed, or imported in or into the state meets specified recycling rates.
 - a) Does not include covered material for which the producer demonstrates to the Department of Resources Recycling and Recovery (CalRecycle) that the covered material, among other criteria, is recycled at a responsible end market. (PRC §42041(e)(2)(H))
 - b) Requires, to be considered recycled, that covered material be sent to a responsible end market. (PRC §42041(aa)(3))
- 2) Prohibits a producer from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in a producer responsibility plan of a producer responsibility organization (PRO) for the source reduction, collection, processing, and recycling of covered

material.

- 3) Authorizes CalRecycle to adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements and contamination standards. (PRC §42041(aa)(4)(A))
- 4) Establishes a producer responsibility advisory board for the purpose of identifying barriers and solutions to creating a circular economy and advising CalRecycle, producers, and PROs in the implementation of the Act. (PRC §42070)
 - a) Requires the advisory board to provide initial recommendations regarding key barriers and possible solutions to advance the objectives of increasing recovery of covered materials and decreasing the leakage of plastic into the environment, including key barriers and possible solutions related to available and viable responsible end markets. (PRC §
- 5) Authorizes an affected entity that asserts that specific actions taken to meet the Act's requirements are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements, to bring the concern and evidence supporting the assertion to the advisory board for discussion and a preliminary evaluation.
- 6) If the advisory board determines that the actions are disrupting or otherwise adversely affecting existing operations, requires the advisory board to submit the concern to CalRecycle for further analysis. Requires CalRecycle to analyze the information provided by the advisory board and authorizes CalRecycle to offer a recommendation for resolution.
- 7) Defines "responsible end market" as a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. Authorizes CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and worker health and safety. (PRC §42041(a)(d))

This bill:

- 1) Redefines “responsible end market” to mean a materials market in which the reclaiming, reconstituting, and end use of covered materials and the disposal of contaminants by the responsible end market is conducted in a way that benefits the environment and minimizes risks to the public health and worker health and safety.
- 2) Instead of authorizing CalRecycle to adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizes risks to public health and safety, authorizes CalRecycle to adopt regulations to establish criteria for end markets.
- 3) Instead of requiring the advisory board to submit the concern that specific actions are disrupting or otherwise adversely affecting existing operations to CalRecycle and requiring CalRecycle to make a recommendation, requires the advisory board to offer a recommendation for resolution.
- 4) After the advisory board has offered its recommendation, allows the initiation of nonbinding arbitration, without prejudice to seeking judicial relief, to determine whether the specific actions are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities. Authorizes the arbiter to order actions to remedy the disruption or adverse effect.

Background

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

The Act establishes stringent recycling requirements, increasing from 30% to 65%, and requires plastic covered materials to be source reduced by 25%, by 2032. It 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.

The Act also created an advisory board to advise CalRecycle, producers, and PROs in implementing the Act. Among other responsibilities, the advisory board evaluates whether actions to implement the Act are disrupting the

operation or commercial viability of solid waste haulers, solid waste recycling facilities, or composting facilities and, if such a finding is made, the advisory board submits the issue to CalRecycle for further analysis and recommendation for resolution.

This bill amends that process so that the advisory board offers a resolution instead of CalRecycle and provides for the initiation of nonbinding arbitration thereafter.

Comments

- 1) *Purpose of Bill.* According to the author, “AB 1897 contains three minor technical fixes to SB 54, the landmark plastics bill approved in June. The changes include clarified definitions of “recycling” (to specify which entity is responsible for ensuring covered material meets recycling criteria); and of “responsible end markets” (to better articulate the destination where material is reclaimed and reconstituted into new material). Another amendment adds clarifying detail around the dispute resolution process between the Producer Responsibility Organization and local governments. It is critical we make these nominal fixes now as SB 54 requires both producers and CalRecycle to begin work toward implementing the program right away. In fact, the first deadlines come at the end of 2023.”
- 2) *Referral to the Committee pursuant to Senate Rule 29.10.* AB 1897 was originally introduced by Assemblymember Wicks on February 9, 2022, as a measure establishing non-vehicular air pollution.

Recent Senate amendments deleted its contents, changed the author to Assemblymember Boerner Horvath, and inserted the current provisions of the bill.

Consistent with Senate Rule 29.10 the Senate Rules Committee has referred the amended bill to the Senate Environmental Quality Committee for a hearing of the new version of the bill.

Related/Prior Legislation

SB 54 (Allen, Chapter 75, Statutes of 2022) established the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which covers certain single-use packaging and plastic single-use food service ware and requires 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.

SOURCE: Author

SUPPORT:

Athens Services
Calchamber
California Chamber of Commerce
California Waste & Recycling Association
California Waste Haulers Council
Environmental Justice League
Recology
Republic Services
Resource and Recovery Coalition California
Waste Connections
Waste Management

OPPOSITION:

None received

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