PROPOSED AMENDMENTS TO SENATE BILL NO. 54 AMENDED IN SENATE FEBRUARY 25, 2021

**SENATE BILL No. 54**

**Introduced by Senators Allen, Stern, and Wiener (Principal coauthor: Senator Gonzalez)**

(Principal coauthors: Assembly Members ~~Lorena Gonzalez,~~ *Friedman,*

Muratsuchi, and Ting)

**~~(Coauthor: Senator Becker)~~**

**SECURED**

***(Coauthors: Senators Becker and Kamlager)***

(Coauthors: Assembly Members Boerner Horvath, Carrillo, ~~Kamlager,~~ and Luz Rivas)

**COPY**

December 7, 2020

An act to add Chapter 3 (commencing with Section ~~42050)~~ *42040)* to Part 3 of Division 30 ~~of~~ *of, and to add and repeal Chapter 6 (commencing with Section 48710) of Part 7 of Division 30 of,* the Public Resources Code, relating to solid waste.

legislative counsel’s digest

SB 54, as amended, Allen. ~~Plastic Pollution Producer Responsibility~~ ~~Act.~~ *Solid waste: packaging and food service ware.*

~~The~~

1. *The* California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste, including, among other solid waste, *plastic packaging containers and* single-use ~~plastic straws.~~ *Foodware accessories.*

The Sustainable Packaging for the State of California Act of 2018 prohibits a food service facility located in a state-owned facility, operating on or acting as a concessionaire on state ~~property,~~ *property*

98

or under contract to provide food service to a state ~~agency~~ *agency,* from dispensing prepared food using a type of food service packaging unless the type of food service packaging is on a list that the department publishes and maintains on its internet website that contains types of approved food service packaging that are reusable, recyclable, or compostable.

Existing law makes a legislative declaration that it is the policy goal of the state that, annually, not less than 75% of solid waste generated be source reduced, recycled, or composted.

This bill would establish the Plastic Pollution *Prevention and Packaging* Producer Responsibility Act, which would ~~prohibit 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 such packaging or products that are manufactured on or after January 1, 2032, unless they are recyclable or ~~compostable.~~ *cover certain single-use packaging and plastic single-use food service ware, as provided. As part of its comprehensive regulatory scheme, the bill would require the producer of these materials, who the bill defines as either the manufacturer, importer, seller, or distributor, as specified, to source reduce certain plastic covered material, to ensure that all plastic covered material manufactured for sale, distribution, or import in or into the state on or after January 1, 2032, is recyclable or compostable, and to ensure that all plastic covered material manufactured for sale, distribution, or import in or into the state meets specified recycling or composting rates. In particular, the bill would require not less than 65% of covered material manufactured on or after January 1, 2032, to be recycled or composted, and would authorize the department to increase or decrease the specified recycling and composting rates in certain circumstances.*

**SECURED**

**COPY**

Once its terms are fully implemented, the bill would prohibit a producer from selling, offering for sale, or distributing covered materials in the state unless the producer is part of a producer responsibility organization (PRO) with a producer responsibility plan approved by the department, as prescribed, for the source reduction, collection, processing, and recycling of covered material. Alternatively, the bill would require a producer to comply with the bill individually without joining a PRO. The bill would impose various requirements on PROs and producers in relation to the bill, including registration, reporting, and recordkeeping requirements, preparing needs assessments, and preparing a budget. The bill would require a PRO to

98

# PROPOSED AMENDMENTS

**— 3 —**

**SB 54**

establish a charge for its member producers sufficient to ensure the

requirements of the bill are met by the PRO and would specify certain subcharges and assessments to be included in the charge and the purposes for which the revenue from the charge may be spent, including the reasonable administrative costs of the PRO, the costs of a producer responsibility advisory board that the bill would create, and the reasonable costs associated with the bill incurred by local jurisdictions, as defined, and recycling service providers.

The bill would require a PRO, commencing on an unspecified date, to remit $600,000,000 each year to the California Department of Tax and Fee Administration (CDTFA) to be deposited into the California Plastic Pollution Mitigation Fund, which the bill would create. The bill would require the PRO to establish and impose on its member producers an environmental mitigation surcharge in an amount sufficient to raise that sum and to remit those moneys, as prescribed. The bill would require moneys in the California Plastic Pollution Mitigation Fund to be expended, upon appropriation by the Legislature, by specified state agencies on purposes relating to mitigating the environmental impacts of plastic. The bill would prohibit those appropriations from replacing funding for those purposes from any other source, including certain appropriations in the Budget Act of 2019.

**SECURED**

**COPY**

The bill would require the department to adopt regulations to implement the bill, as prescribed, and would require the department to publish certain information and lists on its internet website. The bill would require the department’s regulations to mandate that local jurisdictions and recycling service providers include in their collection and recycling programs covered material contained on the lists published by the department, except as specified. By imposing additional requirements on local jurisdictions, the bill would impose a state-mandated local program.

The bill would require the department to establish, and a PRO to pay on behalf of its member producers, the California circular economy regulatory fee. The bill would require the department to set the amount of the regulatory fee at no more than is necessary to cover the reasonable regulatory costs of the comprehensive regulatory scheme. The bill would require CDTFA to collect the regulatory fee in accordance with the Fee Collection Procedures Law, as prescribed. The bill would require the regulatory fees to be deposited into the California Circular Economy Fund, which the bill would create. The bill would make moneys in the fund available upon appropriation by

98

# PROPOSED AMENDMENTS

**SB 54**

**— 4 —**

# 

the Legislature to the department to fund the bill’s regulatory activities

and to CDTFA for expenses incurred in the collection of the fee. The bill would require the department and CDTFA to report specified information to the Legislature concerning the bill’s implementation.

The bill would provide for its enforcement, including authorizing the department to impose an administrative civil penalty in an amount not to exceed $50,000 per day per violation, except as specified, on an entity that is not in compliance with the bill’s requirements. The bill would require the department to deposit collected penalties into the Circular Economy Penalty Account, which the bill would create. The bill would make moneys in the account available upon appropriation by the Legislature for purposes that further the bill.

1. *The California Integrated Waste Management Act of 1989 requires each city and county, and each regional agency formed pursuant to the act, to develop a source reduction and recycling element of an integrated waste management plan to divert 50% of all solid waste, through source reduction, recycling, and composting activities. This bill would prohibit a city, county, city and county, or other local public agency from requiring a grocery store, as defined, to use a certain type of food packaging for any food sold in the grocery store unless the majority of residential households within the jurisdiction of the local agency have access to a curbside program, as defined, that accepts the material from which that food packaging is made. The bill would also prohibit those local agencies from requiring a grocery store to use a food packaging container that does not meet specified criteria. The bill*

**SECURED**

**COPY**

would repeal these provisions as of January 1, 2032.

1. *Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.*

This bill would make legislative findings to that effect.

1. *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*
2. *This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require*

98

# PROPOSED AMENDMENTS

**— 5 —**

**SB 54**

for passage the approval of 2⁄3 of the membership of each house of the

Legislature.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: ~~majority~~ *2⁄3*. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

+ SECTION 1. Chapter 3 (commencing with Section 42040) is

+ added to Part 3 of Division 30 of the Public Resources Code, to

**SECURED**

+ *read:*

+

**COPY**

+ Chapter 3. Plastic Pollution Prevention and Packaging

+ Producer Responsibility Act

+

+ Article 1. General Provisions

+

+ 42040. (a) This chapter shall be known, and may be cited, as

+ the Plastic Pollution Prevention and Packaging Producer

+ Responsibility Act.

+ (b) The Legislature finds and declares ~~both of~~ the following:

+ (1) Disadvantaged and low-income communities are

+ disproportionately impacted by the human health and

+ environmental impacts of plastic pollution and fossil fuel

+ extraction.

+ (2) Local jurisdictions are the backbone of the solid waste

+ management and recycling efforts in California. The new statewide

+ comprehensive circular economy framework established by this

+ chapter is intended to shift the burden of costs to collect, process,

+ and recycle materials from the local jurisdictions to the producers

+ of plastic products.

(3) In 2021 only 5 percent of post-consumer plastic waste in the United States was recycled, down from a high of 9.5 percent in 2014, when the United State exported millions of tons of plastic waste to China. Even then, much of this material was incinerated or dumped into the environment and not recycled.

(4) Recycling can be an effective way to reclaim some natural resources such as metals, glass, paper, and some plastic resins. However, in some circumstances, recycling is cost-prohibitive and an ineffective means to handle the end-of-life of a covered material. In these circumstances the Legislature acknowledges that some material types cannot effectively meet the requirements of this chapter and producers will choose to shift packaging or food service ware to a covered material category that can more

efficiently meet the requirements of this chapter.

+ (c) It is the intent of the Legislature in enacting this chapter to

+ ensure that local jurisdictions will be made financially whole for

+ any new costs incurred associated with the implementation of this

+ chapter and its implementing regulations.

+ 42041. For purposes of this chapter, the following definitions

+ *apply:*

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 6 —**

(a) “Department” means the Department of Resources Recycling and Recovery.

~~(a)~~(b) “Advisory board” means the producer responsibility

+ advisory board established pursuant to Section 42070.

+ ~~(b)~~(c) “California circular economy regulatory fee” means the

+ fee imposed by the department pursuant to Section 42090.

+ ~~(c)~~(d) (1) “Covered material” means both of the following:

+ (A) Single-use 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.

+ (B) 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. For

+ purposes of this subparagraph, “single-use food service ware”

**SECURED**

+ includes trays, plates, bowls, clamshells, lids, cups, utensils,

+ stirrers, hinged or lidded containers, wraps or wrappers, bags, and straws.

**COPY**

+ (2) Notwithstanding paragraph (1), “covered material” does

+ not include any of the following:

+ (A) Packaging used for the following products:

(i) Medical products and products defined as devices or

+ prescription drugs, as specified in the Federal Food, Drug, and

+ Cosmetic Act (21 U.S.C. Secs. 321(g), 321(h), and 353(b)(1)).

+ ~~(B)~~(ii) Drugs that are used for animal medicines, including, but

+ not limited to, parasiticide products for animals.

+ ~~(C)~~(iii) Infant formula, as defined in Section 321(z) of Title 21 of

+ the United States Code.

+ ~~(D)~~(iv) Medical food, as defined in Section 360ee(b)(3) of Title 21

+ of the United States Code.

+ ~~(E)~~(v) Fortified oral nutritional supplements used for persons who

+ require supplemental or sole source nutrition to meet nutritional

+ needs due to special dietary needs directly related to cancer,

+ chronic kidney disease, diabetes, malnutrition, or failure to thrive,

+ as those terms are defined as by the International Classification

+ of Diseases, Tenth Revision, or other medical conditions as

+ determined by the department.

+ ~~(F) Packaging used for a product listed in subparagraphs (A) to (E), inclusive.~~

+ ~~(G)~~(B) Packaging used to contain ~~toxic or hazardous~~ products

+ regulated by the Federal Insecticide, Fungicide, and Rodenticide

+ Act (7 U.S.C. Sec. 136 et seq.).

+ ~~(H)~~(C) Plastic packaging containers that are manufactured for use

+ in the shipment of hazardous materials and are prohibited from

# PROPOSED AMENDMENTS

**— 7 —**

**SB 54**

+ being manufactured with used material by federal packaging

+ material specifications set forth in Part 178 (commencing with

+ Section 178.0) of Subchapter C of Chapter I of Subtitle B of Title

+ 49 of the Code of Federal Regulations.

(D) Packaging used to contain hazardous or flammable products regulated by the 2012 OSHA Hazard Communications Standard (29 CFR 1910.1200)

+ ~~(I)~~(D) Beverage containers subject to the California Beverage

+ Container Recycling and Litter Reduction Act (Division 12.1

+ (commencing with Section 14500)).

+ ~~(J)~~(E) Packaging used for the long-term protection or storage of

+ a product with a lifespan of not less than five years as determined by the department.

+ ~~(K)~~(F) P~~roducts and the p~~ackaging associated with products

+ covered under the architectural paint recovery program established

+ pursuant to Chapter 5 (commencing with Section 48700) of Part

+ *7.*

**SECURED**

+ ~~(d)~~(e) “Covered material category” means ~~the~~ a category that

+ includes covered material of a similar ~~specific~~ type and

+ form ~~of either single-use packaging or single-use food service~~

**COPY**

+ *~~ware~~ as determined by the department.*

+ ~~(e)~~(f) “Curbside collection” means a program that includes the

+ collection of material, including but not limited to covered materials, by a local jurisdiction or recycling

+ or composting service provider under contract with a local

+ jurisdiction.

“Disadvantaged or low-income community” means and area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code, an area identified as a disadvantaged unincorporated community pursuant to Government code section 65302.10, or an area that is a low-income community.

+ ~~(f)(g) “End market specifications” means the purchasing~~

~~+ specifications issued by a buyer of recycled materials who intends~~

~~+ to reprocess those materials for use in a new product.~~

+ ~~(g)~~(h) “Expanded polystyrene” means blown polystyrene and

+ expanded and extruded foams that are thermoplastic petrochemical

+ materials utilizing a styrene monomer and processed by any

+ technique or techniques, including, but not limited to, fusion of

+ polymer spheres (expandable bead polystyrene), injection molding,

+ foam molding, and extrusion-blow molding (extruded foam

+ polystyrene).

+ ~~(h)~~(i) “Local jurisdiction” means a city, county, city and county,

+ or regional agency formed pursuant to Chapter 5 (commencing

+ with Section 6500) of Division 7 of Title 1 of the Government Code

+ or Article 3 (commencing with Section 40970) of Chapter 1 of Part

+ *2, or any special district that provides solid waste collection services.*

*“Low-income community” means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section 50093.*

+ ~~(i)~~(j) “Malus fee” means a charge imposed by a PRO on a member

+ producer for a covered material due to the adverse environmental

+ or public health impacts of the covered material.

+ ~~(j)~~(k) “Materials recovery facility” or “MRF” means a ~~primary~~

+ ~~or secondary~~ recycling facility that receives recyclable material,

98

# PROPOSED AMENDMENTS

**SB 54**

**— 8 —**

# 

+ including any covered material, for mechanical or manual sorting

+ into specification-grade commodities for ~~or~~ sales to a broker or

+ end market.

+ ~~(k)~~(l) “Needs assessment” means a needs assessment prepared

+ pursuant to Section 42071.

+ ~~(l)~~(m) “Packaging” means any separable and distinct material

+ component used for the containment, protection, handling, delivery,

+ or presentation of goods by the producer for the user or consumer,

+ ranging from raw materials to processed goods. “Packaging”

+ includes, but is not limited to, all of the following:

+ (1) Sales packaging or primary packaging intended to provide

+ the user or consumer the individual serving or unit of the product

+ and most closely containing the product, food, or beverage.

+ (2) Grouped packaging or secondary packaging intended to

**SECURED**

+ bundle, sell in bulk, brand, or display the product.

+ (3) Transport packaging or tertiary packaging intended to

**COPY**

+ protect the product during transport.

+ (4) Packaging components and ancillary elements integrated

+ into packaging, including ancillary elements directly hung onto

+ or attached to a product and that perform a packaging function,

+ except both of the following:

+ (A) A component or element with a de minimis weight or volume,

+ as determined by the department.

+ (B) A component or element that is an integral part of the

+ product, if all components or elements of the product are intended

+ to be consumed or disposed of together.

+ ~~(m)~~(n) “Plastic” means …..Work in progress

+ ~~(n)~~(o) “Plastic component” means any single piece of covered material plastic component made partially or entirely of a plastic. The “plastic component” may constitute the entirety of the covered material or a separate or separable piece of the covered material. The department may amend the definition of “plastic component” in regulations ~~covered material.~~ ~~a single piece of food service~~ ~~ware or packaging, whether the component constitutes the entirety~~ ~~of the food service ware item or packaging or a separate or~~ ~~separable component.~~

+ ~~(o)~~(p) “Processing” means to sort, segregate, break or flake, and

+ clean material to prepare it to meet the specification for sale to

+ an end market.

+ ~~(p)~~(q) (1) “Producer” means …..Work in progress the person who manufactures a product ~~the~~

~~+ covered material~~ under that person’s own name or brand using covered material and who

+ sells, ~~or~~ offers for sale, imports, or distributes ~~the~~ covered material

+ in the state under that person’s own name or brand.

+ (2) If there is no person who is the producer ~~of the covered~~

~~+ material~~ for purposes of paragraph (1) in the state, the producer

+ is the person who owns the trademark or brand ~~imports the covered material as the owner or licensee of a trademark or brand~~

# PROPOSED AMENDMENTS

**— 9 —**

**SB 54**

+ under which the product packaged in or made from the covered material is sold, ~~or~~ distributed, offered for sale, or imported in or into the state. For purposes of this subparagraph, a licensee holding the exclusive right to control the sale or distribution of the product packaged in or made from the covered material in the state under a trademark or brand shall be considered the owner of the trademark or brand.

+ (3) If there is no person who is the producer for purposes of

+ paragraphs (1) and (2) in the state, the producer is the person,

+ wholesaler, retailer, or company that offers for sale, sells, ~~or~~

+ distributes, or imports the product packaged or made from covered material in the state.

+ (4) “Producer” does not include a person who produces,

+ harvests, and packages an agricultural commodity on the site

+ where the agricultural commodity was grown or raised.

+ ~~(q)~~(r) “Producer responsibility organization” or “PRO” means

+ an organization that is exempt from taxation under Section

+ 501(c)(3) of the federal Internal Revenue Code of 1986 and is

+ ~~approved by the department~~ eligible to implement a plan to

**SECURED**

+ meet the requirements of this chapter.

+ ~~(r)~~(s) “Producer responsibility plan” or “plan,” unless context

**COPY**

+ requires otherwise, means the plan produced by a PRO,

+ or by a producer who chooses to assume individual responsibility

+ to comply with this chapter individually, and submitted to the

+ advisory board and department pursuant to Section 42051.

+ ~~(s)~~(t) “Rate of inbound contamination” means the amount of

+ nonrecyclable or noncompostable materials arriving at a materials

+ recovery facility or other recycling or composting facility.

+ ~~(t)~~(u) “Recycling rate,” …..Work in progress

+ ~~(u)~~(v) “Recycling service provider” means a solid waste enterprise

+ that provides solid waste handling services on behalf of the jurisdiction.

+ ~~(v)~~(w) “Responsible end market” means a materials market in

+ which the recycling or 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.

+ ~~(w)~~(x) (1)“Retailer” or “wholesaler” means the person who sells

+ covered material in the state or offers to consumers the covered

+ material in the state through any means, including, but not limited

+ to, any of the following:

+ (~~1~~A) Remote offering, including sales outlets or catalogs.

+ (~~2~~B) Electronically through the internet.

+ (~~3~~C) Telephone.

+ (~~4~~D) Mail.

+ (~~5~~E) Direct sales to consumers.

*(2) “Retailer or wholesaler”* …..Work in progress *does not include an online marketplace as defined in (3).(3) “Online marketplace” means a person or entity that operates a consumer-directed, electronically accessed platform in a manner in which all of the following are true:*

*(A) The platform includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in this state.*

*(B) The features described in paragraph (1) are used by third-party sellers.*

*(C) The person or entity has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.*

*(4) An online marketplace that satisfies all of criteria in subparagraph (3) shall, as a condition of selling or distributing into the state, shall require its third party sellers to confirm they will not offer for sale, sell, or distribute into the state on the online marketplace, covered material that does not meet the requirements of this chapter.*

# PROPOSED AMENDMENTS

**SB 54**

+

**— 10 —**

# 

+(~~x)(~~y) “Reusable” or “refillable” in regard to packaging or food

service ware, means either of the following:

+ (1) For packaging or food service ware that is reused or refilled

+ by a producer, it satisfies all of the following:

+ (A) Explicitly designed and marketed to be utilized multiple

+ times for the same product, or for another purposeful packaging

+ use in a supply chain.

+ (B) Designed for durability to function properly in its original

+ condition for multiple uses.

+ (C) Supported by adequate infrastructure to ensure the package

+ or food service ware can be conveniently and safely reused or

+ refilled for multiple cycles.

+ (D) Repeatedly recovered, inspected, and repaired, if necessary,

**SECURED**

+ and reissued into the supply chain for reuse or refill for multiple

+ *cycles.*

**COPY**

+ (2) For packaging or food service ware that is reused or refilled

+ by a consumer, it satisfies all of the following:

+ (A) Explicitly designed and marketed to be utilized multiple

+ times for the same product.

+ (B) Designed for durability to function properly in its original

+ condition for multiple uses.

+ (C) Supported by adequate and convenient availability of and

+ retail infrastructure for bulk or large format packages that may

+ be refilled to ensure the pack

age or food service ware can be

+ conveniently and safely reused or refilled by the consumer multiple

+ *times.*

“Rural area” means the same thing as Section 50101 of the Health and Safety Code.

+ ~~(y)~~(z) “Single use” means conventionally disposed of after a single

+ use and not sufficiently durable or washable for, or not intended

+ for, multiple refills of the original product to allow for multiple

+ *uses.*

+ ~~(z)~~(aa) “Source reduction” means the ~~elimination of, or net~~

+ reduction in the amount of covered material created by a producer relative to a baseline established pursuant to this chapter. Methods of source reduction include ~~before creation and includes~~,

+ but are~~is~~ not limited to, shifting covered material to reusable

+ packaging or a reusable product or eliminating unnecessary packaging. “Source reduction” does not

+ include replacing a recyclable or compostable covered material

+ with a nonrecyclable or noncompostable covered material or a

+ covered material that is less likely to be recycled or composted or switching from virgin covered material to post-consumer recycled content.

+ ~~(aa)~~(ab) “Unexpended funds” means money in a PRO’s accounts

+ that the organization is not already obligated to pay pursuant to

+ a contract, claim, or similar mechanism. “Unexpended funds”

+ excludes the California circular economy regulatory fees.

(ac) “Optimize” or “optimization” means limiting the amount of covered material used in packaging by meeting product or packaging needs with minimal material. This includes but is not limited to eliminating unnecessary components, right-sizing, concentrating, and using bulk or large format packaging.

(ad) “Right-size” or “right-sizing” means reducing the amount of material used to package an item by reducing unnecessary space or components of the packaging

(ae) “Concentrate” or “concentration” means reducing the amount of packaging needed for a product by reformulating the product to allow for smaller quantities of the product to be used for the same purpose as the previous, larger quantity.

(af) “Shift to bulk packaging or large format packaging” means packaging a larger amount of a product in a larger packaging, offsetting the need for multiple smaller packages for the same amount of product.

(ag) “Lightweighting” means reducing the weight (or amount) of material used in a specific packaging or food service ware without functionally changing the packaging or food service ware. This does not include changes that result in a recyclable or compostable covered material becoming nonrecyclable or noncompostable or less likely to be recycled or composted.

98

# PROPOSED AMENDMENTS

**— 11 —**

**SB 54**

+

+

+ Article 2. Producer Responsibility

+

+ 42050. Consistent with the policy goal established in Section

+ 41780.01, producers of covered material sold, offered for sale,

+ imported, or distributed in the state shall achieve all of the following~~:~~ with respect to the materials for which they are the producers:

+ (a) All plastic covered material is s~~S~~ource reduced ~~plastic~~

+ ~~covered material~~ pursuant to the requirements established in

+ Section 42057 and subdivision (f) of Section 42061.

+ (b) Ensure that all plastic covered material ~~manufactured~~

+ offered for sale, distributed ~~distribution~~, or imported in or into the

**SECURED**

+ state on or after January 1, 2032, are ~~is~~ recyclable in the state

+ or eligible for being labeled “compostable” in accordance with

**COPY**

+ Chapter 5.7 (commencing with Section 42355).

+ (c) Ensure that all plastic covered material ~~manufactured offered~~

+ for sale, distributed ~~distribution~~, or imported in or into the state meets

+ the following recycling or composting rates:

+ (1) Not less than 30 percent of covered material manufactured

+ on or after January 1, 2028.

+ (2) Not less than 40 percent of covered material manufactured

+ on or after January 1, 2030.

+ (3) Not less than 65 percent of covered material manufactured

+ on or after January 1, 2032.

+ 42051.

(!) Within twelve months of the effective date this chapter, producers of covered material shall form and join a PRO for the purposes of compiling with this chapter. The governing body of the PRO shall submit an application to the department describing how the PRO meets the requirements to be an approved PRO pursuant to this chapter. If the department approves the PRO pursuant to section 42061, the PRO shall proceed to carry out the requirements of this chapter.

(a) (1) Except as provided for in paragraph (2), upon approval of a plan pursuant to section 42051, or

+ commencing January 1, 2027, whichever is sooner, a producer shall not sell, offer for

+ sale, import or distribute covered materials in the state unless

+ ~~the~~a producer is ~~part~~ approved to participate in the plan of a PRO

+ ~~producer responsibility organization~~ with a producer responsibility

+ plan approved by the department for the source reduction, collection,

+ processing, and recycling of covered material to meet the

+ requirements of this chapter. A producer that is not already a participant of an approved PRO plan after January 1, 2027 but who after that date begins to sell, offers for sale, import, distribute covered material in the state shall within six months become a participate of the PRO and comply with this chapter.

+ (2) (A) A producer may comply with this chapter individually

+ without participating in ~~joining~~ a PRO’s plan if the producer can

+ demonstrate to the department, and the department determines at its sole discretion,

+ that the producer meets all of the following criteria:

+ (i) From the 2013 calendar year to the 2022 calendar year,

+ inclusive, the producer achieved a net 5 percent or greater ~~has~~

+ ~~demonstrated~~ source reduction of its ~~within its~~ covered

+ materials through shifting to refill, reuse, or elimination ~~at or above~~

+ ~~5 percent~~.

# PROPOSED AMENDMENTS

**SB 54**

+

**— 12 —**

(ii) From the 2013 calendar year to the 2022 calendar year,

# 

+ inclusive, the producer achieved a net 8 percent or greater ~~has~~

+ ~~demonstrated~~ source reduction of its ~~within its~~ covered

+ materials through optimization, concentration, right-sizing, bulking,

+ shifting to a nonplastic packaging, or light-weighting, or increasing the number of consumer uses. ~~by~~

+ ~~8 percent~~.

+ (iii) Seventy-five percent of the producer’s covered material sold, offered

+ for sale, distributed, or imported is in a covered material category that ~~all covered materials~~

~~within its portfolio are~~

+ meets ~~ing~~ a 30-percent recycling or composting rate

+ as of January 1, 2023~~, and the producer ensures all of its covered materials will meet the 65-percent recycling or composting rate by January 1, 2032, in accordance with subdivision (c) of Section 42050~~.

+ (B) A producer who chooses to comply with this chapter

**SECURED**

+ individually shall assume individual responsibility for complying

+ with this chapter and do all of the following:

**COPY**

+ (i) Develop and implement a plan that meets all of the applicable

+ requirements of a producer responsibility plan, including, but not

+ limited to, the review, update, and approval process. The plan

+ shall include a producer source reduction plan that meets all of

+ the applicable requirements of a PRO source reduction plan,

+ including, but not limited to, the review, update, and approval

+ process.

+ (ii) Fully cover the costs associated with implementing this

+ chapter to the same extent as any other producer participating in

+ a PRO based on the producer’s share of covered material. This

+ includes, but is not limited to, the costs necessary to meet the

+ requirements of Section 42050, costs incurred by local jurisdictions

+ and the department in relation to this chapter, the producer’s

+ market share of environmental mitigation funding pursuant to

+ Section 42064, as determined by the department, and any penalties

+ associated with noncompliance.

+ ~~(iii)~~(C) Annually report sales, recycling, composting, and source reduction

+ data to the department pursuant to sections 42052 and 42058 in

+ a manner determined by the department. This includes, but is not

+ limited to, annually reporting the amount of recycling or composting of covered

+ materials, and the number of components and weight of plastic covered material

+ components shifted to refill or reuse or shifted to a material that is

+ compostable in accordance with Chapter 5.7 (commencing with

+ Section 42355), the use of postconsumer content used in lieu of virgin

+ plastic content, and the number and weight of plastic components

+ eliminated or shifted to another material type.

(D) Regardless of whether a producer participates in a PRO plan, each producer in the state shall file its primary business address with the department in a manner prescribed by regulation pursuant to this chapter. Each producer shall notify the department of any change in their business address. A PRO may satisfy the requirements of this paragraph on behalf of the producer by including the producer’s primary business address in a plan, update, or annual report pursuant to subdivision (c) of section 42058 or otherwise notifying the department of the address and any changes of address.

98

# PROPOSED AMENDMENTS

**— 13 —**

**SB 54**

+ (b) As a condition of producer responsibility plan approval, the

+ plan shall be consistent with the regulations adopted by the

+ department pursuant to Section 42061 and shall include a budget

+ and the provisions necessary for the department to ensure

+ producers covered under the plan comply with this chapter. The

+ plan shall meet all of the following criteria:

+ (1) The plan shall include objective and measurable criteria

+ whenever possible, and describe all of the following:

+ (A) How the ~~plan~~ PRO will meet the requirements of this chapter,

+ including, but not limited to, how it will, in an economically

+ efficient and practical manner, provide for viable end markets to

+ ensure the covered material will achieve the requirements of

+ Section 42050 based on the PRO’s needs assessments.

**SECURED**

+ (B) How the PRO will support and achieve the collection, processing,

+ recycling, or composting of, and the development of viable responsible end

**COPY**

+ markets for, covered materials that are included in the plan to

+ meet the requirements of this chapter.~~,~~ This includes ~~including,~~ but not limited

+ to, actions necessary to sort, segregate, break, flake and clean material to specifications for sale to an end market. how the PRO will leverage and utilize existing collection

+ programs and recycling, composting, sorting, and processing

+ infrastructure For the purposes of this paragraph, “specifications” means the third-party purchasing specifications issued by a buyer or buyers of recycled materials who intends to reprocess materials for use in a new product.

+ (C) (i) How the plan is supplemental to, and not in conflict

+ with, disruptive of, or adversely affecting, the performance of the

+ solid waste network providing services in accordance with local

+ solid waste handling requirements and the intent described in

+ Section 40004.

+ (ii) Except as specified in subparagraph (B) of paragraph (4)

+ of subdivision (b) of Section 42061, how the plan will be

+ implemented in a manner utilizing solid waste collection programs

+ and solid waste facilities as the designated system for the curbside

+ collection and processing of covered material.

+ (D) In accordance with Section 40059, how the plan and the

+ activities undertaken pursuant to the plan will be implemented in

+ compliance with state and local laws, rules, and regulations

+ applicable to solid waste handling and in a manner that does not

+ violate existing franchise agreements.

+ (E) How covered material will be collected, processed,

+ managed, and recycled and remanufactured or composted ~~disposed of~~ consistent with the goals,

+ standards, and practices required by this chapter, including ensuring

+ covered material collected for recycling will be transferred to

+ responsible end markets for processing into new packaging or

+ products.

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 14 —**

*(F) Arrangements the PRO or member producer has made, or*

# 

+ will make, with processors or recyclers to ensure that covered

+ materials that are not collected through a curbside collection

+ program are recycled at a responsible end market, including any

+ investment ~~intended to be~~ that will be made to support processors or recyclers.

(G) Arrangements the PRO or member producers have made, or will make, to establish and fund reuse or refill infrastructure, fund facility retrofits or other needed infrastructure to eliminate plastic covered material, shift covered material from plastic to a non-plastic covered material category, or any other actions take, or that will be taken, to implement the source reductions requirements pursuant to section 42057.

(H) How producers will incorporate postconsumer recycled content into covered material.

(I) How the plan will enhance or expand responsible end markets in California including manufacturing

+ (2) (A) The ~~plan~~ PRO shall include in the plan a fee for participants of the PRO consistent with the provisions of section 42053, set forth the calculation of such fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO’s approved plan.~~, calculate, and charge producers that are members of the PRO a fee consistent with the~~ ~~provisions of Section 42053.~~

+ (B) The plan shall include a description of the fee structure and

+ a schedule of the fees actually charged to ~~member~~ producers who are participants of a PRO’s approved plan.

+ (3) The plan shall include proven effective efforts to use education and promotion

+ to encourage proper participation in recycling and composting

+ collection and reuse and refill systems. The PRO shall ensure

**SECURED**

+ coordination between these efforts and existing educational and

+ promotional efforts. These may include, but are not limited to, all

**COPY**

+ of the following:

+ (A) Education and engagement to reduce the rate of inbound

+ contamination or unwanted materials.

+ (B) Outreach to obtain consistently high levels of public

+ participation in and use of curbside collection services and reuse

+ and refill systems.

+ (C) Education and engagement with residents on proper

+ recycling, composting, and reuse and refill behaviors.

(D) Support increased statewide and local outreach needed to achieve the plan’s goals.

+ (4) The plan shall include a closure or transfer plan to settle

+ the affairs of the PRO that ensures that producers who are participants of the PRO’s approved plan ~~member producers~~ will continue to meet their obligations in the event of dissolution of the

+ organization or revocation of a plan by the department and that describes a process for notifying the

+ department, the advisory board, and local jurisdictions, and any contractors of the

+ dissolution. The closure or transfer plan shall provide for sufficient

+ reserve funds in the trust fund or escrow account established

+ pursuant to Section 42056 to allow the PRO to satisfy all

+ obligations in the event of dissolution of the PRO until the participants of the PRO’s approved plan ~~member producers~~ have become a participant of ~~joined~~ adifferent PRO’s approved plan.

+ (5) The plan shall include a process for determining and paying

+ the total costs that will be incurred by local jurisdictions and

+ recycling service providers under this chapter.

+ (6) The plan shall include a five-year strategic capital

+ investment and spending plan to meet the needs identified in the

+ PRO’s needs assessments. The investment and spending plan shall

+ not propose investing in activities contrary to the intent described

# PROPOSED AMENDMENTS

**— 15 —**

**SB 54**

+ in Section 40004 or an agreement entered into pursuant to Section

+ 40059 and shall include a mechanism to disburse funds for

+ identified activities. The strategic capital investment plan may

+ include, but shall not be limited to, elements that will accomplish

+ all of the following:

+ (A) Expanding access to or improvement of curbside collection

+ services wherever feasible.

+ (B) Expanding access to dropoff recycling services or other

+ mechanisms where curbside collection services are not feasible,

+ or as necessary in order to supplement curbside collection services to achieve the requirements of this chapter.

+ (C) Expanding access to curbside collection services in public

+ *spaces.*

+ (D) Providing or facilitating deployment of innovative enhanced

**SECURED**

+ collection, composting, and recycling systems and innovative recycling systems within a Recycling Center or MRF that utilize advanced technology such as artificial intelligence and robotics, to improve the identification and sortation of covered materials, where ~~practically~~ feasible.

+ (E) Creation of on-premise access to recycling or composting services for

**COPY**

+ multifamily residences.

+ (F) Funding, providing, or facilitating the efficient transport of

+ materials from remote or rural areas to centralized sorting

+ facilities, brokers, or responsible end markets.

+ (G) Enhancing existing materials recycling or composting infrastructure by

+ developing a quality incentive payment, grants, and other

+ mechanisms sufficient to cover the reasonable cost of separating,

+ processing, bailing, recycling, composting, remanufacturing and transporting desired materials that meet

+ responsible end market quality specifications, or for reducing the rate inbound contamination to composting facilities.

+ (H) Infrastructure or other mechanisms needed to implement a source reduction plan, including but not limited to, investments in reuse, refill, and composting infrastructure.

(I) Infrastructure or other activities needed to achieve recycling and composting rates for all covered material under the plan and ensure covered material is recyclable or compostable.

+ (7) As part of the plan, the PRO or a member producer may

+ rely on a range of means to collect and recycle or compost various categories of covered

+ materials that are not collected and recycled or composted through a curbside collection

+ program, including, but not limited to, dropoff recycling services

+ and retailer take-back. If curbside collection and recycling or composting services provided by

+ local jurisdiction programs, local jurisdiction contracted programs,

+ solid waste collection companies, or other entities with a franchise

+ contract are available in a local jurisdiction, the plan shall, consistent with paragraph (8), include

+ those services as a covered materials collection and recycling or composting option in the local

+ jurisdiction served.

+ (8) Consistent with Section 42053, a plan shall include curbside

+ collection and recycling or composting services for covered materials under any of the following

+ circumstances:

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 16 —**

(A) The category of covered materials can be made suitable for

# 

+ curbside collection and can be effectively and cleanly sorted by the facilities

+ receiving the curbside collected material for recycling or composting.

+ (B) The ~~local jurisdiction, in consultation with the~~ recycling

+ facility providing processing and sorting service, in consultation with the local jurisdiction, agrees to include

+ the category of covered materials as an accepted material for recycling or composting and agrees to collect and sort the material in a manner that achieves cleanliness and quality necessary for recycling and remanufacturing or composting.

+ (C) The provider of the curbside collection and recycling or composting service agrees to

+ the costs arrangement.

(D) Should a primary MRF choose to send material to a secondary sorting facility for additional sortation and recycling of covered materials, the PRO may provide the primary MRF a rebate based on criteria it may develop to cover transportation costs of such covered materials provided it is free of toxic or hazardous materials

+ (9) The plan shall include specific measures to ensure that producers participating in the plan comply with the requirements of the plan and this chapter. Such measures shall include at least the following elements:

(A) Adequate incentives for compliance. Such measures shall include, without limitation, fees for failing to provide accurate and timely information required to be provided to the PRO or otherwise materially violating requirements of the plan or this chapter. Notwithstanding the PRO’s assessment of a fee, the department may take enforcement action pursuant to Article 5 against producers in violation of this chapter.

(B) Protocols to ensure that the PRO becomes aware, within a reasonable time, of producers’ violations of the requirements of the plan or this chapter.

(C) Criteria for determining when a producer’s performance merits terminating the producer’s participation in the PRO’s plan, and a process for making such determination.

(D) Record maintenance protocols requiring the PRO to maintain records sufficient to demonstrate whether each producer participating in the plan has complied with the requirements of the plan and this chapter for at least the previous three years. Such protocols shall ensure that all records remain reasonably accessible by the department upon request.

(10) The plan shall include the specific information required under subdivision (c) of section 42057.

~~(~~c) The PRO shall ensure that plan implementation avoids and minimizes ~~does not~~

~~+ result in~~ negative environmental or public health impacts on

+ low-income, disadvantaged or low-income communities, ~~and~~ or rural ~~communities~~ areas.

+ (~~c~~ d) Prior to submitting the plan to the department for approval, t ~~T~~he PRO shall submit a proposed plan to the advisory board for review and comment pursuant to section 42070(h). ~~before submitting the plan to the~~

**SECURED**

~~+ department for approval. The advisory board may offer written~~

~~+ comments, suggest modifications to the plan, and advise the~~

**COPY**

~~+ department on whether the plan should be approved.~~ The advisory board may provide written comments within 60 calendar days. The PRO shall consider the comments, along with any public comments, and incorporate these comments into the plan as reasonable.

*(e) (1)The PRO shall submit the plan to the department with revisions, if any, in response to comments by the advisory board or public within 120 days of receipt of the board’s comments.*

*(2) The department shall review the plan for compliance with this chapter.  Within 90 days of receipt of the plan from the PRO, the department shall respond with an approval, disapproval, conditional approval, request for additional information, or timeline for a decision on approval or disapproval.*

*(3) If the department conditionally approves the plan pursuant to subdivision (b), the department shall explain in writing, how the plan or parts of the plan does not comply with the chapter, and the PRO shall assure the conditions are met and resubmit a revised plan within 12 months.*

*(4) If the department disapproves the plan pursuant to subdivision (b), the department shall explain, in writing, how the plan does not comply with this chapter, and the PRO shall resubmit a plan to the department. If the department finds that the plan resubmitted by the PRO does not comply with the requirements of this chapter, the PRO shall not be deemed in compliance with this chapter until the organization submits a plan that the department finds complies with the requirements of this chapter.*

*(5) The approved plan shall be a public record, except that financial, production, or sales data reported to the department by the PRO is not public record for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department shall release financial, production, or sales data in summary form only so the information cannot be attributable to a specific manufacturer or retailer or to any other entity.*

(!) Within 90 calendar

+ days after approval or conditional approval of the plan by the

+ department, the PRO shall implement the approved plan and post

+ the plan on the PRO’s internet website.

+ (d) (1) Except as provided in paragraph (3) of subdivision (f), a ~~A~~ plan approved by the department under Section 42063 is valid for five years.

(A) The department’s rejection or revocation of a plan or plan amendment submitted for approval under this section does not relieve the PRO or producers from its obligations pursuant to the previously approved plan or the requirements of this chapter.

(B) The submission of a plan amendment for approval under this section does not relieve the PRO or producers from its obligations pursuant to the approve plan prior to action by the department on the plan amendment.

(2) No less than 180 calendar days before a plan’s five-year

+ expiration date, the PRO shall submit a proposed updated plan to

+ be reviewed by the advisory board and approved by the department

+ for an additional five years. An updated plan submitted for

+ approval under this subdivision shall satisfy the requirements of

+ this chapter and Section 42063 and describe any

+ changes from the previously approved plan. The department may allow for an extension of a previously approved plan until a plan submitted under this subparagraph is approved or rejected. ~~Until the updated plan~~

~~+ is approved by the department, the previously approved plan shall~~

~~+ remain in effect. The department’s rejection of an updated plan~~

~~+ does not relieve the PRO from continuing to implement the~~

~~+ previously approved plan pending a final action by the department~~

~~+ on the updated plan.~~

+ (e) No changes that modify actions to meet the obligations set forth in section 42050, setting and collection of fees, changes to the implementation of this chapter with respect to costs incurred by local governmentsor recycling service providers,

or covering the cost to ~~manage~~ implement the plan including costs to source reduce covered material shall be made to an approved plan unless the proposed change is submitted to the advisory board for comment, and approved by the department. Such submission and review shall be conducted according to the same process set forth in subdivision (c). ~~of this chapter with respect to costs incurred by local governments or recycling service providers.~~

~~(1) If a PRO proposes to change an approved plan as it~~

~~+ relates to the requirements of Section 42050, setting and collecting~~

~~+ fees, or covering the costs to manage covered material, including,~~

~~+ but not limited to, costs incurred by local jurisdictions or recycling~~

~~+ service providers related to implementing this chapter, that change~~

~~+ shall be considered an amendment to the plan and the PRO shall~~

~~+ submit the amendment to the advisory board and department. The~~

98

# PROPOSED AMENDMENTS

**— 17 —**

**SB 54**

~~+ amendment shall be subject to department approval pursuant to~~

~~+ this chapter and Section 42063.~~

~~+ (2) For any change made to the plan for which an amendment~~

~~+ to the plan is not required under paragraph (1), the PRO shall~~

~~+ provide written notice to the department and the advisory board~~

~~+ within 90 days of the change. If there are no changes to the plan~~

~~+ made in a calendar year, the PRO shall provide written notice of~~

~~+ that fact to the department and the advisory board within 90 days~~

~~+ of the conclusion of that calendar year.~~

+ (f) (1) A PRO shall annually submit to the department and make

+ publicly available on its internet website an annual report and

+ budget that describes how the PRO is implementing the plan and

+ how the PRO has complied with the requirements of this chapter

**SECURED**

+ and its implementing regulations.

+ (2) The annual report shall describe in detail progress made

**COPY**

+ toward meeting or exceeding the requirements in Section 42050

+ and shall include an evaluation of whether the PRO is reasonably likely ~~on target~~

+ to meet those requirements. If the PRO is not reasonably likely ~~on target~~ to meet

+ those requirements, the PRO shall submit to the department an amendment to ~~amend~~ the plan to include additional measures to be implemented to ensure the requirements are met. The department may approve or disapprove the amendment based on a determination as to whether the amendment is sufficient to result in actions reasonably likely to meet the requirements of this chapter.

(3) Within 90 calendar days of receiving an annual report, the department shall review the report and determine whether the PRO, in light of its implementation of the plan and any amendments or pending amendments to the plan pursuant to paragraph (2), is reasonably likely to meet the requirements of the plan and this chapter. Based on such review, the department may revoke its approval of the plan, effective no earlier than 120 calendar days after notice to the PRO of such revocation. The PRO shall submit a new plan within 120 calendar days, which the department shall review pursuant to section 42063, provided, however, that the previously approved plan shall remain in effect during the pendency of such review if the new plan is submitted before the revocation of the previous plan takes effect

+ (g) A PRO shall ensure that each participant of its approved plan ~~member producers~~

+ complies with the requirements of this chapter. The PRO shall

+ notify the department within 30 days of ~~both~~ any the following:

+ (1) The end of any three-month period in which the PRO

+ unsuccessfully attempted to obtain a fee, records, or information

+ from a member producer, or received incomplete or incorrect records or information pursuant to Section 42052 or 42053.

+ (2) The date a ~~member~~ producer no longer participates in ~~leaves~~ the PRO’s approved plan.

(3) An instance of non-compliance by a participant producer.

+ 42052. (a) A PRO shall register in the department’s Recycling

+ and Disposal Reporting System, or an alternative reporting system

+ established by the department, and annually submit to the system

+ all of the following information on behalf of each ~~member~~

+ producer who participates in the PRO’s approved plan:

+ (1) The ~~estimated~~ aggregate quantities in ~~quantity and~~ total weight and units, including 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, as the department deems necessary to determine

+ compliance with this chapter in a form, manner, and frequency

+ determined by the department pursuant to paragraph (1) of

+ subdivision (b) of Section 42061.

(2) The aggregate quantities in total weight and units, including number of plastic components, of covered material by covered material category recycled, as defined in paragraph (p) of section 42041, or composted as the department deems necessary to determine compliance with this chapter in a form, manner, and frequency determined by the department pursuant to section 42061(b).

(3) For covered material not collected through a curbside collection program, the PRO shall collect, verify and submit data demonstrating take-back and drop-off performance including the amount and type of covered materials collected. If public drop-off sites are utilized the associated costs shall be included in the plan.

# PROPOSED AMENDMENTS

**SB 54**

+

**— 18 —**

*~~(2)~~(3) Any additional information deemed necessary by the*

# 

+ department to collect and report data pursuant to subdivision (c)

+ of Section 42060.

+ (b) A PRO shall not require a producer who is a participant ~~member~~ of the

+ PRO’s approved plan to report to the PRO covered materials that the producer is required to report pursuant to another PRO’s plan, another department-authorized stewardship organization’s plan, or that the producer directly reports to the department. ~~are either part~~

~~+ of another department-authorized stewardship organization’s plan~~

~~+ or PRO’s plan or otherwise directly reported to the department~~

~~+ by the producer.~~

+ (c) A producer or PRO shall respond ~~to a request for data~~ within

+ 14 calendar days to a request by the department for ~~if the department seeks~~ additional data. ~~Based~~

~~+ on consultation with the producer or PRO, t~~ The department may

+ grant additional time for responding that shall not exceed 60

+ calendar days. To determine if an extension of time is warranted,

**SECURED**

+ the department shall take into account, at a minimum, all of the

+ following considerations:

**COPY**

+ (1) The amount of data requested.

+ (2) Whether the producer or PRO has the data readily available.

+ (3) Whether the data is necessary to ensure compliance with

+ Section 42050.

+ (4) Whether the producer or PRO needs to obtain the data from

+ a third party.

+ (5) The producer’s or PRO’s timely compliance with any

+ previous data requests.

+ (d) A producer or PRO shall maintain records of covered

+ materials offered for sale, sold, distributed, or imported in or into

+ the state in a form and manner established by the department that

+ the department determines is necessary to determine if a producer

+ is in compliance with this chapter during an audit.

+ (e) Data provided by producers and collected under this section

+ shall only be used by the PRO for the purposes of this chapter.

+ ~~Information provided to t~~The PRO ~~by producers pursuant to this~~

~~+ chapter~~ shall ~~be considered~~ consider all information provided to it by producers in compliance with this chapter to be confidential and shall not ~~be disclosed~~ disclose the information

+ to other producers or the public or allow the use of the information ~~used~~ for commercial purposes.

+ This section does not prohibit the PRO from providing data

+ requested by the department or from releasing aggregated data

+ that does not identify data in connection with a specific responsible

+ *entity.*

+ (f) A PRO shall provide contact information for any of the

+ PRO’s registered ~~member producers~~ participants to the department upon

+ request.

98

# PROPOSED AMENDMENTS

**— 19 —**

**SB 54**

+ 42053. (a) As part of its producer responsibility plan, a PRO

+ shall establish a fee schedule for its ~~member producers~~ participants sufficient to ensure

+ the requirements of this chapter are met by the PRO and the plan is fully implemented. This includes, but is not limited to, the full costs delineated in subdivisions (g) and (e).

+ (b) During the first two years of operation, during the preparation of the plan developed pursuant to section 42051, the PRO shall

+ determine the fee schedule for each producer based on estimated costs of implementing the plan,

+ operating costs ~~of the PRO~~, the cost of completing the needs

+ assessment, the costs to cover the environmental mitigation

+ requirements of Section 42064, and the California circular

+ economy regulatory fee as determined by the department pursuant

+ to Section 42090. A producer shall be charged a prorated share

+ of these costs based on the producer’s annual gross sales. In the

+ third year and each successive year of operation, each producer

+ shall pay an annual fee as established in the PRO plan based on the factors described in

**SECURED**

+ subdivision (c).

+ (c) (1) A PRO shall structure the fee schedule required pursuant to

**COPY**

+ subdivision (a), delineated by covered material category and based on the following factors:

+ (A) Costs to develop and sustain responsible end markets for each covered

+ material category.

+ (B) Costs to collect, sort ~~into defined streams~~, avoid or remove contamination, aggregate, and transport the covered

+ material into defined streams to support the responsible end markets for the remanufacturing of ~~for~~ the

+ covered material either through curbside collection or other means.

+ (C) Costs incurred by local jurisdictions or recycling service

+ providers to process and transport covered materials in a manner and quality sufficient for

+ acceptance by responsible end markets. This includes costs incurred by local jurisdictions or recycling service providers to reduce or mitigate the rate of inbound contamination at composting facilities

These costs may vary by local

+ jurisdiction.

+ (D) Costs incurred by local jurisdictions or recycling service

+ providers for any waste stream sampling and reporting required

+ by this chapter and for any costs incurred to educate ratepayers

+ to improve the preparation and sorting, as needed, of covered material.

(E) Other costs necessary to implement the plan and achieve the source reduction, recyclability and compostability, recycling and composting rate, and other requirements of this chapter, including but not limited to ensuring that plan implementation does not result in negative environmental or public health impacts on disadvantaged or low-income communities or rural areas.

+ ~~(E)~~(F) ~~Whether~~ If recycling or composting of the ~~a~~ covered material is made more difficult by the incorporation of specific elements, including but not limited to, ~~could be easier to recycle except~~

~~+ that the covered material incorporates elements such as~~ inks,

+ labels, and adhesives that may be ~~are~~ detrimental to recycling or composting according to the Association of Plastic Recyclersdesign guide,

+ or other relevant industry association, or other criteria established by the department, the fee for that covered material shall be sufficiency to account to the increased cost to manage that covered material. ~~as~~

~~+ determined by the Association of Plastic Recyclers design guide,~~

~~+ or other relevant industry association, and whether the covered~~

~~+ material warrants, and the producer is charged, a malus fee~~

~~+ pursuant to subdivision (d).~~

(G) Covered materials that are determined by the department

+ to be made from plastic derived wholly from renewable materials

+ shall be subject to a reduced fee, as determined by the PRO, but

+ under no circumstances shall the reduced fee equal more than

+ one-half of the fee established for similar or equivalent covered

+ material derived wholly from nonrenewable materials. Covered

+ materials that are determined by the department to be made

+ primarily, but not wholly, from plastic derived from renewable

+ materials shall also be subject to a reduced fee, as determined by

+ the PRO, but under no circumstances shall the reduced fee equal

**SE**

**CURED**

+ more than three-fourths of the fee established for similar or

+ equivalent covered material derived wholly from nonrenewable

**COPY**

+ materials. This fee reduction shall not inhibit with the PRO’s obligation to pay the whole costs as established in section (a).

+ (~~F)~~(H) The commodity value of the covered material based on an

+ independent index or the reported commodity value of materials

+ of equivalent quality of the covered material.

(2) The PRO shall structure the fee paid by each participating producers to account for the following:

(A) Any malus fee charged to the producer pursuant to subdivision (d).

# PROPOSED AMENDMENTS

**SB 54**

+

**— 20 —**

~~(G)~~ (B) The costs necessary to fund the environmental mitigation

# 

+ requirements of Section 42064.

+ ~~(H)~~ (C) The revenue necessary to cover the California circular economy regulatory fee.

(D) Costs incurred by the PRO to assist producers to meet the source reduction requirements pursuant to section 42057.

+ ~~(2) Covered materials that are determined by the department~~

~~+ to be made from plastic derived wholly from renewable materials~~

~~+ shall be subject to a reduced fee, as determined by the PRO, but~~

~~+ under no circumstances shall the reduced fee equal more than~~

~~+ one-half of the fee established for similar or equivalent covered~~

~~+ material derived wholly from nonrenewable materials. Covered~~

~~+ materials that are determined by the department to be made~~

~~+ primarily, but not wholly, from plastic derived from renewable~~

~~+ materials shall also be subject to a reduced fee, as determined by~~

~~+ the PRO, but under no circumstances shall the reduced fee equal~~

**SE**

**CURED**

~~+ more than three-fourths of the fee established for similar or~~

~~+ equivalent covered material derived wholly from nonrenewable~~

**COPY**

~~+ materials.~~

(d) The fee required pursuant to subdivision (a) shall be adjusted

+ using malus fees or credits for member producers, with those

+ adjustments based on any of the following, as applicable:

+ (1) The percentage of postconsumer recycled content in the

+ member producer’s covered materials. The percentage of

+ postconsumer recycled content shall be verified ~~by the PRO or~~

+ through an independent third party approved by the department to perform

+ verification services to ensure that the percentage exceeds the

+ minimum requirements for the covered material, as long as the

+ recycled content does not disrupt the potential for future recycling.

+ (2) Source reduction related to right-sizing, optimization, and

+ bulking of packaging, or concentrating the product packaged to

+ reduce packaging.

+ (3) Standardization of packaging materials that simplifies the

+ processing, marketing, sorting, and recycling or composting of

+ covered materials.

+ (4) Presence of hazardous material as identified by the Office

+ of Environmental Health Hazard Assessment, the Department of

+ Toxic Substances Control, or the department.

+ (5) Actions taken by the producer, including clear and accurate

+ disposal, recycling, ~~or~~composting, or reuse or refill labeling and instructions, that

+ comply with Chapter 5.7 (commencing with Section 42335),

+ including paragraph (6) of subdivision (d) of Section 42355.51,

98

# PROPOSED AMENDMENTS

**— 21 —**

**SB 54**

+ that improve consumer behavior related to sorting and proper

+ disposal.

+ (6) Actions taken by the producer to accelerate source reduction

+ and to invest in sustained and robust reuse and refill systems. The

+ PRO may create a mechanism to allow producers to receive a

+ credit for achieving source reduction beyond what producers of

+ similar covered material are achieving. The revenue for that credit

+ shall be paid for by charging producers not achieving source

+ reduction for similar products a malus fee.

98

# PROPOSED AMENDMENTS

**SB 54**

**— 22 —**

# 

+ (e) The fee required pursuant to subdivision (a) shall be set at

+ an amount to cover the reasonable ~~administrative~~ costs of the

+ PRO, including, but not limited to, staff and associated ~~with the development and implementation of the plan,~~

~~+ administrative expenses~~ and the costs associated with the development and implementation of the producer

**SECURED**

+ responsibility plan, the operational costs of the advisory board as

+ incurred by the department, environmental mitigation costs

**COPY**

+ ~~associated with~~ incurred pursuant to Section 42064, and payment of the California

+ circular economy regulatory fee on behalf of participants of the PRO’s plans ~~member producers~~.

+ (f) In addition to the annual schedule of fees approved in the

+ plan, the PRO fee schedule may include a special assessment,

+ charged to the member producers of a particular covered material

+ category, to be imposed on that particular category of covered

+ material at the request of those producers if the nature of the

+ covered material imposes unusual costs in collection or processing

+ or requires special actions to address effective access to recycling, composting,

+ or successful processing. The revenue from the special assessment

+ shall be used to make system improvements for the specific covered

+ materials or products on which the special assessment was applied.

+ (g) (1) Fees paid to the PRO pursuant to subdivision (a) shall

+ be used to fund the following:

+ (A) (i) Reasonable costs associated with this chapter incurred

+ by local jurisdictions and recycling service providers related to

+ consumer outreach and education; ~~and for the collection,~~

+ the transportation of covered materials to a material recovery facility, broker, or responsible end market; sorting, aggregating, and baling covered materials as necessary to bring those materials to market; improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling or composting rates. Costs include those related to both curbside and non-curbside collection programs and may be varied based on population density, distance to market, and other relevant factors. ~~and processing necessary to bring the covered~~

~~+ materials to viable and responsible end markets. Costs may include~~

~~+ those imposed for both curbside and noncurbside collection~~

~~+ programs and may be varied based on population density, distance~~

~~+ to the relevant market, and other relevant factors. The fees required~~

~~+ pursuant to subdivision (a) shall be set at an amount to allow local~~

~~+ jurisdictions to protect ratepayers from increased costs associated~~

~~+ with the processing and marketing of covered material and to~~

98

# PROPOSED AMENDMENTS

**SB 54**

**— 22 —**

# 

+ ~~cover the costs associated with any waste stream sampling,~~

~~+ reporting, or other requirements imposed upon local jurisdictions~~

~~+ and recycling service providers pursuant to this chapter.~~

+ (ii) Disputes concerning the reimbursement of reasonable costs

+ between the PRO and a local jurisdiction or recycling service

+ provider shall be forwarded to the department and the department

+ shall determine the reasonable costs within 30 calendar days of submission

+ pursuant to the process established in subparagraph (A) of

+ paragraph (4) of subdivision (b) of Section 42061.

+ (B) The development and implementation of the five-year

+ strategic investment plan contained in the plan.

+ (C) Reimbursing the department for the costs to administer the

+ advisory board and to pay the California circular economy

**SECURED**

+ regulatory fee.

+ (D) Administering the PRO and implementing the plan.

**COPY**

+ (E) Environmental mitigation activities associated with Section

+ *42064.*

+ ~~FF~~

+ ~~(3)~~ (2) If reasonable and able to be discretely directed, funding

+ derived from a material type may be spent on investments needed

+ for that specific material type.

(3) A producer or PRO shall not expend revenue collected for implementation the plan for any of the following purposes:

(A) To pay an administrative civil penalty pursuant to Section 42425.2.

(B) To pay costs associated with litigation between the producer or organization and the state.

(C) To compensate a person whose position is primarily representing

+ the PRO relative to the passage, defeat, approval, or modification

+ of legislation that is being considered by a local, state, or federal

+ government body, nor shall the PRO use or permit the use of these

+ funds for paid advertisement 30 days prior to or during a

+ legislative session for the purposes of encouraging the passage,

+ defeat, approval, or modification of a bill that is being considered,

+ or was considered during the previous legislative session.

+ (h) A producer that is a ~~member~~ participant of a PRO’s approved plan shall pay the fee

+ calculated under the schedule included in the plan developed by

+ the PRO pursuant to paragraph (2) of subdivision (b) of Section

+ 42051 and, upon request, provide the PRO with records or other

+ information necessary for the PRO to meet the PRO’s requirements

+ under this chapter.

*42053.5 (a) (1) On or before the end of the 2026–27 fiscal year, and once every three months thereafter, a PRO shall pay to the department an administrative fee. The department shall set the fee at an amount that, when paid by every producer, is adequate to cover the department’s and any other state agency’s full costs of implementing and enforcing this chapter. The total amount of fees collected shall not exceed the state’s actual and reasonable regulatory costs to implement and enforce this chapter. These costs may include the actual and reasonable costs associated with regulatory activities pursuant to this chapter before submission of producer responsibility plans pursuant to Section 42051.*

*(2) For a PRO, the administrative fee paid pursuant to paragraph (1) shall be funded by the producers that make up the PRO. This administrative fee shall be in addition to the charge paid pursuant to Section* ***42090****. A PRO may require its participating producers to pay the administrative fee and the charge paid pursuant to Section 42090 at the same time.*

*(b) The department shall deposit administrative fees paid by a PRO pursuant to subdivision (a) into the California Circular Economy Regulatory Fund, which is hereby established. Upon appropriation by the Legislature, moneys in the fund may be expended by the department. Upon appropriation by the Legislature, moneys in the fund may be used for those regulatory activities and to reimburse any outstanding loans made from other funds used to finance the startup costs of the department’s activities pursuant to this chapter. Moneys in the fund shall not be expended for any purpose not enumerated in this chapter.*

+ 42054. (a) A PRO shall keep minutes, books, and records that

+ clearly reflect the activities and transactions of the PRO.

+ (b) The accounting books of the PRO shall be audited at least once per calendar year at the

+ PRO’s expense by an independent certified public accountant certified in the USA

+ retained by the PRO ~~at least once each calendar year~~.

98

# PROPOSED AMENDMENTS

**— 23 —**

**SB 54**

+ (c) The PRO shall provide ~~arrange for~~ the audit to ~~be delivered to~~ the

+ department with the annual report required pursuant to subdivision

+ (f) of Section 42051. The department shall review the audit for

+ compliance with this chapter and consistency with the plan adopted

+ pursuant to Section 42051 and shall post the audit publicly on its internet website. The department shall notify the PRO

+ of any compliance issues or inconsistencies.

+ (d) The department may conduct its own audit. ~~if it determines~~

~~+ that an audit is necessary to enforce the requirements of this~~

~~+ chapter and that the audit conducted pursuant to subdivision (b)~~

~~+ is not adequate for this purpose.~~ The PRO may obtain copies of

+ the department’s audit upon request.

+ (e) The department shall not disclose any ~~confidential or~~

~~+ proprietary~~ information in an audit that the PRO identifies as confidential or proprietary information.

**SECURED**

+ 42055. (a) Except as provided in subdivision (c), an action

+ specified in subdivision (b) that is taken by a PRO or its participants ~~members~~

**COPY**

+ is not a violation of the Cartwright Act (Chapter 2 (commencing

+ with Section 16700) of Part 2 of Division 7 of the Business and

+ Professions Code), the Unfair Practices Act (Chapter 4

+ (commencing with Section 17000) of Part 2 of Division 7 of the

+ Business and Professions Code), or the Unfair Competition Law

+ (Chapter 5 (commencing with Section 17200) of Part 2 of Division

+ 7 of the Business and Professions Code).

+ (b) Subdivision (a) shall apply to all of the following actions

+ taken by a PRO or its participants ~~members~~:

+ (1) The creation, implementation, or management of a plan

+ approved by the department pursuant to this chapter and the types

+ or quantities of covered material managed pursuant to an approved

+ *plan.*

+ (2) The cost and structure of an approved plan.

+ (3) The establishment, administration, collection, or

+ disbursement of any fees associated with funding the

+ implementation of this chapter.

+ (c) Subdivision (a) shall not apply to an agreement that does

+ any of the following:

+ (1) Fixes a price of or for covered material, except for an

+ agreement related to costs or fees associated with participation

+ in a plan approved or conditionally approved by the department

+ and otherwise in accordance with this chapter.

+ (2) Fixes the output or production of covered material.

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 24 —**

1. *Restricts the geographic area in which, or customers to*

# 

+ whom, covered material will be sold, or where or by whom covered

+ material may be purchased.

+ 42056. (a) A PRO, as part of its producer responsibility plan,

+ shall set up a trust fund or an escrow account in California, into

+ which it shall deposit all unexpended funds for use in accordance

+ with this section if the plan terminates or is revoked or the PRO

+ dissolves in accordance with the closure or transfer plan required

+ pursuant to paragraph (4) of subdivision (b) of Section 42051.

+ (b) If a plan terminates or is revoked, the trustee or escrow

+ agent of a trust fund or escrow account set up pursuant to

+ subdivision (a) shall do both of the following, starting within 30

+ *days:*

**SECURED**

+ (1) Accept payments directly from producers into the trust fund

+ or escrow account that would have been made to the PRO before

**COPY**

+ the plan’s termination or revocation.

+ (2) Make payments from the trust fund or escrow account as

+ the department shall direct, in writing, to implement the most

+ recently approved plan.

+ (c) If a new plan has not been approved by the department within

+ one year after termination or revocation, the department may make

+ modifications to the previously approved plan, as it deems

+ necessary, and continue to direct payments from the trust fund or

+ escrow account in accordance with paragraph (2) of subdivision

+ (b) to implement the modified plan.

+ (d) A trustee or escrow agent in possession of producer

+ responsibility funds shall, as directed by the department, transfer

+ those funds to a successor PRO with an approved plan.

+ 42057. (a) (1) By January 1, 2032, a PRO acting on behalf

+ of ~~member producers~~ participants of the PRO’s approved plan shall develop, implement, and enforce an enforceable agreement with each of their approved plan participants to achieve the 27% reduction by weight and by no less than 27% by plastic component of ~~source reduce~~ the amount of plastic

+ covered material sold, offered for sale, or distributed in the state as required in subdivision (a) of 42050.

+ ~~by its member producers no less than 27 percent by weight and~~

~~+ by no less than 27 percent by plastic component~~. Reductions

+ achieved to comply with the requirement to source reduce the

+ number of plastic components shall count toward the requirements

+ to source reduce by weight if the reduction of a plastic component

+ results in less plastic covered material by weight.

+ (2) Source reduction shall be achieved by a PRO in the following

+ *manner:*

98

# PROPOSED AMENDMENTS

**— 25 —**

**SB 54**

+ (A) At least 11 percent of the plastic covered material sold,

+ offered for sale, or distributed in the state by its member producers

+ shall be source reduced through shifting a plastic covered material

+ to refillable or reusable packaging or food service ware or through

+ eliminating a plastic component.

+ (B) ~~No more than~~ The remaining source reduction ~~16 percent~~ of the plastic covered material

+ sold, offered for sale, or distributed in the state by its member

+ producers shall be source reduced through concentration,

+ right-sizing, or shifting to bulk or large format packaging that

+ allows consumers to refill home or commercial reusable

+ containers, or shifting from a plastic covered material to a nonplastic covered material. ~~As part of that 16 percent~~, No more than 8 percent of

+ the plastic covered material sold, offered for sale, or distributed

+ in the state by its member producers shall be source reduced

**SECURED**

+ through an alternative compliance formula developed by the PRO

+ that offers source reduction credit on a sliding scale to producers

**COPY**

+ who incorporate postconsumer recycled content into plastic covered

+ material. A producer shall only receive this alternative source

+ reduction credit if the postconsumer recycled content is verifiable and

+ certified by a third party approved by the department and the

+ content does not contain intentionally added perfluoroalkyl and

+ polyfluoroalkyl substances.

(i) The resulting source reduction of each action taken to optimize, eliminate, right-size, concentrate, move to bulk packaging, or switching to a non-plastic covered material shall be counted once for the purposes of meeting the source reduction targets.

+ (C) By January 1, 2027, the PRO shall source reduce no less

+ than ~~10~~ tenpercent of plastic covered material sold, offered for sale,

+ or distributed in the state by its member producers, with no less

+ than ~~2~~ two percent of plastic covered material sold, offered for sale,

+ or distributed in the state by its member producers reduced through shifting to reusable or refillable packaging and food service ware systems ~~shifted to~~

~~+ reusable or refillable packaging or food service ware~~.

+ (D) By January 1, 2030, the PRO shall source reduce no less

+ than 20 percent of plastic covered material sold, offered for sale,

+ or distributed in the state by its member producers, with no less

+ than 4 percent of plastic covered material of plastic covered

+ material sold, offered for sale, or distributed in the state by its

+ member producers reduced through shifting to reusable or refillable packaging and food service ware systems ~~shifted to reusable or refillable packaging or~~

~~+ food service ware.~~

+ (b) By January 1, 2025, the PRO shall establish a baseline for

+ the 27-percent reduction required in subdivision (a) based on the

+ amount of plastic covered material, including the number of

+ products packaged in covered material, that was sold, offered for

+ sale, or distributed in the state in the 2023 calendar year.

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 26 —**

1. *As part of ~~a~~ any producer responsibility plan, ~~or~~ plan update, or annual report*

# 

+ submitted to the department, the PRO shall report the following

+ data, disaggregated by member producer:

+ (1) The amount of plastic covered material and products sold

+ in plastic covered material, including the number of plastic

+ components and weight of plastic covered material, sold, offered

+ for sale, or distributed in the state.

+ (2) The number of plastic components and the weight of plastic

+ covered material shifted to a refillable or reusable package or

+ food service ware.

+ (3) The number of plastic components and the weight of plastic

+ covered material eliminated.

+ (4) The number of plastic components and the weight of plastic

**SECURED**

+ covered material shifted from a plastic covered material to a

+ nonplastic covered material.

**COPY**

+ (5) The number of plastic components and the weight of plastic

+ covered material reduced through concentration, right-sizing, and

+ shifting to bulk or large format packaging that allows consumers

+ to refill home or commercial reusable containers.

+ (6) The amount of postconsumer content used compared to

+ virgin plastic in covered material.

+ (d) The PRO shall require producers that are ~~members~~ participants of the

+ PRO’s plan to submit to the PRO the data necessary for the PRO to report

+ the information required pursuant to subdivision (c) and to develop

+ and submit to the PRO individual producer source reduction plans

+ that contain the following information:

+ (1) In the first individual producer source reduction plan, the

+ producer shall include any amount of plastic covered material, by

+ number of plastic components and weight of plastic covered

+ material, the producer source reduced since January 1, 2013.

+ (2) The amount of plastic covered material, by number of plastic

+ components and weight of plastic covered material, the producer

+ plans to source reduce by January 1, 2027, January 1, 2030, and

+ January 1, 2032. The producer shall describe how much will be

+ reduced in each of the following ways:

+ (A) The number of plastic components and the weight of plastic

+ covered material shifted to a refillable or reusable package.

+ (B) The number of plastic components and the weight of plastic

+ covered material eliminated.

98

# PROPOSED AMENDMENTS

**— 27 —**

**SB 54**

+ (C) The number of plastic components and the weight of plastic

+ covered material shifted from a plastic covered material to a

+ nonplastic covered material.

+ (D) The number of plastic components and the weight of plastic

+ covered material reduced through concentration, right-sizing,

+ lightweighting, and shifting to bulk or large format packaging that

+ allows consumers to refill home or commercial reusable

+ containers.

+ (E) The amount of postconsumer content used compared to

+ virgin plastic in covered material.

+ (e) (1) As part of the producer responsibility plan, the PRO

+ shall include a source reduction plan designed to meet the

+ requirements of this section. The source reduction plan shall be

**SECURED**

+ disaggregated based on the individual producer source reduction

+ plans and shall meet all of the following requirements:

**COPY**

+ (2) In the source reduction plan, the PRO shall give producers

+ credit for source reduction achieved from the 2013 calendar year

+ to the 2022 calendar year, inclusive. This credit shall not count towards the requirements of subdivision (a). Allocation of this credit, and

+ the requirement for the PRO source reduction plan to meet the

+ requirements of subdivision (a), may require the PRO to require

+ a producer to revise its individual producer source reduction plan.

+ (3) The PRO may identify material types in the source reduction

+ plan that face significant recycling or end market challenges and

+ would require significant investment to bring into compliance with

+ this chapter by January 1, 2032. ~~Source reduction compliance~~

~~+ may be achieved through s~~Switching an entire identified covered

+ material category to a reusable, refillable or nonplastic alternative shall be considered source reduction for the purpose of subdivision (a). The PRO may report

+ this source reduction in an aggregated form. ~~and the source~~

~~+ reduction shall count toward meeting the requirements of~~

~~+ subdivision (a).~~

+ (f) To ensure equity in the market, the PRO shall require a

+ producer with a covered material new to the producer subsequent

+ to the approval of the PRO to optimize packaging and not include

+ unnecessary covered material. Optimization may also include, but

+ is not limited to, right-sizing, concentrating, and using bulk or

+ large format packaging where appropriate. The PRO shall assess

+ a malus fee on any producer with a new covered material that is

+ not optimized, as determined by the PRO.

+ ~~(g) A producer may meet its requirements under this section to~~

~~+ source reduce individually if the producer submits an individual~~

~~98~~

# ~~PROPOSED AMENDMENTS~~

**~~SB 54~~**

**~~— 28 —~~**

# 

~~+ producer source reduction plan to the department and the~~

~~+ department approves the plan. The department shall approve the~~

~~+ individual producer source reduction plan if the department~~

~~+ determines the source reduction plan meets all of the following:~~

~~+ (1) The plan includes a baseline for the amount of covered~~

~~+ material the producer sold, offered for sale, or distributed in the~~

~~+ state during the 2023 calendar year and demonstrates how the~~

~~+ producer will source reduce that amount by no less than 27 percent~~

~~+ by weight and by no less than 27 percent by plastic component.~~

~~+ Reductions achieved to comply with the requirement to source~~

~~+ reduce the number of plastic components shall count toward the~~

~~+ requirements to source reduce by weight if the reduction of a~~

~~+ plastic component results in less plastic covered material by~~

**SECURED**

~~+~~ *~~weight.~~*

~~+ (2) The source reduction plan demonstrates how the producer~~

**COPY**

~~+ will source reduce the amount of plastic covered material sold,~~

~~+ offered for sale, or distributed in the state in the same manner as~~

~~+ described in subparagraph (2) of subdivision (a).~~

~~+ (3) The source reduction plan includes the data described in~~

~~+ subdivision (c).~~

+ (h) To ensure source reductions achieved by January 1, 2032,

+ are not lost after January 1, 2032, while still allowing for

+ businesses to grow, the department shall, beginning in the 2030

+ calendar year and every five years thereafter, conduct an

+ evaluation of the plastic covered material subject to this section

+ to determine if actions to secure greater source reductions are

+ necessary. If the number of plastic components ~~and overall~~ or weight

+ of plastic covered material has increased, the department shall make this

+ determination. If the department determines that there has been

+ an increase in the number of plastic components or the overall

+ weight of plastic covered material, the department shall take the

+ following actions to secure greater source reductions:

+ (1) Require the PRO to ensure participant producers increase the rate of source reduction

+ through shifting a plastic covered material to reusable or refillable

+ packaging or food service ware or through eliminating plastic

+ components. In requiring these higher source reduction rates, the

+ department shall consider all of the following:

+ (A) The feasibility of increased source reduction rates, as

+ determined by evaluating consumer adoption and acceptance,

+ potential impacts to food safety, and infrastructure availability.

98

# PROPOSED AMENDMENTS

**— 29 —**

**SB 54**

+ (B) Any increase in the use of postconsumer content.

+ (C) The degree to which reuse and refill infrastructure

+ investments were made to improve consumer convenience and

+ adoption.

+ (D) Examples of reuse and refill systems and elimination

+ requirements in other jurisdictions.

+ (E) Reductions achieved through the other tools implemented

+ by the PRO, including fees and required optimization.

+ (F) The percentage of growth in the number of plastic

+ components and the overall weight of plastic covered material.

+ (2) Determine if new packaging types are not optimized and if

+ so, develop optimization requirements through regulations.

+ (i) (1) Producers of expanded polystyrene food service ware

**SECURED**

+ sold, offered for sale, distributed, or imported in or into the state

+ shall ensure that all expanded polystyrene food service ware

**COPY**

+ ~~manufactured~~ offered for sale, distribution, or import in or into the state

+ on and after January 1, 2025, meets a 30-percent recycling rate.

+ (2) Notwithstanding subdivision (b) of Section 42081, before

+ determining whether to assess a penalty on a producer in violation

+ of paragraph (1), the department may allow a producer or a PRO

+ to develop and submit a corrective action plan pursuant to

+ paragraph (b) of Section 42081, except that the duration of the

+ corrective action plan shall not exceed 12 months and shall not

+ be extended.

+

+ Article 3. Program Administration

+

+ 42060. (a) The department shall adopt regulations necessary

+ to implement and enforce this chapter as necessary to ensure that the requirements of this chapter and in particular the requirements established in Section 42050 and the policy goal established in 41780.01 as it related to covered material are met.~~, for producers to meet the requirements of this chapter, and to acheivethe~~

~~+ policy goal established in Section 41780.01 as it relates to covered~~

~~+ material, by January 1, 2032.~~

+ (b) By July 1, 2024 ~~2023~~, the department shall establish and post on

+ its internet website a list of covered material categories. The

+ department may consider material types and forms referenced in

+ waste characterization studies or material characterization studies

+ for determining the categories.

(1)(A) The department shall conduct and publish on its internet website a characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facilities deemed appropriate by the department for inclusion in the study. The department’s activities pursuant to this subparagraph, including the department’s determination of the appropriate facilities to include in the study, are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(B) For the department’s first material characterization study conducted pursuant to this subparagraph due on or before January 1, 2024, the department shall also identify material types and forms that do not satisfy, but which are on track to satisfy, (d)(2)(A)&(B) and have demonstrated in the prior 2 years a consistent, measurable increase statewide collection and sortation rate through either statewide recycling programs or alternative programs such as take-back systems, and whose continued increase in collection, sortation, and end-market development, the department has determined, will be disrupted by a loss of a recyclable designation.  Such material types and forms shall be considered recyclable and may be labeled as such notwithstanding (d)(2)(A)&(B) so long as the material types and forms satisfy (d)(3)(A)-(D) and until it is part of, and in compliance with a program described in paragraph (6).

(2) The department shall update the material characterization study required pursuant to this subparagraph at least every four years, with the first update being issued by the department in 2028.

(3) Notwithstanding subparagraphs (A) and (B), the department may publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms.

(4) For purposes of studying a representative sample of material types and forms in the state, within 90 days of a department request, a facility shall allow for periodic sampling conducted by a designated representative of the department on a mutually-agreed upon date and time. The department shall not request a periodic sampling of a facility if that facility was sampled during the previous 24 months.

(5) For each material characterization study conducted pursuant to this subparagraph, the department shall publish on its internet website the preliminary findings of the study and conduct a public meeting to present the preliminary findings and receive public comments. The public meeting shall occur at least 30 days after the department publishes the preliminary findings. After receiving and considering public comments, and within 60 days of the public meeting, the department shall finalize and publish on its internet website the findings of the study.

+ (c) (1) By January 1, 2026 ~~2025~~, the department shall calculate and

+ publish on its internet website the current recycling or composting

+ rates being achieved in the state for each covered material

+ category. These recycling or composting rates shall be deemed to

98

# PROPOSED AMENDMENTS

**SB 54**

**— 30 —**

# 

+ meet the description in subdivision (g) of Section 11340.9 of the

+ Government Code and may be filed by the Office of Administrative

+ Law, at the request of the department, pursuant to Section 11343.8

+ of the Government Code.

+ (2) In determining a recycling or composting rate, the

+ department may consider data gathered pursuant to any of the

+ following, including any amendments thereto:

+ (A) Chapter 746 of the Statutes of 2015.

+ (B) Chapter 6 (commencing with Section 42370).

+ (C) Chapter 395 of the Statutes of 2016.

+ (D) Chapter 5.5 (commencing with Section 42300).

+ (E) Division 12.1 (commencing with Section 14500).

+ (F) Chapter 5.7. (commencing with Section 42355).

**SECURED**

+ (G) Data voluntarily provided by local jurisdictions.

+ (H) Data and information received from producers.

**COPY**

+ (I) Any other relevant data and information received by the

+ department.

+ 42061. (a) (1) The department shall approve a PRO that meets

+ both of the following:

+ (A) The PRO has a governing board consisting of producers

+ that represent the diversity of covered material ~~types sold~~ placed in the market by those

+ entities. The governing board shall include nonvoting members

+ with representation ~~from each packaging industry covered~~  material trade

+ association and companies if those material types are covered by the organization.

+ (B) The PRO demonstrates that it has adequate financial

+ responsibility and financial controls in place, including fraud

+ prevention measures and an audit schedule, to ensure proper

+ management of funds.

+ (2) After January 1, 2031, upon the determination of the Director that an additional PRO would be beneficial in satisfying the requirements of this chapter, the department may ~~shall~~ approve

+ additional PROs that meet the requirements of this chapter. ~~in~~

~~+ either of the following circumstances:~~

~~+ (A) A covered material or covered material category would~~

~~+ benefit from a separate PRO structure to ensure recovery,~~

~~+ collection, sorting, processing, and recycling of the material.~~

~~+ (B) A covered material or covered material category included~~

~~+ in the existing PRO is not meeting its interim recycling or~~

~~+ composting rates and dates and is not on track to meet the~~

~~+ requirements of Section 42050.~~

+ (3) A proposed PRO shall meet all of the following requirements

+ in order to be approved under paragraph (2):

98

# PROPOSED AMENDMENTS

**— 31 —**

**SB 54**

+ (A) The proposed PRO submits to the department, and agrees

+ to cover the department’s costs to review, a petition to establish

+ a new PRO.

+ (B) The proposed PRO is composed of a sufficient number of

+ producers of a specified covered material or covered material

+ category to jointly comply with the requirements of this chapter.

+ (C) The proposed PRO for a specified covered material or

+ covered material category agrees to cover the costs of all of the

+ provisions of this chapter applicable to the proposed PRO and its

+ member producers, including, but not limited to, all of the

+ following:

+ (i) Costs ~~of~~ to develop and implement an updated needs assessment for the covered

+ material or covered material category.

**SECURED**

+ (ii) Costs ~~of~~ to develop and implement an updated producer responsibility plan to meet

+ the requirements of this chapter.

**COPY**

+ (iii) Administrative costs associated with the operations of the

+ *PRO.*

+ (iv) Administrative costs associated with department review

+ and approval of the plans.

+ (v) Administrative costs associated with department oversight

+ and reporting.

+ (D) The proposed PRO meets the requirements of this chapter,

+ as applicable to the covered material included in the PRO’s

+ producer responsibility plan.

+ (E) Producers covered by the proposed PRO for the specified

+ covered material or covered material category agree to cover the

+ prorated funding share associated with environmental mitigation

+ funding under Section 42064, as determined by the department,

+ based on the original PRO’s established cost distribution.

+ (b) (1) (A) By January 1, 2025, the department shall adopt

+ regulations that do all of the following:

+ (i) Establish a mandatory process for ~~Require~~ producers, retailers, and wholesalers, or a PRO

+ operating on behalf of a producer, retailer, or wholesaler, to

+ register with and report to the department.

~~+ (ii) Determine the manner in which the entities specified in~~

~~+ clause (i) will register and report to the department.~~

+ ~~(iii)~~(ii) Establish appropriate timelines to begin regular reporting

+ following the adoption of the regulations. The department shall

+ consider, along with any other factors the department deems appropriate, the amount of information being reported in developing

+ the timelines.

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 32 —**

(B) (i) Data requests by the department shall be consistent with

# 

+ the covered material categories established and posted on the

+ department’s internet website pursuant to subdivision (b) of Section

+ *42060.*

+ (ii) The department shall require all reported data to use ~~be reported using~~ the

+ metric system.

+ (iii) To the maximum extent feasible t~~T~~he department shall seek to use records and information

+ that the producer, retailer, wholesaler, or PRO already maintains~~,~~

~~+ to the maximum extent feasible,~~ in order to minimize the burden imposed by ~~ensure that~~ the

+ reporting and recordkeeping requirements ~~are the least~~

~~+ burdensome requirements that will~~ while still enabling ~~allow~~ the department to

+ determine compliance with this chapter.

+ (iv) The department shall, to the extent feasible, make the

**SECURED**

+ reporting consistent with other recognized third-party reporting

+ systems used by producers or other packaging extended producer

**COPY**

+ responsibility programs.

+ (v) Except as specified in Section 42093, any ~~confidential or~~

~~+ proprietary~~ market-sensitive trade secret data received by the department

+ pursuant to this chapter shall be held confidentially by the

+ department as required by Section 40062 and any implementing

+ regulations, provided that the furnisher of such data complies with the requirements set forth in subdivision (b) of section 40062 and any implementing regulations for identifying the information claimed to be a trade secret.

+ (vi) The department shall create an online registration form to

+ facilitate submitting reports pursuant to this subdivision. To the

+ extent permissible under applicable law, the department may

+ contract with an independent third-party online reporting system

+ with recognized standards for waste characterization, source

+ reduction, and recycling.

+ (2) The department shall do all of the following:

+ (A) Publish on its internet website a list of covered material

+ categories that are, based on available collection and processing

+ infrastructure and recycling markets, deemed recyclable as of

+ January 1, 2025. Covered material is deemed recyclable if it meets

+ the requirements of Section 17989.2 of Title 14 of the California

+ Code of Regulations, as that section existed on January 1, 2023,

+ and Section 42355.51. The list shall include covered material categories identified by the department and considered recyclable pursuant to Section 42355.51(d)(1)(B)(vi).

+ (B) Create and post on its internet website a list of covered

+ material categories that are deemed compostable as of January

+ 1, 2025. Covered material is deemed compostable if it meets the

+ requirements to be labeled as compostable pursuant to Chapter

+ 5.7 (commencing with Section 42355).

98

# PROPOSED AMENDMENTS

**— 33 —**

**SB 54**

+ (C) Determine a process for updating the lists created pursuant

+ to subparagraphs (A) and (B) to either add covered material

+ categories that are deemed to meet all of the criteria in either

+ subparagraph (A) or (B) or remove covered material categories

+ if they can no longer be deemed recyclable or compostable

+ pursuant to subparagraph (A) or (B). As part of the process, the

+ department shall update the list at least annually until January 1,

+ 2032. After January 1, 2032, the department shall regularly, but

+ no less than once every two years, evaluate the list to determine

+ if it is still accurate and update it as needed. Covered material

+ categories deemed to be recyclable or compostable as of January

+ 1, 2032, and listed pursuant to subparagraph (A) or (B) shall be

+ deemed to be compliant with subdivision (b) of Section 42050 until and unless the department determines that the covered material category no longer meets the requirements of subparagraph (A) or (B).

**SECURED**

+ (3) (A) The department shall determine a process for updating

+ the rates published pursuant to subdivision (c) of Section 42060.

**COPY**

+ The department shall update the list at least every two years and

+ shall regularly, but no less than once every two years, evaluate

+ the list of rates to determine whether the rates are still accurate.

+ After evaluation, the department may amend the list to remove,

+ add, or change rates. The department shall post any updates to

+ the list on its internet website.

+ (B) A producer may demonstrate compliance with the rates in

+ subdivision (c) of Section 42050 by submitting to the department

+ evidence that the particular type of covered material meets the

+ applicable recycling or composting rate by reference to a recycling

+ or composting rate on the department’s list or through another

+ mechanism approved by the department.

+ (C) A producer that seeks to have a rate included or changed

+ on the list, or a covered material category added to the list, may

+ be required by the department to submit data for purposes of the

+ department’s determination of the rate to include on the list or the

+ appropriateness of adding the category.

+ (D) Publication of and updates made to the list pursuant to this

+ subdivision are exempt from Chapter 3.5 (commencing with Section

+ 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

+ (4) The regulations adopted pursuant to paragraph (1) shall

+ also do all of the following:

+ (A) Ensure a PRO covers the costs incurred by a local

+ jurisdiction or a local jurisdiction’s recycling service providers

+ to implement this chapter, including, but not limited to, the cost

98

# PROPOSED AMENDMENTS

**SB 54**

**— 34 —**

# 

+ of consumer education and of collection, including the cost of

+ containers where relevant, as well as the processing, storage, and

+ transportation of covered materials. Costs may vary based on

+ population density or other relevant factors and shall allow local

+ jurisdictions to protect ratepayers from increased costs associated

+ with the processing and marketing of covered material.

+ (B) (i) Except as provided in clauses (ii), (iii), and (iv), require

+ all local jurisdictions or recycling service providers to include in

+ their collection and recycling programs all covered material

+ contained on the list published pursuant to subparagraph (A) of

+ paragraph (2). The regulations shall not prohibit or penalize a

+ local jurisdiction or recycling service provider for recovering and

+ recycling materials that are not included on the list if it can be

**SECURED**

+ demonstrated that the materials have a market and the materials

+ do not impose unreasonable costs on the collection and recycling

**COPY**

+ of covered material. This section does not authorize the department

+ to require mandatory route collection service where it does not

+ already exist.

+ (ii) The department shall grant an extension of, or exemption

+ from, a requirement of clause (i) upon a written showing by the

+ local jurisdiction or recycling service provider, which has been

+ concurred in by the PRO, that compliance with the requirement

+ is not practicable for a specific identified covered material because

+ of specific local conditions, circumstances, or challenges. If the

+ PRO does not concur in or fails to respond to a request from a

+ local jurisdiction or recycling service provider, the PRO shall be

+ responsible for resolving the identified local issues and shall fully

+ cover the costs of the collection, processing, storage, and

+ transportation of covered materials resulting from implementing

+ this chapter. The department shall review a granted extension or

+ exemption every two years, and may renew the extension or

+ exemption after that review. An exemption or extension does not in any way relieve a producer or PRO from meeting the requirements of the chapter

+ (iii) A county board of supervisors of a rural county or a rural

+ jurisdiction, as those terms are defined in Section 42649.8, may

+ adopt a resolution to make the rural county or rural jurisdiction

+ exempt from the requirements of this subparagraph. If a rural

+ jurisdiction is a regional agency composed of jurisdictions that

+ are located entirely within one or more rural counties, the board

+ of the regional agency may adopt a resolution, as prescribed in

98

# PROPOSED AMENDMENTS

**— 35 —**

**SB 54**

+ this clause, to make the rural jurisdiction exempt from the

+ requirements of this subparagraph. An exemption does not in any way relieve a producer or PRO from meeting the requirements of the chapter.

+ (iv) A local jurisdiction or recycling service provider shall not

+ be required to collect material for recycling or composting on the list published pursuant to

+ subparagraph (A) of paragraph (2) that does not meet the criteria

+ described in paragraph (8) of subdivision (b) of Section 42051

+ and is collected and recycled or composted by means other than curbside collection in a

+ producer responsibility plan.

(v) A local jurisdiction shall not be required to collect material that is prohibited pursuant to an ordinance passed by the local jurisdiction prior the publication of the list of recyclable or compostable material.

+ (C) Include a process to promptly resolve disputes that may

+ arise during implementation of this chapter, including, but not

+ limited to, ensuring reasonable costs incurred by a local

+ jurisdiction or recycling service provider to implement this chapter

+ are covered by a PRO even if not accounted for in a needs

**SECURED**

+ assessment or strategic investment plan.

+ (c) (1) The department may identify covered material that,

**COPY**

+ while determined to be single use for purposes of this chapter,

+ presents unique challenges in complying with this chapter and

+ may exempt that covered material from this chapter.

+ (2) For any covered material identified as presenting unique

+ challenges and exempted from this chapter under paragraph (1),

+ the department may at any point develop a plan to phase the

+ covered material into the requirements of this chapter.

+ (d) The department shall ensure that any regulations adopted

+ pursuant to this chapter account for guidelines and regulations

+ issued by the United States Food and Drug Administration and

+ the United States Department of Agriculture.

+ (e) If the department determines at any point that a type of

+ covered material cannot comply with this chapter for health and

+ safety reasons, or because it is unsafe to recycle, the department

+ may exempt that covered material from this chapter.

+ (f) (1) The department’s regulations shall include mechanisms

+ necessary to reduce the amount of covered material entering the

+ environment, in accordance with the requirements adopted

+ pursuant to subdivision (a) of Section 42060.

+ (2) The department may consider reductions of covered material

+ achieved by a producer before the effective date of the regulations

+ toward a producer’s compliance with this chapter if the producer

+ can demonstrate to the satisfaction of the department that the

+ producer reduced the covered material in a manner consistent

98

# PROPOSED AMENDMENTS

**SB 54**

**— 36 —**

# 

+ with this chapter and actions taken to comply with Chapter 5.5

+ (commencing with Section 42300).

+ (3) In calculating the reductions necessary to achieve the

+ requirements adopted pursuant to subdivision (a) of Section 42060,

+ the department shall consider source reduction achieved pursuant

+ to Section 42057.

+ (g) In developing the regulations, the department shall consider

+ relevant information on reduction programs and approaches in

+ other states, localities, and nations, including, but not limited to,

+ the European Union, India, Costa Rica, China, and Canada, and

+ international standards, including, but not limited to, ISO 18602.

+ (h) In adopting regulations pursuant to this section, the

+ department shall ensure the regulations, and activities conducted in accordance with the regulations, avoid disproportionate

**SECURED**

+ impacts to ~~low-income,~~ disadvantaged or low-income communities, or rural areas ~~and rural communities.~~

+ (i) The department shall exempt from the requirements of this

**COPY**

+ chapter, except for the requirements of subdivision (b) of Section

+ 42050, small producers, small retailers, and small wholesalers

+ based on size, revenue, number of retail locations, and market

+ share, as follows:

+ (1) Subject to paragraph (2), t~~T~~he department shall exempt producers, retailers, or

+ wholesalers that, in the most recent calendar year, had gross sales

+ of less than one million dollars ($1,000,000) in the state.

+ (2) If the department determines that exempting a particular

+ small producer, small retailer, or small wholesaler pursuant to paragraph (1) would hinder~~s~~ the

+ ability of a type of covered material or covered material category from complying with the

+ requirements of this chapter, the department may determine that

+ the particular small producer, small retailer, or small wholesaler

+ will not be exempted from the requirements of this chapter.

+ (j) The department shall establish a process to ensure adequate

+ coordination between a PRO and producer that is not a participant ~~member~~

+ of the PRO’s approve plan and between multiple PROs as necessary.

+ 42062. (a) Commencing in the 2026 calendar year, and every

+ two years thereafter, the department shall review, in consultation

+ with the advisory board, relevant data to assess whether the

+ recycling and composting rates established in subdivision (c) of

+ Section 42050 should be adjusted. The department shall make its

+ determination and rationale available for public review.

+ (b) If the department determines pursuant to a review under

+ subdivision (a) that current unforeseen and anomalous market

+ conditions, including, but not limited to, recycling infrastructure

98

# PROPOSED AMENDMENTS

**— 37 —**

**SB 54**

+ conditions, warrant an adjustment to the recycling and composting

+ rates established in subdivision (c) of Section 42050, the

+ department may impose a higher or lower rate for a covered

+ material category subject to both of the following conditions:

+ (1) The rate shall not be adjusted by more than 10 percent of

+ the plastic covered material manufactured for sale, distribution,

+ or import in or into the state for that covered material category.

+ (2) A decreased rate shall be in effect for no more than two

+ years, at which point the rate shall revert to the applicable rate

+ established in subdivision (c) of Section 42050. For an increased

+ rate, the department may determine after each two-year period

+ whether to maintain the increased rate or reduce the increased

+ rate partially or entirely down to the applicable rate established

**SECURED**

+ in subdivision (c) of Section 42050.

+ (c) The department shall determine and post on its internet

**COPY**

+ website whether each covered material category recycling or

+ composting rate complies with the rates required pursuant to

+ subdivision (c) of Section 42050 or this section.

+ 42063. (a) (1) The department shall review a plan, plan

+ amendment, or annual report submitted by a PRO for compliance

+ with this chapter and shall approve, conditionally approve, or

+ reject the document within 120 calendar days of receipt of the document, or notify the PRO of the timeline for determination if additional time is needed.

~~+ (2) Before approving, conditionally approving, or rejecting a~~

~~+ plan, plan amendment, or annual report under this section, the~~

~~+ department shall solicit feedback from the advisory board. The~~

~~+ department shall make the plan, plan amendment, or annual report~~

~~+ available for public comment for a period of not less than 30 days~~

~~+ before approving, conditionally approving, or rejecting it. The~~

~~+ department shall respond in writing to the advisory board’s written~~

~~+ recommendations if received within 75 days of the date the~~

~~+ department transmitted the plan, plan amendment, or annual report~~

~~+ to the advisory board.~~

+ (b) (1) If the department disapproves a plan, plan amendment,

+ or annual report, the department shall explain, in writing, how

+ the plan, plan amendment, or annual report is noncompliant, and

+ the PRO shall resubmit the plan, plan amendment, or annual report

+ with any additional information, modifications, or corrections to

+ the department within 30 calendar days.

+ (2) If the department finds that the plan, plan amendment, or

+ annual report resubmitted by the PRO still does not comply with

98

# PROPOSED AMENDMENTS

**SB 54**

**— 38 —**

# 

+ the requirements of this section, the department shall direct

+ changes to the document and require the PRO to resubmit the

+ plan, plan amendment, or annual report to the department within 30 calendar days.

.

+ (3) If the department determines the PRO has not incorporated

+ the changes into the plan, plan amendment, or annual report, the

+ department shall determine the PRO to be out of compliance with

+ this chapter and shall take enforcement action pursuant to Article

+ 5 (commencing with Section 42080).

+ (4) If a PRO’s updated plan, plan amendment, or annual report

+ is rejected by the department, the department may allow the previously approved plan to ~~shall~~

+ remain in effect.

+ (c) An approved annual report and approved plan shall be a

+ public record, except that financial, production, or sales data

**SECURED**

+ reported to the department by the PRO is not a public record for

+ purposes of the California Public Records Act (Division 10

**COPY**

+ (commencing with Section 7920.000) of Title 1 of the Government

+ Code) and shall not be open to public inspection. The department

+ ~~may~~ shall release financial, production, or sales data in summary form

+ so the information cannot be attributable to a specific producer,

+ retailer, or wholesaler, or to any other entity.

+ 42064. (a) A PRO shall, commencing in the 2024 calendar

+ year, remit six hundred million dollars ($600,000,000) each year

+ to the California Department of Tax and Fee Administration to be

+ deposited into the California Plastic Pollution Mitigation Fund,

+ which is hereby established in the State Treasury.

+ (b) (1) The PRO shall establish and impose on its participants who produce ~~member~~

~~+ producers of~~ plastic covered material subject to Section 42057 an

+ environmental mitigation surcharge in the amount necessary to

+ remit the moneys pursuant to subdivision (a) based on each

+ producer’s market share of plastic covered material, accounting

+ for both number of plastic components and weight.

+ (2) The surcharge imposed pursuant to paragraph (1) shall be

+ paid annually by July 1, commencing in the 2024 calendar year.

+ (c) Moneys in the California Plastic Pollution Mitigation Fund

+ shall not be expended for obligations imposed on any party by any

+ law other than this section or to cover costs identified in a needs

+ assessment.

+ (d) (1) For producers that are not ~~members~~ participants of a PRO’s approved plan, the

+ department shall determine the amount of the environmental

+ mitigation surcharge the producer shall pay based on both the

98

# PROPOSED AMENDMENTS

**— 39 —**

**SB 54**

+ number and weight of plastic covered material the producer offers

+ for sale, sells, distributes, or imports in or into the state.

+ (2) Commencing July 1, 2024, and every July 1 annually

+ thereafter, a producer not in a PRO shall pay the amount of the

+ surcharge determined by the department to the California

+ Department of Tax and Fee Administration to be deposited into

+ the California Plastic Pollution Mitigation Fund.

+ (e) Beginning in the 2030 calendar year, and every five years

+ thereafter, the department shall determine whether the surcharge

+ collected pursuant to this section should be increased or decreased

+ based on the evaluation conducted pursuant to subdivision (h) of

+ Section 42057. If that evaluation finds a change in the overall

+ number of plastic components or weight of plastic covered material

+ in the state, the department shall adjust, through regulation, the

+ amount of the surcharge a PRO collects in proportion to that

*COPY*

+ change. A PRO shall conform the surcharge imposed on its member

+ producers to the adjusted amount of the surcharge established by

+ the department.

+ (f) (1) Upon appropriation by the Legislature, 40 percent of

+ the moneys in the California Plastic Pollution Mitigation Fund

+ 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,

+ ~~and~~ the Department of Parks and Recreation, and CalEPA 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.

+ (2) At least 50 percent of the funds appropriated pursuant to subparagraph (1) must provide benefits to members of a disadvantaged or low-income community or rural area.

~~With the moneys appropriated pursuant to paragraph (1),~~

~~+ projects and programs may be established to improve~~

~~+ environmental conditions and benefit members of an~~

~~+ underresourced community identified pursuant to Section 39711~~

~~+ of the Health and Safety Code, subdivision (d) of Section 39713~~

~~+ of the Health and Safety Code, or subdivision (g) of Section 75005.~~

+ (3) Moneys appropriated pursuant to paragraph (1) may be

+ used to support grants for tribes, nongovernmental organizations,

+ community-based organizations, land trusts, and local jurisdictions

+ ~~to monitor and reduce the environmental impacts of plastics,~~

~~+ including to restore, recover, and protect the natural environment~~.

+ (g) (1) Upon appropriation by the Legislature, 60 percent of

+ the moneys in the California Plastic Pollution Mitigation Fund

+ shall be expended by the Strategic Growth Council, the California

98

# PROPOSED AMENDMENTS

**SB 54**

**— 40 —**

# 

+ Environmental Protection Agency, and the Department of Justice

+ to monitor and reduce the historical and current environmental justice and public health

+ impacts of plastics on disadvantaged or low-income communities, or rural areas, ~~including to mitigate the historical and current~~

~~+ impact of plastics on low-income and disadvantaged communities.~~

+ (2) Of the moneys appropriated pursuant to paragraph (1), 75

+ percent shall directly and primarily benefit residents living in

+ disadvantaged communities identified pursuant to Section 39711

+ of the Health and Safety Code or communities identified as

+ disadvantaged pursuant to Section 65302.10 of the Government

*+ Code.*

+ (3) Moneys appropriated pursuant to paragraph (1) may be

+ used to support grants to local jurisdictions, tribes, nongovernmental organizations, and

+ community-based organizations ~~to monitor and reduce the~~

**SECURED**

~~+ environmental justice and public health impacts of plastics,~~

~~+ including to mitigate the historical and current impact of plastics~~

**COPY**

~~+ on low-income and disadvantaged communities.~~

+ (h) Moneys appropriated from the California Plastic Pollution

+ Mitigation Fund pursuant to subdivisions (f) and (g) shall be used

+ to increase and enhance the activities described in subdivisions

+ (f) and (g) and shall not replace allocation of any other funding

+ for those purposes. Accordingly, General Fund or Greenhouse

+ Gas Reduction Fund appropriations to the Department of Fish

+ and Wildlife, the California Coastal Conservancy, the California

+ Coastal Commission, the Wildlife Conservation Board, the Ocean

+ Protection Council, the Department of Parks and Recreation, the

+ Strategic Growth Council, the Department of Justice, the California

+ Environmental Protection Agency, and the Natural Resources

+ Agency shall not be reduced below the levels provided in the

+ Budget Act of 2019 (Chapter 23 of Statutes of 2019).

+ (i) On or before March 31, ~~2024~~ 2025, and each year thereafter, the

+ California Department of Tax and Fee Administration shall

+ prepare and submit to the Legislature in compliance with Section

+ 9795 of the Government Code a report on appropriations,

+ expenditures, and outcomes of all programs and projects funded

+ by the California Plastic Pollution Mitigation Fund.

+ 42065. (a) The department shall report to the Legislature

+ every two years its progress in implementing this chapter,

+ including, but not limited to, a description of efforts to adopt

+ regulations under subdivision (a) of Section 42060 and whether

+ PROs are on track to meet the requirements contained in those

98

# PROPOSED AMENDMENTS

**— 41 —**

**SB 54**

+ regulations and the PRO plan. Notwithstanding Section 9795 of the Government

+ Code, the report shall be submitted to the relevant policy and

+ budget committees of the Legislature by January 1 of each

+ odd-numbered year.

+ (b) If a national recycling PRO and producer responsibility

+ plan is implemented that is similar to the PRO and plan established

+ under this chapter, the department shall review, evaluate, and

+ compare the national PRO and producer responsibility plan and

+ the PRO and plan established under this chapter. Notwithstanding

+ Section 9795 of the Government Code, the department shall submit

+ a report to relevant policy and budget committees of the Legislature

+ with any related recommended changes to this chapter.

+

**SECURED**

+ Article 4. Producer Responsibility Advisory Board and Needs

+ Assessments

**COPY**

+

+ 42070. (a) In implementing this chapter, the department shall

+ establish a producer responsibility advisory board for the purpose

+ of identifying barriers and solutions to creating a circular economy

+ consistent with this chapter and advising the department,

+ producers, and producer responsibility organizations in the

+ implementation of this chapter. The advisory board shall be

+ composed of 11 voting and 3 nonvoting members as provided in

+ the following categories, who shall be appointed by the director:

+ (1) One representative nominated by a statewide city

+ association.

+ (2) One representative nominated by a statewide rural county

+ association.

+ (3) One representative from an environmental protection organization.

+ (4) One representative from an ocean advocacy organization.

+ (5) One representative from an environmental justice

+ organization.

1. One representative from a disadvantaged or low-income community or rural area.

+ (~~6~~7) One representative of a materials recovery facility located

+ within the State of California.

+ (~~7~~8) One representative of a recycling service provider, or a representative of an association of recycling service providers.

+ (~~8~~9) One representative from the composting industry operating

+ in the State of California.

+ (~~9~~10) A representative of each of ~~three~~ four manufacturers of ~~packaging~~ covered

+ materials of different ~~substrates~~ material types utilizing postconsumer recycled

+ content, one of which produces third-party certified compostable

98

# PROPOSED AMENDMENTS

**SB 54**

**— 42 —**

# 

+ covered material. These board members shall not be a board

+ member of a PRO.

+ (~~10~~11) One representative nominated by a statewide association

+ representing the retail sector. This board member shall be a

+ nonvoting member.

+ (~~11~~12) One representative nominated by a statewide association

+ representing the grocery sector. This board member shall be a

+ nonvoting member.

+ (~~12~~13) One representative of a producer responsibility

+ organization. This board member shall be a nonvoting member.

+ (b) The director shall appoint all members to the advisory board

+ on or before July 1, 2023. The director shall appoint the members

+ for staggered three-year terms, and may reappoint a member for

**SECURED**

+ additional terms. At its first meeting, the advisory board shall elect

+ a chair who will serve as chair for the calendar year, and who

**COPY**

+ may be reelected as chair.

+ (c) The advisory board shall meet at least once ~~a~~ per year by the

+ call of the chair or by request of more than one-half of the voting

+ members. The department shall provide staff and administrative

+ support to the advisory board.

+ (d) The advisory board meetings shall be open to the public and

+ are subject to the Bagley-Keene Open Meeting Act (Article 9

+ (commencing with Section 11120) of Chapter 1 of Part 1 of

+ Division 3 of Title 2 of the Government Code).

+ (e) (1) The advisory board shall provide the PRO and the

+ department, and a third party conducting or updating a needs

+ assessment if applicable, with initial recommendations regarding

+ all of the following:

+ (A) Key barriers and possible solutions to advance the objectives

+ of increasing recovery of covered materials and decreasing the

+ leakage of plastic into the environment no later than one year after

+ the advisory board’s initial meeting. This shall include key barriers

+ and possible solutions related to available and responsible end

+ markets and market development for covered materials.

+ (B) Key barriers and possible solutions to advance the objectives

+ of reducing the production of virgin material for covered material

+ and reducing the landfilling of covered material.

+ (C) Key barriers and possible pathways toward reusable

+ packaging and products and refillable systems.

98

# PROPOSED AMENDMENTS

**— 43 —**

**SB 54**

+ (D) How a PRO will cover the costs incurred by local

+ jurisdictions and local jurisdictions’ recycling service providers

+ associated with implementing this chapter and managing the

+ material covered in a plan, including recommendations to the

+ department to resolve any disputes involving compensation of local

+ jurisdictions and local jurisdictions’ recycling service providers.

+ (2) The department shall consider the recommendations

+ provided under paragraph (1) as it evaluates which specific actions

+ may be appropriate to advance the objectives of this chapter.

+ (f) The advisory board may take any of the following actions

+ through written recommendations as the advisory board deems

+ appropriate:

+ (1) Advise the department, producers, or PROs on technical

**SECURED**

+ matters in support of the goals of this chapter to create a circular

+ economy and reduce covered material pollution.

**COPY**

+ (2) Advise the department in the adoption of the regulations

+ required by this chapter.

+ (3) Advise the department, producers, or PROs on any other

+ pertinent matter in implementing this chapter, as determined by

+ the advisory board or department.

+ (g) Pursuant to Section 42071, the advisory board shall review

+ any needs assessment or revised needs assessment submitted to it

+ by a producer or PRO within 90 days of receipt of the assessment.

+ (h) Within 90 days of receiving a plan submitted pursuant to subdivision (c) of Section 42051, the advisory

+ board shall review the plan and offer written comments, which may include suggested modifications. ~~on any plan~~

~~+ submitted to it within 90 days of the receipt of the plan.~~

+ (i) The advisory board shall submit written recommendations

+ to the department only if a majority of the advisory board’s voting

+ members endorse the recommendation. One or more advisory

+ board members who do not endorse the recommendation may

+ submit a separate written recommendation to the department

+ reflecting the minority opinion or opinions.

+ (j) If an affected entity asserts that specific actions taken to meet

+ the requirements of this chapter 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, the affected entity may

+ bring the concern and evidence supporting this assertion to the

+ advisory board for discussion and ask the advisory board to

98

# PROPOSED AMENDMENTS

**SB 54**

**— 44 —**

# 

+ conduct a preliminary evaluation of the information. If the

+ evaluation demonstrates that specific actions are disrupting or

+ otherwise adversely affecting existing operations, the advisory

+ board shall submit this concern to the department for further

+ analysis. The department shall analyze the information provided

+ by the advisory board and any other information provided to the

+ department by the affected entity and shall do both of the following:

+ (1) Determine whether specific actions taken to meet the

+ requirements of this chapter 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.

**SECURED**

+ (2) If the department determines pursuant to paragraph (1) that

+ specific actions are disruptive or otherwise have an adverse effect,

**COPY**

+ take actions, to the extent feasible, to remedy the disruption or

+ adverse effect, including, but not limited to, requiring a change to

+ the producer responsibility plan causing the disruption or adverse

+ effect or by adopting regulations that further the purposes of this

+ chapter. The department shall include any actions taken pursuant

+ to this subdivision in the subsequent report submitted to the

+ Legislature pursuant to subdivision (a) of Section 42065.

+ 42071. (a) (1) ~~A~~ The department, jointly with the PRO, shall contract with an independent third party to prepare ~~PRO shall fund the preparation of~~ one or

+ more initial statewide needs assessments designed to determine

+ the necessary steps and investment needed for covered material

+ to achieve the requirements of Section 42050. Needs assessments,

+ or components thereof, shall be updated every five years or as

+ necessary to ensure the requirements of Section 42050 are met. A

~~+ PRO shall ensure that~~ An ~~an~~ initial needs assessment for specific

+ covered material ~~is~~ shall be completed before the completion and approval

+ of any producer responsibility plan that includes that covered

+ material.

(b) The PRO shall be responsible for funding any needs assessment and any update to a needs assessment.

(c) The department, jointly with the PRO, shall guide development of the needs assessment and it shall be developed in

+ collaboration with a broad diversity of local jurisdictions, recycling

+ service providers, and processors that reflect the different needs

+ and challenges faced by urban, suburban, and rural communities

+ and a variety of different population densities and socioeconomic

+ perspectives and that choose to participate in the development of a needs assessment.

+ (~~2~~ d) ~~A~~ The department and the PRO may determine to have prepared either several needs assessments each specific to one

+ or more covered materials subject to this chapter or may ~~choose~~ determine to have prepared one

+ ~~collectively to fund a~~ comprehensive needs assessment that includes

+ all covered material subject to this chapter.

+ ~~(b) A PRO may conduct or update a needs assessment or may~~

~~+ contract with an independent third party to have the needs~~

~~+ assessment completed. A~~

(e) Any needs assessment shall comply with all of the following:

# PROPOSED AMENDMENTS

**— 45 —**

**SB 54**

+ (1) ~~Be developed in collaboration with any local jurisdiction,~~

~~+ local jurisdiction’s recycling service providers, or processors that~~

~~+ handle materials included in the needs assessment and that choose~~

~~+ to participate. The needs assessment shall be developed in~~

~~+ collaboration with a broad diversity of local jurisdictions, recycling~~

~~+ service providers, and processors that reflect the different needs~~

~~+ and challenges faced by urban, suburban, and rural communities~~

~~+ and a variety of different population densities and socioeconomic~~

~~+ perspectives.~~

+ (2) Be designed to inform the strategic investment plan pursuant

+ to paragraph (6) of subdivision (b) of Section 42051.

+ (3) Include an evaluation of all of the following with respect to

+ covered materials:

**SECURED**

+ (A) Existing state statutory provisions and funding sources

+ related to market development and financial incentives to help

**COPY**

+ achieve the state’s goals related to recycling, composting, reuse,

+ reduction, and recovery.

+ (B) The current collection and hauling system in the state and

+ the need for potential enhancements to the system.

+ (C) The processing capacity and infrastructure in the state and

+ regionally and the ability for innovative and advanced technologies such as artificial intelligence and robotics to improve that capacity.

+ (D) Current market conditions and the opportunities to create

+ viable and responsible end markets in the state and regionally.

+ (E) Consumer education needs for recycling, composting, reuse, and

+ reduction.

+ (F) Funding needs associated with access to, and the availability

+ of, collection, recycling, composting, processing, transportation,

+ and development of end markets.

+ (G) An evaluation of the availability or lack of availability of markets for recycled covered

+ material ~~types~~, the need to subsidize recycled or composted material market development, and the

+ associated costs needed to ensure that the covered materials are recycled or composted and have

+ viable and sufficient responsible end markets to meet the requirements of

+ Section 42050. This evaluation shall include an assessment of the needs associated with shifting packaging or food service ware from a covered material category that is unlikely to develop sustained viable responsible end markets to one that either has a viable responsible end market or is likely to develop a sustained viable responsible end market.

+ (H) Funding needed to implement the source reduction

+ requirements established in Section 42057 included, but not limited to, investments needed to develop reuse and refill infrastructure and to provide consumers with convenient access to this infrastructure to grow and market the use of reuse and refill packaging and food service ware.

(I) An evaluation of integrating innovative and advanced technologies throughout a MRF that utilize artificial intelligence to improve data collection in order to identify, categorize and track the disposition of covered materials throughout the recycling process.”

+ (c) (1) The initial needs assessment, and any updates, shall be

+ submitted to the advisory board for review and comment before

+ submission to the department for review and approval.

+ (2) Upon a finding by the director that the needs assessment is

+ complete pursuant to this section, the department may approve,

98

# PROPOSED AMENDMENTS

**SB 54**

**— 46 —**

# 

+ conditionally approve, or reject the needs assessment. If the

+ department conditionally approves or rejects the needs assessment,

+ the department shall submit written comments to the PRO or third

+ party conducting the needs assessment. The PRO or third party

+ shall respond to the department or revise the needs assessment to

+ address the comments from the department and resubmit the needs

+ assessment to the department for further review. Once the

+ department determines the needs assessment incorporates the

+ necessary steps and investment needed for the covered material

+ included in the assessment to achieve the requirements of Section

+ 42050, it shall approve the assessment.

+ (3) Review and approval of a needs assessment by the

+ department pursuant to this section are exempt from Chapter 3.5

**SECURED**

+ (commencing with Section 11340) of Part 1 of Division 3 of Title

+ 2 of the Government Code.

**COPY**

+

+ Article 5. Enforcement

+

+ 42080. (a) Failure to comply

with the requirements of this chapter, including, but not limited to, failure by a PRO to implement and satisfy the requirements of its plan, shall subject a PRO or producer to penalties for such violations as set forth in this article. The department may conduct investigations, including by inspecting operations, facilities, and records of producers and PROs and by performing audits of producers and PROs, to determine whether producers and PROs are complying with the requirements of this chapter. ~~audit, or request to audit,~~

~~+ PROs, producers, retailers, and wholesalers, including, but not~~

~~+ limited to, annual reports submitted pursuant to subdivision (f) of~~

~~+ Section 42051 or demonstrations made by a producer pursuant to~~

~~+ subparagraph (B) of paragraph (3) of subdivision (b) of Section~~

~~+~~ *~~42061.~~*

+ (b) The department may deem the information contained in an audit performed by a PRO pursuant to section 42054 or the records maintained by the PRO pursuant to Section 420151(b)(9)(D) to be sufficient to establish violations of the requirements of this chapter. ~~shall review an audit for compliance with~~

~~+ this chapter and consistency with information reported pursuant~~

~~+ to this chapter.~~

+ (c) The department shall notify a PRO, producer, retailer, or

+ wholesaler of any conduct or practice that does not comply with

+ this chapter and ~~or~~ of any inconsistencies identified in the department’s

+ *audit.*

+ (d) Within 15 days after the director approves a completed audit of a PRO, producer, retailer, or wholesaler, the department shall notify the audited entity that the audit will be posted on the department’s internet website. The department shall post the completed audit on the department’s website no later than 45 days after it provides such notice. ~~The department shall post any completed audit on the~~

~~+ department’s internet website within 30 days.~~

+ (e) The department shall hold its audit confidentially to the extent it contains information that is specifically identified as and constitutes a trade secret pursuant to subdivision (d) of Section 3426.1 of the Civil Code or is otherwise exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Within 15 days of receiving a completed audit and notice from the department that the audit will be posted on the department’s website, the PRO, producer, retailer, or wholesaler audited by the department shall specifically identify each portion of the audit that it claims constitutes or contains a trade secret. Notwithstanding any provisions to the contrary in regulations promulgated pursuant to Public Resources Code section 40062, information not identified as a trade secret and information improperly identified as a trade secret, shall be subject to disclosure pursuant California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) unless exempted from disclosure by another provision of law.

~~The department shall not disclose any confidential or~~

~~+ proprietary information that is included in the department’s audit~~

~~+ to the extent that information is protected from disclosure by law.~~

+ 42081. (a) (1) The department may issue a notice of violation

+ to, and impose an administrative civil penalty not to exceed fifty

+ thousand dollars ($50,000) per day per violation on, any producer or PRO ~~entity~~

+ not in compliance with this chapter or any of the regulations the

98

# PROPOSED AMENDMENTS

**— 47 —**

**SB 54**

+ department adopts to implement this chapter, unless the ~~entity~~ producer or PRO

+ meets the criteria of subdivision (i) of Section 42061, in which

+ case the civil penalty shall not exceed twenty-five thousand dollars

+ ($25,000) per day per violation.

+ (2) A violation of Section 42050 shall be determined based on

+ the brand name, package or product line, package or product

+ form, covered material category, and package or product size that

+ the department deems is not in compliance. ~~The PRO shall collect~~

~~+ the penalty assessed from the noncompliant entity.~~

+ (3) ~~An entity shall not accrue penalties~~ Penalties against a PRO or producer shall not begin accruing with respect to a violation until at least 30 days

+ following the notification of such violation.

+ (4) The department shall deposit all penalties collected pursuant

+ to this section into the Circular Economy Penalty Account, which

**SECURED**

+ is hereby created. Moneys in the Circular Economy Penalty

+ Account shall be available upon appropriation by the Legislature

**COPY**

+ for purposes that further this chapter.

+ (b) (1) Before determining whether to assess a penalty, the

+ department may allow a producer or a PRO to develop and submit

+ a corrective action plan to the department detailing how and when

+ the producer or a PRO will come into compliance with this chapter.

+ Corrective action plans may include, but are not limited to, actions

+ such as shifting production to covered material categories that

+ meet the recycling and composting rates required pursuant to

+ subdivision (c) of Section 42050, no longer offering the covered

+ material for sale, reaching a minimum recycled content standard

+ set by the department, or establishing a take-back system or deposit

+ fee system for the covered material that would increase the

+ recycling or composting rate of the material. The department shall

+ not assess a penalty and the producer shall not be listed as

+ noncompliant pursuant to Section 42082 for material covered in

+ a corrective action plan if the producer complies with the

+ corrective action plan. A producer or PRO may request approval

+ from the department to comply with a corrective action plan or

+ elements of a corrective action plan in cooperation with other

+ producers or PROs.

+ (2) (A) The duration of a corrective action plan shall not exceed

+ 24 months. The department may extend a corrective action plan up to an additional

+ ~~for a maximum of~~ 12 months if the department sets forth steps and

+ a timeline for the producer or PRO to ~~achieve compliance~~ comply with

+ the corrective action plan and if the producer or PRO ~~has~~

98

# ~~PROPOSED AMENDMENTS~~

**~~SB 54~~**

**~~— 48 —~~**

# 

~~+ demonstrated that it has~~ made a substantial effort to comply but was reasonably prevented from doing so due to ~~and~~

~~+ that there are~~ extenuating circumstances ~~that have prevented it~~

~~+ from complying~~.

+ (B) For purposes of this paragraph, making a “substantial

+ effort” means taking all practicable actions to comply with a

+ corrective action plan. Substantial effort is not made in

+ circumstances in which ~~the decisionmaking body of~~ a producer or

+ PRO has not taken reasonable ~~the necessary~~ steps to comply with a corrective

+ action plan, including, but not limited to, ~~failing to provide~~ providing staff

+ resources and ~~or failing to provide sufficient~~ funding necessary for ~~to ensure~~

+ compliance ~~with a corrective action plan~~.

(3) The department’s authority under this article to impose penalties and to consider a corrective action plan shall not affect the department’s authority to withdraw its approval of a PRO plan pursuant to section 42051(f)(3).

+ (c) The department, in determining the penalty amount and

+ whether to assess a penalty under this section, shall consider at least all

**SECURED**

+ of the following:

+ (1) The nature, circumstances, extent, and gravity of the

**COPY**

+ violation or a condition giving rise to the violation and the various

+ remedies and penalties that are appropriate in the given

+ circumstances, with primary emphasis on protecting the public

+ health and safety and the environment.

+ (2) Whether the violation or conditions giving rise to the

+ violation have been corrected in a timely fashion or whether

+ reasonable progress is being made to correct the violation or

+ conditions giving rise to the violation.

+ (3) Whether the violation or conditions giving rise to the

+ violation demonstrate a pattern of noncompliance with this chapter

+ or the regulations adopted pursuant to this chapter. If the violation

+ is a first offense, and the nature and gravity of the violation is not

+ considered egregious, the department shall consider assessing a

+ penalty not to exceed twenty-five thousand dollars ($25,000) per

+ *day.*

+ (4) Whether the violation or conditions giving rise to the

+ violation were intentional.

+ (5) Whether the violation or conditions giving rise to the

+ violation were voluntarily and promptly reported to the department

+ before the commencement of an investigation or audit by the

+ department.

+ (6) Whether the violation or conditions giving rise to the

+ violation were due to circumstances beyond the reasonable control

+ of the producer or PRO or were otherwise unavoidable under the

98

# PROPOSED AMENDMENTS

**— 49 —**

**SB 54**

+ circumstances, including, but not limited to, unforeseen changes

+ in market conditions. This does not includes circumstances in which curbside collection either was not available or not suitable for the collection and processing of the covered material and the PRO or producer failed to adequately invest in or develop other means to collect or process the covered material.

+ (7) The size and economic condition of the producer or PRO.

+ (8) The magnitude of the impact on the environment, human

+ health, and disadvantaged or low-income communities or rural area ~~frontline~~ ~~and~~ ~~disadvantaged~~ ~~communities~~ reasonably

+ anticipated from the violation.

+ 42082. (a) The department shall post on its internet website

+ a list of covered material categories, including by material form

+ if applicable, by producer, that are not in compliance with this

+ chapter. The department shall update the list at least once every

+ six months.

+ (b) The department may provide, upon request, a list of covered

+ material categories, by producer if applicable, that are in

**SECURED**

+ compliance with this chapter.

+ 42083. A producer may offer for sale, sell, distribute, or import

**COPY**

+ covered material in a covered material category that does not meet

+ the recycling and composting rates established pursuant to

+ subdivision (c) of Section 42050 if the producer demonstrates to

+ the department 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.

+

+ Article 6. California Circular Economy Regulatory Fee

+

+ 42090. (a) (1) The department shall establish a California

+ circular economy regulatory fee to be paid by a producer. The

+ amount of the fee shall be established and adjusted by the

+ department based on the factors specified in paragraph (3). The

+ department shall set this fee to collect no more than is necessary

+ to cover the reasonable regulatory costs of this chapter for the

+ following fiscal year, including a prudent reserve, as specified in

+ subparagraph (B) of paragraph (3).

+ (2) Once a PRO is approved, the PRO, acting on behalf of a

+ member producer, shall remit the fee assessed pursuant to this

+ subdivision on a quarterly schedule. The revenue from the fee shall

+ not be used for activities other than those described in this

+ subdivision.

+ (3) Before establishing or adjusting the fee, the department shall

+ review at a public hearing all of the following factors:

98

# PROPOSED AMENDMENTS

**SB 54**

+

**— 50 —**

(A) A projection of the amount necessary to fund ~~only~~ the

# 

+ reasonable regulatory costs incurred by the department and the

+ California Department of Tax and Fee Administration incident to

+ audits, inspections, administrative activities, adjudications, or

+ other regulatory activities associated implementation of ~~with covered material~~

~~+ pursuant~~ ~~to~~ this chapter.~~, taking into account any revenue received~~

~~+ from entities agreeing to corrective action plans.~~

+ (B) The sufficiency of revenues to administer, enforce, and

+ promote regulatory activities regarding covered material, including

+ the regulatory aspects of the programs established pursuant to

+ this chapter, plus a prudent reserve.

+ (C) Whether additional revenues are necessary to preserve the

+ ability to conduct regulatory activities necessary to implement this

**SECURED**

+ chapter in the following fiscal year.

+ (D) If the actual regulatory costs incurred by the department

**COPY**

+ and the California Department of Tax and Fee Administration are

+ lower than the projected costs, whether at the end of the fiscal

+ year there remains sufficient revenues to reduce the fee.

+ (4) An adjustment to the fee shall become effective on January

+ 1 of the year following its adoption.

+ (5) The department may adopt regulations to establish and

+ adjust the fee. Regulations to establish and adjust the fee shall be

+ deemed to meet the description in subdivision (g) of Section

+ 11340.9 of the Government Code and may be filed by the Office

+ of Administrative Law, at the request of the department, pursuant

+ to Section 11343.8 of the Government Code.

+ (b) (1) The amount of the fee imposed on a producer shall be

+ proportionate to the cost of regulating that producer based on

+ whether the producer is complying with this chapter individually

+ or collectively as a ~~member~~ participant of a PRO’s approved plan. ~~producer responsibility~~

~~+ organization~~. If a producer is a member of a PRO, the PRO shall

+ pay the fee on behalf of the producer. A PRO shall require a

+ ~~member~~ participant to reimburse the PRO for the amount of the regulatory

+ fee paid on behalf of the ~~member~~ participant as part of the fee established in

+ the producer responsibility plan.

+ (2) The amount of the fee imposed on a producer shall be

+ proportionate to the cost of regulating that producer, or a PRO

+ acting on the producer’s behalf.

+ 42091. (a) The department shall transmit to the California

+ Department of Tax and Fee Administration the name and address

98

# PROPOSED AMENDMENTS

**— 51 —**

**SB 54**

+ of each producer and PRO responsible for paying the California

+ circular economy regulatory fee, and the name of each producer

+ on whose behalf that organization is paying the fee and the amount

+ of the fee to be assessed, as authorized by this article. The

+ department shall also provide to the California Department of Tax

+ and Fee Administration a contact telephone number for the

+ department to be printed on the California circular economy

+ regulatory fee bill to respond to questions about the fee.

+ (b) (1) The California Department of Tax and Fee

+ Administration shall collect the California circular economy

+ regulatory fee in accordance with the Fee Collection Procedures

+ Law (Part 30 (commencing with Section 55001) of Division 2 of

+ the Revenue and Taxation Code), except as specified in paragraphs

**SECURED**

+ (2) and (3).

+ (2) Notwithstanding the appeal provisions in the Fee Collection

**COPY**

+ Procedures Law (Part 30 (commencing with Section 55001) of

+ Division 2 of the Revenue and Taxation Code), a petition for

+ redetermination by a producer or PRO that is based on the

+ assertion that the department improperly or erroneously

+ determined that the producer is subject to the California circular

+ economy regulatory fee, or that the department improperly or

+ erroneously calculated the fee amount, shall be subject to review

+ pursuant to Section 42094 and shall not be subject to a petition

+ for redetermination by the California Department of Tax and Fee

+ Administration.

+ (3) (A) Notwithstanding the refund provisions in the Fee

+ Collection Procedures Law (Part 30 (commencing with Section

+ 55001) of Division 2 of the Revenue and Taxation Code), the

+ California Department of Tax and Fee Administration shall not

+ accept any claim for refund that asserts that the department

+ improperly or erroneously determined the amount of the California

+ circular economy regulatory fee, or incorrectly determined that a

+ producer is subject to that fee, unless that determination has been

+ set aside by the department or the court reviewing the

+ determination.

+ (B) If the department determines that a producer or PRO is

+ entitled to a refund of all or part of the California circular economy

+ regulatory fee, the producer or PRO shall make a claim for refund

+ to the California Department of Tax and Fee Administration

98

# PROPOSED AMENDMENTS

**SB 54**

**— 52 —**

# 

+ pursuant to Chapter 5 (commencing with Section 55221) of Part

+ 30 of Division 2 of the Revenue and Taxation Code.

+ (C) This section does not prohibit the California Department

+ of Tax and Fee Administration from accepting a claim for refund

+ or taking action on its own to correct a mistake or clerical error.

+ (c) The California circular economy regulatory fee shall be due

+ and payable 30 days from the assessment issued by the California

+ Department of Tax and Fee Administration.

+ 42092. (a) Notwithstanding Article 1.1 (commencing with

+ Section 55050) of Chapter 3 of Part 30 of Division 2 of the Revenue

+ and Taxation Code, the California circular economy regulatory

+ fee shall be remitted by a producer or PRO through electronic

+ funds transfer to the California Department of Tax and Fee

**SECURED**

+ Administration.

+ (b) Except for payments of refunds made pursuant to Chapter

**COPY**

+ 5 (commencing with Section 55221) of Part 30 of Division 2 of the

+ Revenue and Taxation Code, all California circular economy

+ regulatory fee payments shall be deposited into the California

+ Circular Economy Fund, which is hereby created in the State

+ Treasury.

+ (c) Moneys in the California Circular Economy Fund shall be

+ available upon appropriation by the Legislature to the department

+ to fund the regulatory activities of this chapter and to the

+ California Department of Tax and Fee Administration for expenses

+ incurred in the collection of the fee imposed by Section 42090.

+ 42093. (a) Notwithstanding any other law, upon request by

+ the California Department of Tax and Fee Administration, the

+ department shall fully and timely provide data, including

+ confidential producer, wholesaler, or retailer information, to

+ administer this article.

+ (b) A person from the California Department of Tax and Fee

+ Administration who receives confidential information pursuant to

+ this section shall not divulge, or make known in any manner not

+ authorized under existing law, any of the confidential information

+ received by or reported to the California Department of Tax and

+ Fee Administration. Confidential information authorized to be

+ provided pursuant to this section shall otherwise retain its

+ confidential status and shall otherwise remain subject to the

+ confidentiality provisions of applicable law, including, but not

+ limited to, the confidentiality provisions in this chapter.

98

# PROPOSED AMENDMENTS

**— 53 —**

**SB 54**

+ 42094. (a) A ~~person~~ producer or PRO who the department determines is required

+ to pay the California circular economy regulatory fee under this

+ article may petition for redetermination of whether this article

+ applies to that person within 30 calendar days after service upon that person

+ of a notice of the determination. If a petition for redetermination

+ is not filed within the 30-day period, the amount determined to be

+ due becomes final at the expiration of the 30-day period.

+ (b) A petition for redetermination shall be in writing and shall

+ be sent to the department or its designee. The petition shall state

+ the specific grounds upon which the petition is founded and shall

+ include supporting documentation. The petition may be amended

+ to state additional grounds or provide additional documentation

+ at any time before the date that the department issues its order or

**SECURED**

+ decision with regard to the petition for redetermination.

+ (c) If a petition for redetermination is filed within the 30-day

**COPY**

+ period, the department shall reconsider whether the fee is due and

+ make a determination in writing. The department may eliminate

+ the fee based on a determination that this chapter does not apply

+ to the person who filed the petition.

+ (d) If a timely petition for redetermination has been filed

+ pursuant to subdivision (a), all action to collect the California

+ circular economy regulatory fee shall be stayed pending the final

+ determination of the department pursuant to subdivision (f).

+ (e) Notice of the determination of the department shall be served,

+ on the same date, to the petitioner and the California Department

+ of Tax and Fee Administration.

+ (f) The order or decision of the department upon a petition for

+ redetermination of the California circular economy regulatory fee

+ shall become final 30 days after service upon the petitioner of

+ notice of the determination.

+ 42095. The California circular economy regulatory fee

+ determined to be due by the department pursuant to this article is

+ due and payable at the time it becomes final, and if it is not paid

+ when due and payable, the penalty imposed pursuant to Section

+ 55086 of the Revenue and Taxation Code shall apply.

+ 42096. (a) Notice required to be served under this article shall

+ be in writing and shall be placed in a sealed envelope, with postage

+ paid, addressed to the recipient at the recipient’s address as it

+ appears in the records of the department. The giving of notice

+ shall be deemed complete at the time of the deposit of the notice

98

# PROPOSED AMENDMENTS

**SB 54**

**— 54 —**

# 

+ in a United States Post Office, or a mailbox, subpost office,

+ substation, mail chute, or other facility regularly maintained or

+ provided by the United States Postal Service without extension of

+ time for any reason.

+ (b) Notwithstanding subdivision (a), notice required to be served

+ under this article may be served personally by delivering it to the

+ person to be served and service shall be deemed complete at the

+ time of delivery. Personal service to a corporation may be made

+ by delivery of a notice to any person designated in the Code of

+ Civil Procedure to be served for the corporation with summons

+ and complaint in a civil action.

+ SEC. 2. Chapter 6 (commencing with Section 48710) is added

+ to Part 7 of Division 30 of the Public Resources Code, to read:

**SECURED**

+

+ Chapter 6. Local Agency Regulation of Food Packaging

**COPY**

+ Material

+

+ 48710. (a) For purposes of this chapter, the following

+ definitions apply:

+ (1) “Curbside program” means a recycling or composting

+ program that picks up waste material from individual or multiple

+ family residences, or both, with the intent to recycle or compost

+ the waste material, operated by, or pursuant to a contract with, a

+ local agency, or is acknowledged, in writing, by a local agency.

+ (2) “Grocery store” means a store primarily engaged in the

+ retail sale of canned food, dry goods, fresh fruits and vegetables,

+ and fresh meats, fish, and poultry, and any area that is not

+ separately owned within the store where food is prepared and

+ served, including a bakery, deli, and meat and seafood counter.

+ (3) “Local agency” means a city, county, city and county, or

+ other local public agency.

+ (b) A local agency shall not require a grocery store to use a

+ certain type of food packaging for any food sold in the grocery

+ store unless the majority of residential households within the

+ jurisdiction of the local agency have access to a curbside program

+ that accepts the material from which that food packaging is made.

+ (c) A local agency shall not require a grocery store to use a

+ food packaging container that does not meet an ASTM standard

+ specification, as defined pursuant to subdivision (b) of Section

98

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

+

Page 2 1

2

3

4

42356, or the compostability criteria developed pursuant to Chapter 5.7 (commencing with Section 42355).

1. *(1) Except as provided in paragraph (2), a local agency shall not enforce or implement an ordinance, resolution, regulation, or rule, or make any amendment to an ordinance, resolution, regulation, or rule, that violates or conflicts with subdivision (b) or (c).*

(2) A local agency that, as of September 15, 2020, has an ordinance, resolution, regulation, or rule that violates or conflicts with subdivision (b) or (c) may continue to implement and enforce that ordinance, resolution, regulation, or rule.

1. *This chapter does not prohibit a local agency from requiring a grocery store to use a certain type of food packaging that is refillable or reusable.*

**SECURED**

1. *This chapter shall remain in effect only until January 1, 2032, and as of that date is repealed.*

**COPY**

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Chapter 3 (commencing with Section 42040) to Part 3 of Division 30 of the Public Resources Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to ensure the effective solid waste management of, and viable markets for, ~~single-use packaging and single-use food service ware~~ covered material, it is necessary to protect the proprietary information of producers, retailers, wholesalers, and solid waste enterprises by keeping confidential the financial, production, and sales data reported by those entities under Section 1 of this act.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. (a) The Legislature finds and declares all of the~~ ~~following:~~

1. ~~Annual global production of plastic has reached 335,000,000~~ ~~tons and continues to rise. The United States alone discards~~

98

Page 2 5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

Page 3 1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

30,000,000 tons each year. Global plastic production is projected to more than triple by 2050, accounting for 20 percent of all fossil ~~fuel consumption.~~

1. ~~Without action, projections estimate that by 2050 the mass~~ of plastic pollution in the ocean will exceed the mass of fish. A study by the University of Exeter and Plymouth Marine Laboratory in the United Kingdom found plastics in the gut of every single sea turtle examined and in 90 percent of seabirds. Additionally, plastic negatively affects marine ecosystems and wildlife, as demonstrated by countless seabirds, turtles, and marine mammals, including, but not limited to, whales and dolphins, dying from ~~plastic ingestion or entanglement.~~
2. ~~Based on data from the United States Environmental~~ Protection Agency, Institute of Scrap Recycling Industries, Inc. trade statistics, and industry news source Resource Recycling, Inc., the national recycling rate for plastic was projected to sink from

**SECURED**

**COPY**

9.1 percent in 2015 to 4.4 percent in 2018, and to drop to 2.9 percent in 2019. Even in California, less than 15 percent of ~~single-use, disposable plastic is recycled.~~

1. ~~Before 2017, the United States was sending 4,000 shipping~~ containers full of American waste to China every day, including two-thirds of the state’s potentially recyclable materials. However, China has implemented the Green Fence, National Sword, and Blue Sky policies, severely restricting the amount of contaminated and poorly sorted plastics it would accept. This shift in China’s policy has resulted in the loss of markets for low-value plastic packaging that was previously considered recyclable. That material ~~is now being landfilled or burned.~~
2. ~~Additionally, the foreign market for recycled paper has~~ collapsed in the state. Foreign exports of mixed paper fell from over 400,000 tons in the first quarter of 2017 to just 136,000 tons in the first quarter of 2018. The price of mixed paper fell from ninety-five dollars ($95) per ton to just ten dollars ($10) per ton ~~in the same timeframe.~~
3. ~~The loss of markets for recyclable material has added huge~~ costs to local programs for the disposal and diversion of material. For many cities, counties, and waste haulers in the state, recycling has turned from a profitable business into an activity that actually costs local governments and solid waste service providers money. These costs are being absorbed by city general funds, by solid

98

waste collectors and processors, or by rate increases on residents ~~for waste collection.~~

|  |  |
| --- | --- |
| Page 3 | 25 |
|  | 26 |
|  | 27 |
|  | 28 |
|  | 29 |
|  | 30 |
|  | 31 |
|  | 32 |
|  | 33 |
|  | 34 |
|  | 35 |
|  | 36 |
|  | 37 |
|  | 38 |
|  | 39 |
|  | 40 |
| Page 4 | 1 |
|  | 2 |
|  | 3 |
|  | 4 |
|  | 5 |
|  | 6 |
|  | 7 |
|  | 8 |
|  | 9 |
|  | 10 |
|  | 11 |
|  | 12 |
|  | 13 |
|  | 14 |
|  | 15 |
|  | 16 |
|  | 17 |
|  | 18 |
|  | 19 |
|  | 20 |
|  | 21 |
|  | 22 |
|  | 23 |

1. ~~The environmental and public health impacts of plastic~~ pollution are devastating, and the environmental externalities and public costs of cleaning up and mitigating plastic pollution are already staggering and continue to grow. Most plastics are petrochemicals made from hydrocarbons derived from fossil fuels. Production of these materials contributes to climate change and furthers the reliance on nonrenewable resources. Litter of these plastics constitutes a form of oil pollution spilling into the oceans ~~and contaminating the environment.~~
2. ~~Local governments in the state annually spend in excess of~~ four hundred twenty million dollars ($420,000,000) in ongoing efforts to clean up and prevent plastic and other litter from entering the state’s rivers and streams and polluting the state’s beaches and ~~oceans.~~

**SECURED**

**COPY**

1. ~~Evidence now shows that even the state’s own food and~~ drinking water sources are contaminated with plastic. Microplastics have been found in tap water, bottled water, table salt, and fish and shellfish from local California fish markets. A growing body of research is finding plastic and associated toxins throughout the food web, including in human blood, feces, and tissues. Exposure to these toxins has been linked to cancers, birth defects, impaired ~~immunity, endocrine disruption, and other ailments.~~
2. ~~It is the policy goal of the state that not less than 75 percent~~ of solid waste generated be source reduced, recycled, or composted by the year 2020. However, as of 2017, the state was only on track to reach 44 percent, a peak level still falling far short of this important goal. By 2019, the rate had dropped to 37 percent. Additionally, the state has done little to require businesses to reduce the amount of disposable packaging and single-use, disposable ~~food service ware waste they generate in the state.~~
3. ~~As the fifth largest economy in the world, California has~~ a responsibility to lead on solutions to the growing plastic pollution crisis, and to lead in the reduction of unnecessary waste generally. ~~(12) Further, businesses selling products into the state have a~~ responsibility to ensure that their packaging and products are minimizing waste, including ensuring materials used are reusable, recyclable, or compostable. This responsibility includes paying

98

Page 4 24

25

26

27

28

29

30

31

32

34

35

36

37

38

39

40

Page 5 1

2

3

+ 5

6

7

8

9

10

11

12

for the cost of the negative externality of recovery for the materials ~~they sell in the state.~~

~~(13) All disposable packaging and food service ware should be~~ ~~able to be recycled or composted.~~

~~(b) It is the intent of the Legislature in adopting this act to~~ substantially reduce local, statewide, and global impacts resulting from the generation and improper handling of disposable packaging and food service ware waste to achieve the state’s 75-percent source reduction, recycling, and reuse goal, and to significantly reduce the amount of this waste entering California’s waste stream, polluting oceans, littering local communities and beaches, and costing local governments millions of dollars in cleanup costs through source reduction requirements and increased composting ~~and recycling.~~

**SECURED**

~~SEC. 2. Chapter 3 (commencing with Section 42050) is added~~ ~~to Part 3 of Division 30 of the Public Resources Code, to read:~~

**COPY**

~~Chapter 3. Plastic Pollution Producer Responsibility~~

~~Act~~

~~42050. Consistent with the policy goal established in Section~~ 41780.01, producers of single-use, disposable packaging or single-use, disposable food service ware products shall not offer for sale, sell, distribute, or import in or into the state single-use, disposable packaging or single-use, disposable food service ware products manufactured on or after January 1, 2032, unless the packaging or food service ware product is recyclable or ~~compostable.~~

***Sec 5.*** ***Amend section 41821.5 of the Public Resources Code as follows:***

(a) Disposal facility operators shall submit information on the disposal tonnages by jurisdiction or region of origin that are disposed of at each disposal facility to the department, and to counties that request the information, in a form prescribed by the department. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operatorsshall provide information todisposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) (1) Recycling and composting operations and facilities shall submit periodic information to the department on the types and quantities of materials that are disposed of, sold, or transferred to other recycling or composting facilities, end users inside of the state or outside of the state, or exporters, brokers, or transporters for sale inside of the state or outside of the state.

(2) Exporters, brokers, self-haulers, and transporters of recyclables or compost shall submit periodic information to the department on the types, quantities, and destinations of materials that are disposed of, sold, or transferred. The department shall develop regulations implementing this section that define “self-hauler” to include, at a minimum, a person or entity that generates and transports, utilizing its own employees and equipment, more than one cubic yard per week of its own food waste to a location or facility that is not owned and operated by that person or entity.

(3) The information in the reports submitted pursuant to this subdivision may be provided to the department on an aggregated facility-wide basis and may exclude financial data, such as contract terms and conditions (including information on pricing, credit terms, volume discounts and other proprietary business terms), the jurisdiction of the origin of the materials, or information on the entities from which the materials are received. The department may provide this information to jurisdictions, aggregated by company, upon request. The aggregated information, other than that aggregated by company, is public information.

***(4) The reporting requirements pursuant to this section do not apply to materials that are used by facilities defined as end users pursuant to the regulations adopted by the department pursuant to this section or that are otherwise exempt pursuant to such regulations.***

(c) The department shall adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to implement this section, and that provide a representative accounting of solid wastes and recyclable materials that are handled, processed, or disposed. Those regulations approved by the department shall not impose an unreasonable burden on waste and recycling handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste and recyclables. The department shall include in those regulations both of the following:

(1) Procedures to ensure that an opportunity to comply is provided prior to initiation of enforcement authorized by Section 41821.7.

(2) Factors to be considered in determining penalty amounts that are similar to those provided in Section 45016.

(d) Any person who refuses or fails to submit information required by regulations adopted pursuant to this section is liable for a civil penalty of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(e) Any person who knowingly or willfully files a false report, or any person who refuses to permit the department or any of its representatives to make inspection or examination of records, or who fails to keep any records for the inspection of the department, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records as required by regulations adopted pursuant to this section, is liable for a civil penalty of not less than five hundred dollars ($500) and not more than ten thousand dollars ($10,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(f) Liability under this section may be imposed in a civil action, or liability may be imposed administratively pursuant to this article.

(g) (1) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, all records that the facility or operator is reasonably required to keep to allow the department to verify information in, or verification of, the reports required pursuant to subdivisions (a) and (b) and implementing regulations shall be subject to inspection and copying by the department, but shall be confidential and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) Notwithstanding Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code and Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, an employee of a government entity may, at the disposal facility ***permitted solid waste facility***, inspect and copy records related to tonnage received at the facility on or after July 1, 2015, and originating within the government entity’s geographic jurisdiction. Those records shall be limited to weight tags that identify the hauler, vehicle, quantity, date, type, and origin of waste received at a disposal facility ***permitted solid waste facility***. Those records shall be available to those government entities for the purposes of subdivision (a) and as necessary to enforce the collection of local fees, but those records shall be confidential and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Names of haulers using specific landfills shall not be disclosed by a government entity unless necessary as part of an administrative or judicial enforcement proceeding to fund local programs or enforce local franchises.

(3) A government entity may petition the superior court for injunctive or declaratory relief to enforce its authority under paragraph (2). The times for responsive pleadings and hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

(4) For purposes of this section, a government entity is an entity identified in Section 40145 or an entity formed pursuant to Section 40976.

(5) For purposes of this subdivision, “disposal” and “disposal facility” have the same meanings as prescribed by Sections 40120.1 and 40121, respectively.

(6) Nothing in this subdivision shall be construed to limit or expand the authority of a government entity that may have been provided by this section and implementing regulations as they read on December 31, 2015.

(7) The records subject to inspection and copying by the department pursuant to paragraph (1) or by an employee of a government entity pursuant to paragraph (2) may be redacted by the operator before inspection to exclude confidential pricing information contained in the records, such as contract terms and conditions (including information on pricing, credit terms, volume discounts, and other proprietary business terms), if the redacted information is not information that is otherwise required to be reported to the department.

(h) Notwithstanding the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code), reports required by this section shall be submitted electronically, using an electronic reporting format system established by the department.

(i) All records provided in accordance with this section shall be subject to Section 40062.

***(j) For the purposes of this section:***

***(i) recycling operations and facilities are facilities that conduct recycling, as defined in Public Resources Code section 40180; provided, however, that recycling, for purposes of this section, shall not be limited to the processing of materials that would otherwise become solid waste, such that it includes processes applied to non-hazardous materials that have value principally as a feedstock for such processing, regardless of whether the materials have been discarded or constitute solid waste.***

***(ii) Regardless of whether a recycling operation or facility is required to register and report pursuant to the regulations adopted by the department pursuant to this section , such operation or facility shall not be deemed a solid waste handler unless they are, in fact, handling solid waste.***

***Sec 6.*** ***Intent language***

***The addition of subdivision (j) of Section 41821.5 of the Public Resources Code made by this act does not constitute a change in, but is declaratory of, existing law. It is the intent of the Legislature in adding subdivision (j) to clarify the meaning and effect of existing law, such that the reporting obligations described in Section 41821.5 apply to materials regardless of whether they are discarded or otherwise constitute solid waste.***

­

O

98