



Environment, Land Use & Natural Resources ADVISORY ■

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California Legislature Recycles Single-Use Plastics Regime

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In 2020, for the second year in a row, the California Legislature narrowly rejected a bill phasing out the majority of single-use plastics that can't be recycled or composted. Had it passed, [Senate Bill 54](#)—the California Circular Economy and Plastic Pollution Reduction Act—would have established a sweeping regulatory regime affecting producers, retailers, and wholesalers of single-use plastic packaging, including primary, secondary, and tertiary packaging, and “priority single-use products,” defined as single-use plastic food service ware such as plates, cups, straws, and utensils. Failure to comply would subject a company to fines of up to \$50,000 per day.

The law would have empowered the Department of Resources Recycling and Recovery (“CalRecycle”) to broadly regulate single-use plastic packaging and priority single-use products with the goal of achieving a mandated statewide 75 percent reduction in waste from these sources. To that end, the statute would have required packaging and food service ware “producers” to ensure that by 2032 all of their plastic single-use packaging and priority single-use products in California are recyclable or compostable. Producers affected by the law would include all parties that manufacture single-use packaging or priority single-use products under their own name or brand and sell or offer those items for sale within California.

In addition to the 2032 deadline for composting and recycling, the law also would have required producers to meet specified recycling rates and to source reduce “to the maximum extent feasible.” Senate Bill 54 would have mandated that a producer’s single-use packaging and priority single-use products must be recycled at a rate of no less than 30 percent by 2028, 40 percent by 2030, and 75 percent by 2032. Producers, retailers, and wholesalers all would have been subjected to registration, reporting, and recordkeeping requirements aimed at enabling CalRecycle to track compliance with mandatory recycling rates and source reduction standards.

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While its companion bill, [Assembly Bill 1080](#), died despite passing both houses, after intense debate, Senate Bill 54 failed by a slim margin in the California Assembly. If passed, Senate Bill 54 would have enacted the strictest state-level restrictions on single-use plastic packaging and food service products in the country.

California's Regulatory Landscape

Nationwide, California has long been known for its tough regulatory approach to plastics.

Now nearing its thirtieth anniversary, the state's legal framework for rigid plastic packaging requires manufacturers of products contained in qualifying rigid plastic containers to meet minimum standards for including recycled material in the container or otherwise achieve source reduction or other recycling and reusability goals. California also requires manufacturers of glass containers, trash bags, and newspaper to meet minimum standards for inclusion of recycled materials in their products.

Back in 2016, California voters approved the country's first statewide ban on single-use plastic shopping bags at grocery stores, pharmacies, and convenience stores. California's statewide ban on plastic straws at full-service restaurants, effective as of 2019, was also the first of its kind in the United States. Just this fall, California became the first state in the nation to adopt a law requiring plastic bottle manufacturers to include mandated minimum levels of recycled content. Enacted as Assembly Bill 793, this groundbreaking statute requires manufacturers to meet minimum average recycled content thresholds of 15 percent by 2022, 25 percent by 2025, and 50 percent by 2030.

As with so many other environmental regimes, what happens in California does not stay in California: the state's plastics laws historically have served as a model for similar provisions across the country. In the time since California's plastic bag ban has gone into effect, seven other states—New York, Connecticut, Delaware, Maine, Oregon, and Vermont—have followed suit with their own bans, while all of Hawaii's most populous counties have also enacted plastic bag bans. Since California's plastic straw ban went into effect, similar restrictions have spread across the country as well. Last year, at least seven states weighed proposals that would—like California's law—make plastic straws available at restaurants only upon request.

Coming Soon in 2021?

The comprehensive regulatory regime proposed in Senate Bill 54 is expected to be back up for consideration in the state legislature in 2021. And it is expected to be a high priority for passage.

Some key areas of debate as the legislators attempt to win over those last few votes needed for passage will be who defines key terms such as "recyclable" and "compostable," the legislature or CalRecycle; whether the law will include tertiary packaging; whether the statute specifies "goals" or "mandates"; whether the statute allows for industry flexibility, e.g., extension of deadline and easing of self-reporting requirements, in meeting those "goals" or "mandates"; or whether the statute will allow for alternative compliance methods like those available in the rigid plastic packaging context, which would allow manufacturers unable to comply with the mandated recycling rate to demonstrate compliance through recycled content standards or source reduction.

Finally, a new and improved proposal could eliminate significant reporting requirements appearing in Senate Bill 54 that would have required manufacturers to submit aggregated sales data to the state. Borrowing again from the rigid plastic packaging container program, the state could instead establish a registration policy for manufacturers that would allow for regulatory follow-up if and when a particular type of material failed to achieve the mandated rate of recycling.

Overall, if legislators are able to increase the flexibility in the timing and burden of compliance, this will work to reduce some of the legislative and industry pushback Senate Bill 54 received in 2020 and pave the way for another landmark California plastics regulatory program in 2021.

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