

Plastic Pollution Prevention and Packaging Producer
Responsibility Act (SB 54)

Advisory Board Meeting

SB 54 (Allen, Chapter 75, Statutes of 2022)
Department of Resources Recycling and Recovery
(CalRecycle)
February 02, 2024

Agenda

I. CALL TO ORDER

II. ROLL CALL

III. CALRECYCLE

- Introductions - Round Table
- Statutory Requirements of the Advisory Board
- Bagley-Keene Open Meeting Act

IV. PRODUCER RESPONSIBILITY ORGANIZATION

- Circular Action Alliance - Introductions

Agenda

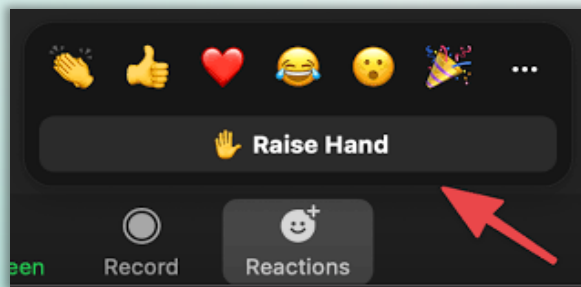
V. ADVISORY BOARD

- Election of a Chair (Led by CalRecycle)
- Election of any other positions deemed necessary by Advisory Board (AB Chair)
- Frequency of Meetings (AB Chair)
- Discussion of agenda items for next meeting (AB Chair)

VI. Adjournment

Questions and Comments

- To make a comment in-person, please line up at the podium.
- To make an oral comment via Zoom, please raise your hand and the host will unmute you.



- To make a written comment via Zoom, please use the chat box.
- Email packaging@calrecycle.ca.gov Subject: Advisory Board

I. CALL TO ORDER

II. ROLL CALL

III. CALRECYCLE

Introductions – Voting Members

Ajit Perera, Vice President of Post Consumer Operations of Talco Plastics, Inc., representative of a manufacturer of covered materials

Christy Pestoni, Director of Government Affairs of Waste Connections, representative of a materials recovery facility located within the State of California

Doug Kobold, Executive Director of the California Product Stewardship Council, representative of an environmental protection agency

Erin Levine, Resource Recovery Manager - World Centric, representative of manufacturer that produces third-party certified compostable covered material

Fred Briones, Chief Executive Officer of Native American Fiber Program, representative of a disadvantaged or low-income community or rural area

Miho Ligare, Plastic Pollution Policy Manager of Surfrider Foundation, representative of an ocean advocacy organization

Neil S. Edgar, Executive Director of California Compost Coalition, representative of a composting industry operating in the State of California

Introductions – Voting Members

Patrick Keenan, Associate Packaging Principal Engineer of General Mills, representative of a manufacturer of covered materials

Tedd Ward, Director of Del Norte Solid Waste Management Authority, representative of a statewide rural county association

Thomas A. Helme, Co-Founder & Project Director of Valley Improvement Projects, representative of an environmental justice organization

Timothy Burroughs, Executive Director of StopWaste, representative of a statewide city association

Veronica Pardo, Regulatory Affairs Director of Resource Recovery Coalition of California, representative of a recycling service provide or an association of recycling providers

Wes Carter, President & Co-Founder of Atlantic Packaging Corp, representative of a manufacturer of covered materials

Introductions – Non-Voting Members

Rachel Michelin, President & Chief Executive Officer of the California Retailers Association, representative of a statewide association representing the retail sector

Shane Buckingham, EPR Program Planning Lead for Circular Action Alliance, representative of a producer responsibility organization

Timothy James, Director of Local Government Relations of the California Grocers Association, representative of a statewide association representing the grocery sector

Disclaimer

This communication is neither intended to, nor does it constitute definitive legal counseling, conclusions, or advice in any way. Instead, the contents of this communication and any analysis, guidance, or other information is intended to objectively address the question(s) presented based on the current existing, known facts and legal authority as described to and understood by the author and/or CalRecycle at the time of this communication. Please be advised that any relevant facts or legal authority or authorities that are undisclosed or unknown at the time of this communication may affect or alter any analysis, guidance, or other information herein. Please be further advised that any analysis, guidance, or other information herein may be subject to change and/or correction based on changed facts or legal authority, actual or understood, subsequent to the time of this communication. No analysis, guidance, or other information herein should be construed as a waiver of any rights or remedies available to CalRecycle. Recipients of this communication are encouraged to seek the assistance of legal counsel to comply with applicable state law based on current facts and circumstances.

Statutory Requirements of the Advisory Board

Marcus Santillano

Program Manager

SB 54 Establishes an Independent Advisory Board

Purpose of the Advisory Board:

- Identify barriers and solutions to creating a circular economy consistent with the statute.
- Advise the department, producers, and the producer responsibility organization (PRO).
- Conduct reviews of documents (e.g., producer responsibility plan, needs assessment, etc.).

Membership:

- 13 voting members, representing various entities.
- 3 non-voting members, representing the retail sector, the grocery sector, and the PRO.
- Membership is appointed by the Director of CalRecycle.

Duties of the Advisory Board

- Comply with statutory requirements specified in Section 42070 of the Public Resources Code (PRC). This includes:
 - Advise CalRecycle in the adoption of regulations pertaining to this statute.
 - Advise the department on any other pertinent matters.
 - Review any needs assessment or update within 90 days of receipt.
 - Review PRO plans and offer written comments on the plan within 60 calendar days of receiving it.
 - Evaluate concerns raised by entities on adverse impacts and submitting them to the Department for analysis when applicable.

Expectations of the Board and Members

- Meet at least once per year as required by PRC 42070(c).
- Comply with the Bagley-Keene Open Meeting Act.
- Elect a chair at the first meeting; chair serves for the calendar year.
- Take and share meeting notes with the public.
- Host a document repository to post Advisory Board information and documents.
- Conduct statutorily required tasks (e.g., review plans, provide recommendations, etc.).

Bagley-Keene Open Meeting Act Highlights

Anastasia Baskerville

Chief Counsel

Plastic Pollution Prevention and Packaging Producer Responsibility Advisory Board (PRAB)

- The Act governs members of every “state body.” (Gov. Code, § 11127.)
- Public Resources Code section 42070 establishes the PRAB as a state body subject to Bagley Keene (the Act)
- The Act governs state multimember bodies created by statute or required by statute to conduct official meetings. (Gov. Code, § 11121, subd. (a).) The Act extends not only to statutory bodies with operative powers but also to those with advisory functions.

Meetings

- A meeting occurs when (1) a majority of a state body (2) gathers to hear, discuss, or deliberate on (3) an item under its subject matter jurisdiction. (Gov. Code, § 11122.5, subd. (a).)
- The Act applies when a majority of a state body congregate, either at or **outside** an open and noticed meeting.
- Conduct meetings using Robert's Rules of Order

Serial Meetings

- A serial meeting comprises several communications, each among less than a majority of a state body, which taken together involve a **majority**.
- **“A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.”** (Gov. Code, §§ 11122, 11122.5, subd. (b)(1); 1

Goal of the Act's Prohibition on Serial Meetings

- Precludes any attempt to circumvent open meeting requirements through serial meetings.
- The restriction on serial meetings extends to all communications technologies (e.g., **email, mobile phones, instant messaging, text messaging, social media, blogs**). (Gov. Code, § 11122.5, subd. (b)(1).)
- **A majority of a state body may not separately communicate by electronic means to deliberate on any topic under the state body's jurisdiction.**

Serial Meetings

- Serial meetings may occur within a state body either through (1) sequential contacts among the body's members, or (2) one member's selective communications with multiple members.
- Example: Member A emails member B who then communicates with member C and so on until nine members of the sixteen member state body are involved – this violates the Law and is actionable.

Serial Meetings

- Example: Member A calls member B, then member A calls member C, until Member A has called 9 members – this is a violation of the Act and is actionable.

Not a Serial Meeting

- Example: Individual sends an email message to the entire state body and other members of the public, yet just one PRAB member replies to the sender and the other members of the public - this email is not deliberation by a majority of the state body.
- Example: Housekeeping- PRAB members may plan times, dates and locations of upcoming meetings as long as the planning does not include substantive discussion of agenda items.

The Rule of TWO

- Do not discuss any matter under the PRAB's jurisdiction with more than one other member, thus avoiding a majority in most cases.

What does it mean to Deliberate under the Act

- A majority of a state body gathers to hear or discuss a matter, not necessarily vote.
- Includes acquiring and exchanging facts relevant to an ultimate decision.

What is subject matter jurisdiction of the PRAB

- Anything that the PRAB has the authority to hear.
- Extremely broad.

Notice and Agenda

- At least 10 calendar days before a regular meeting to any person who requests it and post on PRAB website.
- The notice deadline is calculated in calendar days, not business days.
- Holidays falling within the 10-day period do not result in more time to post a meeting notice.

Content

- Meeting time and place;
- Contact information for the person who can answer questions about the meeting;
- PRAB website address;
- Information on how persons with a disability may ask for accommodations.
- Substantive information about the meeting, including an agenda describing each item of business that the PRAB will consider.

Notice and Agenda Boundaries

- PRAB may not deliberate or act upon on any item not described or inadequately described on the agenda.

Special Meetings

- No less than 48-hour notice for upon a finding that 10-day notice rule would impose a substantial hardship on the PRAB or that protecting the public interest calls for immediate action.
- Reasons: pending litigation; emergency - crippling disaster or work stoppage that severely impairs public health or safety.

Consequences

- Criminal penalties: Violation of the Act is a misdemeanor resulting in criminal penalties against the PRAB member. (Gov. Code, § 11130.7; see Pen. Code, §§ 19, 1

Civil Remedies

- The Attorney General, a district attorney, or any interested person may seek mandamus, injunctive, or declaratory relief in a superior court to prevent or stop violations or threatened violations of the Act. (Gov. Code, § 11130, subd. (a).)

Attorneys' Fees

- A prevailing plaintiff in an open-meeting action may recover reasonable attorneys' fees from the PRAB. (Gov. Code, § 11130.5.)
- If the PRAB prevails the PRAB may only recover fees if the plaintiff's lawsuit was frivolous and completely lacking in merit. (Gov. Code, § 11130.5)

Bagley-Keene Open Meeting Act Highlights

Anastasia Baskerville

Chief Counsel

IV. PRODUCER RESPONSIBILITY ORGANIZATION

CIRCULAR ACTION ALLIANCE INTRODUCTION

Shane Buckingham

EPR Program Planning Lead

V. Advisory Board

V: Advisory Board

- Election of a Chair and Co-Chair (*CalRecycle*)
 - Election of any other positions deemed necessary by Advisory Board (*AB Chair*)
 - Discussion of frequency of meetings (*AB Chair*)
 - Discussion of agenda items for next meeting (*AB Chair*)
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VI. Adjournment
