Assembly Bill No. 1526

CHAPTER 848

An act to amend Sections 3114, 3206.2, 4584, 42040, 42041, 42051.1, 42053, 42061, 42064, 42064.01, 42067, 42081, 42464.3, 48701, 48703, and 48705 of, and to add Section 48707 to, the Public Resources Code, relating to public resources.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1526, Committee on Natural Resources. Public resources.

(1) Existing law requires the Department of Conservation, in consultation with the State Water Resources Control Board, to provide to the fiscal and relevant policy committees of the Legislature an annual report regarding certain aspects of the implementation of the Underground Injection Control Program until October 1, 2024.

This bill would make these provisions inoperative on October 1, 2029, and would repeal them as of January 1, 2030.

(2) Existing law requires the Geologic Energy Management Division in the Department of Conservation, in consultation with the State Air Resources Board, to initiate a study to be conducted by independent experts of fugitive emissions from idle, idle-deserted, and abandoned wells in the state, as provided. Existing law requires oil and gas operators with wells selected for purposes of sampling under these provisions to (1) make reasonable efforts to permit access to the wells to the division and the independent experts contracted to undertake the study if adequate notice is provided to the operator to ensure appropriate safety precautions are taken at the well site, and (2) submit to the division a certification stating that no action was taken to reduce emissions from the sampling site within 72 hours of the sampling taking place so as to reduce the value of measurements taken. A violation of these requirements is a crime. Existing law requires the department, on or before January 1, 2022, to post all results of testing conducted pursuant to the study on the department's internet website in a machine-readable format. Existing law requires the independent experts contracted to undertake the study, on or before July 1, 2022, to complete a peer-reviewed written document that includes specified elements. Existing law requires the division, on or before January 1, 2023, to make the results of the study, as per the required written document, available on its internet website. Existing law repeals these provisions on January 1, 2024.

This bill would extend the operation of these provisions until January 1, 2029. The bill would change the deadline for the department to post all results of the testing on its internet website from January 1, 2022, to January

1, 2026. The bill would change the deadline for independent experts contracted to undertake the study to complete the written document from July 1, 2022, to July 1, 2026. The bill would change the deadline for the division to make the results of the study available on its internet website from January 1, 2023, to January 1, 2028.

By extending provisions that the violation of which is a crime, this bill would impose a state-mandated local program.

(3) The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations, as defined, unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The act authorizes the State Board of Forestry and Fire Protection to exempt from some or all of those provisions of the act a person engaging in specified forest management activities, as prescribed, including the one-time conversion of less than 3 acres to a nontimber use, as specified.

This bill would authorize the board to adopt regulations for a waiver of the one-time limitation, as specified, including a process for an appeal of a denial of a waiver.

(4) The Plastic Pollution Prevention and Packaging Producer Responsibility Act covers certain single-use packaging and plastic single-use food service ware, as provided. As part of its comprehensive statutory scheme, the act requires producers of those covered materials to reduce and recycle the covered plastic material and to ensure that covered materials that are offered for sale, distributed, or imported in or into the state on or after January 1, 2032, are recyclable or compostable, as provided. The act prohibits a producer from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in the producer responsibility plan of a producer responsibility organization (PRO), as prescribed, for the source reduction, collection, processing, and recycling of covered material, except as provided. The act requires the producer responsibility plan to include certain information, including, but not limited to, arrangements with processors or recyclers to ensure that covered materials that are not collected through a curbside collection program are collected and recycled at a viable responsible end market.

This bill would instead require a producer responsibility plan to include arrangements with processors or recyclers to ensure that covered materials that are not collected through a curbside collection program or other local collection program are collected and recycled at a viable responsible end market. The bill would require the producer responsibility plan to include a mechanism and schedule for transferring specified fee proceeds to local jurisdictions. The bill would make technical amendments and other revisions to certain components of the act.

The act defines "covered material" to include, among others, wraps or wrappers and bags sold to food service establishments.

This bill would instead include as "covered material" wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments.

The act requires a PRO, commencing in the 2027 calendar year, and until January 1, 2037, to remit a $500,000,000 surcharge each year, as provided, to the California Department of Tax and Fee Administration (CDTFA) to be deposited into the California Plastic Pollution Mitigation Fund. The act requires the Department of Resources Recycling and Recovery to transmit to the CDTFA by March 1 of each year specified information regarding who is liable for the surcharge and in what amounts. The act requires the surcharge be paid 30 days from the date of CDTFA's assessment. The act requires a producer that is not in a PRO to pay the surcharge on July 1 of each year.

This bill would recast the surcharge as the "environmental mitigation surcharge." The bill would delete the July 1 date for the requirement for a producer not in a PRO to pay the environmental mitigation surcharge. The bill would instead require the CDTFA to mail to each person liable for the environmental mitigation surcharge a notice of determination within 90 days of receiving from the Department of Resources Recycling and Recovery the information regarding who is liable for the environmental mitigation surcharge and the amounts to be assessed.

(5) The California Integrated Waste Management Act of 1989 establishes the architectural paint recovery program, under which a manufacturer of architectural paint is required, individually or through a stewardship organization, to submit an architectural paint stewardship plan to the Department of Resources Recycling and Recovery to develop and implement a recovery program to reduce the generation of postconsumer architectural paint, promote the reuse of postconsumer architectural paint, and manage the end of life of postconsumer architectural paint. Existing law excludes from the program aerosol spray paint. Existing law requires a manufacturer of architectural paint or a stewardship organization to submit to the department on or before November 1 of each year a report describing its architectural paint recovery efforts.

This bill would, among other things, eliminate the exemption from the program of aerosol spray paint and would provide that architectural paint includes aerosol coating products, as defined. The bill would specify that aerosol coating products shall not be regulated under the program until the implementation date of a plan or plan amendment concerning aerosol coating products approved by the department or January 1, 2027, whichever occurs sooner, and would authorize the department to extend that implementation date. The bill would require, on or before July 1, 2026, a manufacturer or stewardship organization to submit an architectural paint stewardship plan or amendment to an approved architectural paint stewardship plan to the department. The bill would change the due date for the annual report to on or before May 15 of each year, would require certain information included in the annual report to be reported based on calendar year, and, commencing with the 2028 report, would require the annual report to include certain information on aerosol coating products. The bill would authorize the department, in coordination with the Department of Toxic Substances

Control, to adopt regulations to clarify and implement the architectural paint recovery program.

(6) This bill would incorporate additional changes to Section 42041 of the Public Resources Code proposed by SB 303 to be operative only if this bill and SB 303 are enacted and this bill is enacted last.

(7) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 3114 of the Public Resources Code is amended to read:

3114. (a) By July 30, 2019, and annually thereafter, the Department of Conservation, in consultation with the State Water Resources Control Board, shall report to the fiscal and relevant policy committees of the Legislature on the Underground Injection Control Program. The report shall include, but is not limited to, all of the following about activities in the previous 12 months:

(1) The number and location of underground injection control project approvals issued by the department, including projects that were approved but subsequently lapsed without having commenced injection.

(2) The monthly average number of pending project applications.

(3) The average length of time to obtain an underground injection control project approval from date of receipt of complete application to the date of issuance.

(4) The average amount of time to review an underground injection control project proposal by the division and the average combined review time by the State Water Resources Control Board and regional water quality control boards for each proposed underground injection control project.

(5) The number of project proposals pending for over one year.

(6) A list of pending aquifer exemptions, if any, and their status in the review process.

(7) The average length of time to process an aquifer exemption and the average amount of time to review a proposed aquifer exemption by the division and the average combined review time by the State Water Resources Control Board and regional water quality control boards for each aquifer exemption proposal.

(8) The number and description of underground injection control related violations identified.

(9) The number of enforcement actions taken by the department.

(10) The number of shut-in orders or requests to relinquish permits and the status of those orders or requests.

(11) The number, classification, and location of staff with work related to underground injection control.

(12) The number of staff vacancies for positions associated with underground injection control.

(13) Any state or federal legislation, administrative, or rulemaking changes to the program.

(14) The number of underground injection control projects reviewed for compliance with statutes and regulations in each district and a summary of findings from project reviews completed during the reporting period, including any steps taken to address identified deficiencies.

(15) The number of underground injection control projects that have not been reviewed for compliance with applicable statutes and regulations within the prior two years.

(16) Summary of significant milestones in their compliance schedule agreed to with the United States Environmental Protection Agency, as indicated in the March 9, 2015, letter to the division and the state board from the United States Environmental Protection Agency, including, but not limited to, regulatory updates, evaluations of injection wells, and aquifer exemption applications.

(17) Summary of activities undertaken by the underground injection control review panel established pursuant to Section 46 of Chapter 24 of the Statutes of 2015.

(b) This section shall become inoperative on October 1, 2029, and, as of January 1, 2030, is repealed.

SEC. 2. Section 3206.2 of the Public Resources Code is amended to read:

3206.2. (a) (1) The division, in consultation with the State Air Resources Board, shall initiate a study to be conducted by independent experts of fugitive emissions from idle, idle-deserted, and abandoned wells in the state. The independent experts selected shall have experience measuring and documenting emissions from multiple idle and abandoned wells and well sites, preferably at multiple locations within the state.

(2) In developing the parameters of the study, the division shall seek input from researchers with expertise in fugitive emissions, oil and gas operators, and people with relevant experience in nongovernmental organizations. The parameters of the study shall (A) be conducted based on a total well sample not to exceed 500 wells, (B) utilize existing information and technology tools that allow data collection without disruption to a well site, (C) limit surface disturbance associated with any emissions sampling, and (D) limit the total cost of the study to a maximum of one million dollars ($1,000,000).

(3) In implementing the study, the division shall seek to minimize costs to operators, and the testing conducted pursuant to this section shall not conflict with a scheduled routine maintenance operation of the well or associated equipment.

(4) The study shall be conducted to measure emissions of air pollutants, including, but not limited to, greenhouse gases, toxic air contaminants, and

volatile organic compounds, from idle wells, idle-deserted wells, and abandoned wells that can contribute to climate change or endanger occupational and public health and safety through their toxicological properties.

(5) The division shall work with the independent experts, oil and gas operators, and nongovernmental organizations to identify a stratified random sample of wells, and set of pollutants to be measured, from which measurement data can be used to extrapolate to the total number of idle, idle-deserted, and abandoned wells in the state. To the maximum extent possible, the sample shall include emissions data already collected from wells in the state.

(6) The sample of wells shall include idle-deserted wells identified by the division, previously abandoned wells, and idle wells that are ordered or permitted to be plugged and abandoned by the division.

(7) For purposes of undertaking the study, for a well that is selected for measurement as part of the sample but which is also scheduled to be plugged, abandoned, or reabandoned, before the initiation of physical work to plug, abandon, or reabandon the well the division or the contracted independent experts, with oversight from the division, shall have testing performed for leaks on the well and associated equipment either (A) in accordance with the United States Environmental Protection Agency Reference Method 21, as set forth in Appendix A-7 to Part 60 of Title 40 of the Code of Federal Regulations, as it read on January 1, 2019, (B) by using an optical gas imaging instrument that is operated by a technician with a certification or training in infrared theory, infrared inspections, and heat transfer principles, or (C) in accordance with an alternative methodology developed for the purposes of this study.

(8) If, pursuant to paragraph (7), a well is found to emit hydrocarbons in observable quantities using an optical imaging device or in concentrations greater than 1 percent by volume using a United States Environmental Protection Agency Reference Method 21 instrument when tested before the initiation of physical work, the division or the contracted independent experts shall ensure additional testing is performed using a direct measurement method consisting of high volume sampling, bagging, or a calibrated flow measuring instrument to determine the flow rate of atmospheric emissions of total and speciated hydrocarbon pollutants before the initiation of physical work.

(b) Oil and gas operators with wells selected for purposes of sampling under this section shall make reasonable efforts to permit access to the wells to the division and the independent experts contracted to undertake the study if adequate notice is provided to the operator to ensure appropriate safety precautions are taken at the well site. All oil and gas operators with wells selected for sampling shall submit to the division a certification stating that no action was taken to reduce emissions from the sampling site within 72 hours of the sampling taking place so as to reduce the value of measurements taken.

(c) On or before January 1, 2026, the department shall post all results of testing conducted pursuant to subdivision (a) on the department's internet website in a machine-readable format. On or before January 1, 2021, the department shall produce and post to the department's internet website an interim progress report describing the status of the study conducted pursuant to this section, including, but not limited to, the number of wells where testing has been completed, the number of wells remaining to be tested, study costs, and any preliminary testing results, as available and subject to the requirement described in paragraph (2) of subdivision (d).

(d) (1) On or before July 1, 2026, the independent experts contracted to undertake the study shall complete a written document that includes an executive summary of the findings, a description of the results, the findings, and an estimate of hydrocarbon emissions from the state's idle, idle-deserted, and abandoned wells.

(2) Before public release pursuant to subdivision (e), the written document shall be provided for peer review and comments, to the operators whose wells were included in the sample, and to a group of independent experts and nongovernmental organizations selected by the division.

(e) On or before January 1, 2028, the division shall make the results of the study, as per the written document required pursuant to subdivision (d), available on its internet website.

(f) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 3. Section 4584 of the Public Resources Code is amended to read:

4584. Upon determining that this exemption is consistent with the purposes of this chapter, the board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to any of the following:

(a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(b) The planting, growing, nurturing, shaping, shearing, removal, or harvest of immature trees for Christmas trees or other ornamental purposes or minor forest products, including fuelwood.

(c) The cutting or removal of dead, dying, or diseased trees of any size.

(d) Site preparation.

(e) Maintenance of drainage facilities and soil stabilization treatments.

(f) Timber operations on land managed by the Department of Parks and Recreation.

(g) (1) The one-time conversion of less than three acres to a nontimber use. A person, whether acting as an individual, as a member of a partnership, or as an officer or employee of a corporation or other legal entity, shall not obtain more than one exemption pursuant to this subdivision in a five-year period. If a partnership has as a member, or if a corporation or other legal entity has as an officer or employee, a person who has received this exemption within the past five years, whether as an individual, as a member of a partnership, or as an officer or employee of a corporation or other legal entity, then that partnership, corporation, or other legal entity is not eligible

for this exemption. "Person," for purposes of this subdivision, means an individual, partnership, corporation, or other legal entity.

(2) (A) Notwithstanding Section 4554.5, the board shall adopt regulations that do all of the following:

(i) Identify the required documentation of a bona fide intent to complete the conversion that an applicant will need to submit in order to be eligible for the exemption in paragraph (1).

(ii) Authorize the department to inspect the sites approved in conversion applications that have been approved on or after January 1, 2002, in order to determine that the conversion was completed within the two-year period described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 1104.1 of Title 14 of the California Code of Regulations.

(iii) Require the exemption pursuant to this subdivision to expire if there is a change in timberland ownership. The person who originally submitted an application for an exemption pursuant to this subdivision shall notify the department of a change in timberland ownership on or before five calendar days after a change in ownership.

(iv) The board may adopt regulations allowing a waiver of the five-year limitation described in paragraph (1) upon finding that the imposition of the five-year limitation would impose an undue hardship on the applicant for the exemption. The board may adopt a process for an appeal of a denial of a waiver.

(v) The board may adopt regulations allowing a waiver of the one-time limitation described in paragraph (1) upon finding that the imposition of the one-time limitation would impose an undue hardship on the applicant. The board may adopt a process for an appeal of a denial of a waiver.

(B) The application form for the exemption pursuant to paragraph (1) shall prominently advise the public that a violation of the conversion exemption, including a conversion applied for in the name of someone other than the person or entity implementing the conversion in bona fide good faith, is a violation of this chapter and penalties may accrue up to ten thousand dollars ($10,000) for each violation pursuant to Article 8 (commencing with Section 4601).

(h) An easement granted by a right-of-way construction agreement administered by the federal government if timber sales and operations within or affecting the area are reviewed and conducted pursuant to the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(i) (1) The cutting or removal of trees in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 150 feet on each side from an approved and legally permitted structure that complies with the California Building Standards Code, when that cutting or removal is conducted in compliance with this subdivision. For purposes of this subdivision, an "approved and legally permitted structure" includes only structures that are designed for human occupancy, garages, barns, stables, and structures used to enclose fuel tanks.

(2) (A) The cutting or removal of trees pursuant to this subdivision is limited to cutting or removal that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns and shall be in accordance with any regulations adopted by the board pursuant to this section.

(B) Trees shall not be cut or removed pursuant to this subdivision by the clearcutting regeneration method, by the seed tree removal step of the seed tree regeneration method, or by the shelterwood removal step of the shelterwood regeneration method.

(3) (A) All fuel treatments conducted pursuant to this subdivision that do not comply with board rules and regulations may be determined to be a nuisance and subject to abatement by the department or the city or county having jurisdiction.

(B) The costs incurred by the department, city, or county, as the case may be, to abate the nuisance upon a parcel of land subject to the timber operations, including, but not limited to, investigation, boundary determination, measurement, and other related costs, may be recovered by special assessment and lien against the parcel of land by the department, city, or county. The assessment may be collected at the same time and in the same manner as ordinary ad valorem taxes, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ad valorem taxes.

(4) All timber operations conducted pursuant to this subdivision shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances. This paragraph does not authorize the cutting, removal, or sale of timber or other solid wood forest products within an area where timber harvesting is prohibited or otherwise restricted pursuant to the rules or regulations adopted by the board.

(5) (A) The board shall adopt regulations, initially as emergency regulations in accordance with subparagraph (B), that the board considers necessary to implement and to obtain compliance with this subdivision.

(B) The emergency regulations adopted pursuant to subparagraph (A) shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(j) (1) The cutting or removal of trees on the person’s property that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break. An exemption pursuant to this subdivision shall be known as the Small Timberland Owner Exemption. The cutting or removal of trees in compliance with this subdivision shall be subject to all of the following conditions:

(A) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(B) The residual stocking standards are consistent with the following standards and shall be achieved through uneven-aged management, as defined in Section 895.1 of Title 14 of the California Code of Regulations excluding group selection:

(i) On Site I lands at least 150 square feet of basal area shall be retained within the coast forest district, as defined in Section 907 of Title 14 of the California Code of Regulations, while at least 100 square feet of basal area shall be retained within the northern and southern districts, as defined in Section 908 or 909, respectively, of Title 14 of the California Code of Regulations.

(ii) On Site II lands at least 100 square feet of basal area shall be retained within the coast district, while at least 75 square feet of basal area shall be retained within the northern and southern districts.

(iii) On Site III lands at least 75 square feet of basal area shall be retained.

(C) (i) Forest management activities will increase the quadratic mean diameter of the stand.

(ii) Increases in quadratic mean diameter shall only consider trees greater than eight inches in diameter at breast height. The registered professional forester responsible for preparation of the notice of exemption shall report the expected postharvest increase in quadratic mean diameter.

(D) (i) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed through the harvested area.

(ii) No trees of the genus quercus that are greater than 26 inches in diameter at stump height, measured 8 inches above ground level, shall be harvested under a notice of exemption submitted pursuant to this subdivision.

(iii) No trees greater than 32 inches in diameter at stump height, measured 8 inches above ground level, shall be harvested under a notice of exemption submitted pursuant to this subdivision.

(iv) The six largest trees per acre within the boundaries of a notice of exemption submitted pursuant to this subdivision shall not be harvested.

(v) The postharvest composition of tree species shall be representative of the preharvest stand condition and demonstrate progression towards climax forest conditions, unless the registered professional forester provides justification explaining how modification of species diversity will benefit forest health and resiliency.

(E) The submitted notice of exemption shall include a description of the preharvest stand structure and a statement of the minimum expected postharvest stocking.

(F) All trees harvested or all trees retained shall be marked by, or under the supervision of, a registered professional forester before felling operations begin.

(G) The board shall adopt regulations for the treatment of understory vegetation and standing dead fuels, canopy closure, clearance to base of live crown, or ladder fuels, that could promote the spread of wildfire. A fuel reduction effort conducted under a submitted notice of exemption pursuant

to this subdivision shall comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(H) A notice of exemption submitted to the department that is within the coast forest district is submitted for a small forestland owner who owns 60 acres or less of timberland within a single planning watershed.

(I) A notice of exemption submitted to the department that is within the northern forest district or the southern forest district is submitted for a small forestland owner who owns 100 acres or less of timberland within a single planning watershed.

(2) (A) All timber operations conducted pursuant to this subdivision may only occur once on any given acre per any 10-year period of time. The department shall only grant a maximum of three exemptions under the Small Timberland Owner Exemption per landowner.

(B) Except for the harvesting of dead, diseased, or dying trees, during this 10-year period the department shall not approve a plan, as defined in Section 895.1 of Title 14 of the California Code of Regulations, that allows even-aged silviculture prescriptions. During this 10-year period of time a registered professional forester shall not submit a notice of exemption pursuant to subdivision (k) on portions of the property subject to an exemption pursuant to this subdivision.

(3) The department may conduct an onsite inspection to determine compliance with this subdivision. The department may notify the regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey before conducting the onsite inspection. The regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey may conduct an inspection with the department.

(4) (A) This subdivision shall be operative for a period of five years after the effective date of emergency regulations as adopted by the board and as of that date is inoperative.

(B) The board shall notify the Secretary of State when emergency regulations have been adopted.

(k) (1) The harvesting of trees, limited to those trees that eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns. An exemption pursuant to this paragraph shall be known as the Forest Fire Prevention Exemption.

(2) The board may authorize an exemption pursuant to paragraph (1) only if the tree harvesting will decrease fuel continuity and increase the quadratic mean diameter of the stand, and the tree harvesting area will not exceed 300 acres. Increases in quadratic mean diameter shall only consider trees greater than eight inches in diameter at breast height. The notice of exemption may be authorized only if all of the conditions specified in paragraphs (3) to (9), inclusive, are met.

(3) A registered professional forester shall prepare the notice of exemption and submit it to the director.

(4) (A) The submitted notice of exemption shall include a description of the preharvest stand structure and a statement of the postharvest stand stocking levels and the expected postharvest increase in quadratic mean diameter.

(B) The level of residual stocking shall be consistent with maximum sustained production of high-quality timber products. The residual stand shall consist primarily of healthy and vigorous dominant and codominant trees from the preharvest stand. Stocking shall not be reduced below the standards required by the following provisions that apply to the exemption at issue:

(i) Clauses 1 to 4, inclusive, of subparagraph (A) of paragraph (1) of subdivision (a) of Sections 913.3, 933.3, and 953.3 of Title 14 of the California Code of Regulations, where appropriate.

(C) If the preharvest dominant and codominant crown canopy is occupied by trees less than 14 inches in diameter at breast height, a minimum of 100 trees over four inches in diameter at breast height shall be retained per acre for Site I, II, and III lands, and a minimum of 75 trees over four inches in diameter at breast height shall be retained per acre for Site IV and V lands.

(D) All trees that are harvested or all trees that are retained shall be marked or sample marked by, or under the supervision of, a registered professional forester before felling operations begin. The board shall adopt regulations for sample marking for this section in Title 14 of the California Code of Regulations. Sample marking shall be limited to homogenous forest stand conditions typical of plantations.

(5) (A) The board shall adopt regulations for the treatment of understory vegetation and standing dead fuels, canopy closure, clearance to base of live crown, or ladder fuels, that could promote the spread of wildfire. A fuel reduction effort conducted under a submitted notice of exemption pursuant to this subdivision shall comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.

(B) The postharvest stand shall not contain more than 200 trees over three inches in diameter per acre.

(C) Vertical spacing shall be achieved by treating dead fuels to a minimum clearance distance of eight feet measured from the base of the live crown of the postharvest dominant and codominant trees to the top of the dead surface fuels.

(D) The standards required by subparagraphs (A) to (C), inclusive, shall be achieved on approximately 80 percent of the treated area.

(6) Before the submission of a notice of exemption to the department, the registered professional forester responsible for submitting the notice shall designate temporary road locations, landing locations, tractor road crossings of class III watercourses, unstable areas, or connected headwall swales on the ground and map their locations.

(7) The construction or reconstruction of temporary roads on slopes of 30 percent or less shall be allowed if all of the following conditions are met:

(A) Temporary roads or landings shall not be located on unstable areas, as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(B) Temporary roads shall be single-lane in width.

(C) Temporary roads shall not be located across a connected headwall swale, as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(D) Construction or reconstruction of temporary roads, landings, or watercourse crossings shall not occur during the winter operating period. Pursuant to subdivision (g) of Sections 923.6, 943.6, and 963.6, as applicable, of Title 14 of the California Code of Regulations, roads and landings used for log hauling or other heavy equipment uses during the winter period shall occur on a stable operating surface and, where necessary, be surfaced with rock to a depth and quantity sufficient to maintain the stable operating surface. Use shall be prohibited on roads that are not hydrologically disconnected and exhibit saturated soil conditions. Timber operations during the winter period shall comply with paragraphs (1) and (2) of subdivision (c) of Sections 914.7, 934.7, and 954.7, as applicable, of Title 14 of the California Code of Regulations.

(E) Use of temporary roads shall comply with the operational provisions of Article 12 (commencing with Section 923) of Subchapter 4 of Chapter 4 of Division 1.5 of Title 14 of the California Code of Regulations, and recognize guidance on hydrologic disconnection in Technical Rule Addendum Number 5.

(F) No logging road or landings construction or reconstruction activities of any kind shall occur within 200 feet of class I and class II watercourses or within 50 feet of a class III watercourse.

(G) The landowner shall retain a registered professional forester who is available to provide professional advice to the licensed timber operator and timberland owner throughout the active timber operations. The name, address, telephone number, and registration number of the retained registered professional forester shall be provided on the submitted notice of exemption. This professional advice shall include overseeing the construction or reconstruction of any temporary roads or landings and advising on necessary mitigation to avoid potential impacts to associated watershed and forest resources. The registered professional forester shall also comply with Section 1035.2 of Title 14 of the California Code of Regulations, relating to interaction between the licensed timber operator and the registered professional forester.

(H) The registered professional forester responsible for submitting the notice of exemption shall affirm that the construction or reconstruction of each temporary road is necessary to provide access to harvest areas where no feasible alternative exists. The submitted notice of exemption shall include the number and cumulative length of temporary roads that will be constructed or reconstructed.

(I) (i) Temporary road construction or reconstruction, shall be limited to no more than two miles of road per ownership in a planning watershed per any five-year period.

(ii) For each exemption affecting less than 40 acres, all temporary roads constructed or reconstructed under this exemption shall not exceed a cumulative length of 300 feet.

(iii) For each exemption affecting between 40 and 80 acres, all temporary roads constructed or reconstructed under this exemption shall not exceed a cumulative length of between 300 and 600 feet, as determined on a pro rata basis by the total acreage affected by the exemption.

(iv) For each exemption affecting over 80 acres, all temporary roads constructed or reconstructed under the exemption shall not exceed a cumulative length of 600 feet. The submitted notice of exemption shall list the number of acres affected and the cumulative length of the road in feet.

(v) Temporary roads constructed or reconstructed under this exemption shall not be connected to other temporary roads constructed under previous or subsequent exemptions filed under this paragraph.

(vi) All temporary roads shall be abandoned using proactive measures that have been applied to effectively remove them from the permanent road network, in accordance with the definition of abandoned road as defined in Section 895.1 of Title 14 of the California Code of Regulations.

(vii) This paragraph shall not be interpreted to permit road construction or reconstruction except as authorized under the Forest Fire Prevention Exemption, pursuant to this paragraph.

(viii) No trees larger than 36 inches in diameter at stump height, measured 8 inches above ground level, shall be removed for the purposes of road construction or reconstruction under a notice of exemption submitted pursuant to this subdivision. A tree that is between 30 and 36 inches in diameter at stump height, measured 8 inches above ground level, may be removed for the purposes of road construction or reconstruction under a notice of exemption submitted pursuant to this subdivision only if there are no feasible alternatives for the road placement.

(8) Except within constructed or reconstructed temporary road prisms, only trees less than 30 inches in stump diameter, measured at eight inches above ground level, may be removed.

(9) All timber operations conducted pursuant to this subdivision shall only occur within the most recent version of the department's Fire Hazard Severity Zone Map in the moderate, high, and very high fire threat zones.

(10) If pesticides or herbicides will be used within the boundaries of an area covered by a notice of exemption pursuant to this paragraph within one year of director acceptance, the timberland owner shall notify the appropriate regional water quality control board 10 days before application of any pesticides or herbicides.

(11) After the timber operations are complete, the department shall conduct an onsite inspection to determine compliance with this subdivision and whether appropriate enforcement action should be initiated. The department shall notify the appropriate regional water quality control board, the Department of Fish and Wildlife, and the California Geologic Survey seven days prior to conducting the onsite inspection. The regional water

quality control board, the Department of Fish and Wildlife, and the California Geologic Survey may conduct an inspection with the department.

(12) This subdivision shall become inoperative on January 1, 2026.

(*l*) The cutting or removal of trees to restore and conserve California black or Oregon white oak woodlands and associated grasslands, if all of the following requirements are met:

(1) A registered professional forester shall prepare the notice of exemption and submit it to the director. The notice shall include all of the following:

(A) A certification signed by the registered professional forester that a minimum of 35 square feet of basal area per acre of California black or Oregon white oak, or both, occupy the proposed treatment area at the time the notice is prepared and the timber operation is designed to restore and conserve California black and Oregon white oak woodlands and associated grasslands.

(B) A description of the preharvest stand structure and a statement of the postharvest stand stocking levels.

(2) No tree larger than 26 inches in diameter at stump height shall be harvested for commercial purposes, which includes use for saw logs, posts and poles, fuel wood, biomass, or other forest products.

(3) Only conifers within 300 feet of a California black or Oregon white oak that are at minimum four inches in diameter at breast height may be harvested.

(4) The total area exempted pursuant to this subdivision shall not exceed 300 acres per property per five-year period.

(5) Conifer shall be reduced to less than 25 percent of the combined hardwood and conifer postharvest stand stocking levels.

(6) No more than 20 percent of the total basal area of preexisting oak stock shall be cut or removed during harvest and a minimum of 35 square feet of basal area per acre of California black or Oregon white oak, or both, shall be maintained postharvest.

(7) Slash shall be configured so as to minimize the risk of fire mortality to the remaining oak trees.

(8) The board shall adopt regulations to implement this subdivision.

(9) This subdivision shall not apply to the Southern Subdistrict of the Coast Forest District, as defined in Section 895.1 of Title 14 of the California Code of Regulations, or the Southern Forest District, as defined in Section 909 of Title 14 of the California Code of Regulations.

(m) (1) The board may exempt from this chapter, or portions of this chapter, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person's property in compliance with Sections 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak for a distance of not more than 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with this subdivision and all of the following conditions are met:

(A) The notice of exemption is prepared, signed, and submitted by a registered professional forester to the department.

(B) For the areas between 150 and 300 feet from the habitable structure, the operations meet all of the following provisions:

(i) The residual stocking standards are consistent with Sections 913.2, 933.2, and 953.2 of Title 14 of the California Code of Regulations, as appropriate.

(ii) Activities within this area will increase the quadratic mean diameter of the stand.

(iii) The residual stand consists primarily of healthy and vigorous dominant and codominant trees from the preharvest stand, well distributed throughout the harvested area.

(iv) Postharvest slash treatment and stand conditions will lead to more moderate fire behavior in the professional judgment of the registered professional forester who submits the notice of exemption.

(v) Any additional guidance for slash treatment and postharvest stand conditions and any other issues deemed necessary that are consistent with this section, as established by the board.

(2) For purposes of this subdivision, "habitable structure" means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single-family homes, multidwelling structures, mobile and manufactured homes, and condominiums. For purposes of this subdivision, "habitable structure" does not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

(3) This subdivision shall become inoperative on January 1, 2026.

SEC. 4. Section 42040 of the Public Resources Code is amended to read:

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 all 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) (A) 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 covered material.

(B) 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.

(3) (A) In 2021, only 5 percent of postconsumer plastic waste in the United States was recycled, down from a high of 9.5 percent in 2014, when the United States 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.

(B) It is the intent of the Legislature to establish a producer responsibility program designed to ensure that producers of single-use packaging and food service ware covered by this program take responsibility for the costs associated with the end-of-life management of that material and ensure that the material is recyclable or compostable. This standardization will reduce consumer confusion regarding recycling and composting, reduce costs to ratepayers, and increase system efficiency.

(C) It is also the intent of the Legislature that these improvements will allow California, going forward, to better harmonize curbside collection programs as local jurisdictions will collect material identified as either recyclable or compostable if that material is found to be suitable for curbside collection.

(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 management 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 be required to eliminate, redesign, or shift packaging or food service ware to a covered material category that can more efficiently meet the requirements of this chapter.

(5) This chapter does not modify, limit, or abrogate in any manner the existing rights of an owner of recyclable materials to sell or donate those materials.

SEC. 5. Section 42041 of the Public Resources Code is amended to read:

42041. For purposes of this chapter, the following definitions apply:

(a) "Advisory board" means the producer responsibility advisory board established pursuant to Section 42070.

(b) "Bulk or large format packaging" means packaging for a large amount of a product in a large packaging, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

(c) "California circular economy administrative fee" means the fee imposed by the department pursuant to Section 42053.5.

(d) "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.

(e) (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" includes both of the following:

(i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.

(ii) Wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments.

(2) Notwithstanding paragraph (1), "covered material" does not include any of the following:

(A) Packaging used for any of 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)).

(ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

(iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) 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.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under 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 classified by the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with products covered under the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7.

(H) (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) Until January 1, 2027, the producer annually demonstrates to the department that the material has had a recycling rate of 65 percent for three consecutive years. On and after January 1, 2027, the producer demonstrates to the department that the material has had a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

(f) "Covered material category" means a category that includes covered material of a similar type and form, as determined by the department.

(g) "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.

(h) "Department" means the Department of Resources Recycling and Recovery.

(i) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(j) "Eliminate" or "elimination," with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

(k) "Expanded polystyrene" means blown polystyrene and expanded or 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).

(*l*) "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. "Lightweighting" 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.

(m) "Local jurisdiction" means a city, county, city and county, 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 special district that provides solid waste collection services.

(n) "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 of the Health and Safety Code.

(o) "Malus fee" means a charge imposed by a PRO on a participant producer for a covered material due to the adverse environmental or public health impacts of the covered material.

(p) "Materials recovery facility" or "MRF" means a recycling facility that receives recyclable material, including, but not limited to, any covered material, for mechanical or manual sorting into specification-grade commodities for sale to a broker or end market.

(q) "Needs assessment" means a needs assessment prepared pursuant to Section 42067.

(r) "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.

(s) "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 bundle, sell in bulk, brand, or display the product.

(3) Transport packaging or tertiary packaging intended to 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) An element of the packaging or food service ware with a de minimis weight or volume, which is not an independent plastic component, 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.

(t) "Plastic" means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. "Plastic" includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density

polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). "Plastic" does not include natural rubber or naturally occurring polymers such as proteins or starches.

(u) "Plastic component" means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

(v) "Processing" means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market.

(w) (1) "Producer" means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into 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.

(5) For purposes of this chapter, the sale of covered materials shall be deemed to occur in the state if the covered materials are delivered to the purchaser in the state.

(x) "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 formed for the purpose of implementing a plan to meet the requirements of this chapter.

(y) "Producer responsibility plan" or "plan," unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1.

(z) "Rate of inbound contamination" means the amount of nonrecyclable or noncompostable materials arriving at a materials recovery facility or other recycling or composting facility.

(aa) (1) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and

returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.

(2) "Recycle" or "recycling" does not include any of the following:

(A) Combustion.

(B) Incineration.

(C) Energy generation.

(D) Fuel production, except for anaerobic digestion of source separated organic materials.

(E) Other forms of disposal.

(3) To be considered recycled, covered material shall be sent to a responsible end market.

(4) (A) The department may adopt regulations to define guidelines and verification requirements for covered material shipped out of state and exported to other countries for recycling, including processing requirements, and contamination standards, or to otherwise implement this paragraph.

(B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:

(i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.

(ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.

(C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.

(D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.

(5) The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

(ab) "Recycling rate" means the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192, and the amount of covered material recycled, unless and until the department adopts a new methodology for calculating the recycling rate by regulation.

(ac) "Recycling service provider" means a solid waste enterprise that provides solid waste handling services on behalf of a local jurisdiction.

(ad) "Responsible end market" means a materials market in which the recycling and recovery of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety. The department may adopt regulations to identify responsible end markets and to establish criteria regarding benefits to the environment and minimizing risks to public health and worker health and safety.

(ae) (1) "Retailer" or "wholesaler" means the person or entity who sells covered material in the state to purchasers or offers to purchasers the covered material in the state through any means, including, but not limited to, any of the following:

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

(B) Electronically through the internet.

(C) Telephone.

(D) Mail.

(E) Direct sales.

(2) A person who sells covered material as a third-party seller using an online marketplace as described in paragraph (3) shall be considered the retailer or wholesaler for purposes of such transactions. The owner or operator of the online marketplace shall not be considered the retailer or wholesaler for such sales.

(3) For purposes of this subdivision, "online marketplace" means a consumer-directed, electronically accessed platform in which all of the following are true:

(A) The platform includes features that enable third-party sellers to sell consumer products directly to consumers in the state without the owner or operator of the platform involved in the transaction other than by providing order processing, payment, storage, shipping, or delivery services.

(B) Third-party sellers use the features described in subparagraph (A) to sell directly to consumers in the state, with title to the consumer product passing from the third-party sellers directly to consumers and not being held by the owner or operator of the online marketplace at any point during the transaction, including upon receipt of the order and throughout the order fulfillment process.

(C) Except as provided by subparagraph (E), the owner or operator of the platform does not directly or indirectly control the covered material used in packaging and shipping of a consumer product in this state.

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

(E) Third-party sellers agree, pursuant to the platform's terms and conditions or other enforceable agreement, that they will not use the platform to offer for sale, sell, or distribute into the state covered material that does not meet the requirements of this chapter.

(af) "Reusable" or "refillable" or "reuse" or "refill," 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 packaging or food service ware can be conveniently and safely reused or refilled for multiple cycles.

(D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.

(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 packaging that may be refilled to ensure the packaging or food service ware can be conveniently and safely reused or refilled by the consumer multiple times.

(ag) "Right-size" or "right-sizing" means reducing the amount of material used to package an item by reducing unnecessary space or eliminating unnecessary components of the packaging.

(ah) "Rural area" has the same meaning as defined in Section 50101 of the Health and Safety Code.

(ai) "Single use" means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

(aj) "Source reduction" means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. "Source reduction" does not include either of the following:

(1) 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.

(2) Switching from virgin covered material to postconsumer recycled content.

(ak) "Source reduction plan" means the plan prepared as part of the PRO plan in accordance with Section 42057.

(al) "Unexpended funds" means moneys 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 administrative fees.

SEC. 5.5. Section 42041 of the Public Resources Code is amended to read:

42041. For purposes of this chapter, the following definitions apply:

(a) “Advisory board” means the producer responsibility advisory board established pursuant to Section 42070.

(b) “Bulk or large format packaging” means packaging for a large amount of a product in a large packaging, thereby offsetting the need for multiple smaller packaging units for the same amount of product.

(c) “California circular economy administrative fee” means the fee imposed by the department pursuant to Section 42053.5.

(d) “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.

(e) (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 serviceware, 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 serviceware” includes both of the following:

(i) Trays, plates, bowls, clamshells, lids, cups, utensils, stirrers, hinged or lidded containers, and straws.

(ii) Wraps or wrappers and bags used in the packaging of food offered for sale or provided to customers by food service establishments.

(2) Notwithstanding paragraph (1), “covered material” does not include any of the following:

(A) Packaging used for any of 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)).

(ii) Drugs that are used for animal medicines, including, but not limited to, parasiticide products for animals.

(iii) Products intended for animals that are regulated as animal drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), or the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(iv) Infant formula, as defined in Section 321(z) of Title 21 of the United States Code.

(v) Medical food, as defined in Section 360ee(b)(3) of Title 21 of the United States Code.

(vi) 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.

(B) Packaging used to contain products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(C) Plastic packaging containers that are used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under 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 classified by the 2012 federal Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200).

(E) Beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500)).

(F) Packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years, as determined by the department.

(G) Packaging associated with products covered under the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7.

(H) (i) Covered material for which the producer demonstrates to the department that the covered material meets all of the following criteria:

(I) The covered material is not collected through a residential recycling collection service.

(II) The covered material does not undergo separation from other materials at a commingled recycling processing facility.

(III) The covered material is recycled at a responsible end market.

(IV) Until January 1, 2027, the producer annually demonstrates to the department that the material has had a recycling rate of 65 percent for three consecutive years. On and after January 1, 2027, the producer demonstrates to the department that the material has had a recycling rate at or over 70 percent annually, as demonstrated to the department every two years.

(ii) If only a portion of the covered material sold in or into the state by a producer meets the criteria of clause (i), only the portion of the covered material that meets the criteria of clause (i) is exempt from this chapter and any portion that does not meet the criteria is a covered material for purposes of this chapter.

(f) "Covered material category" means a category that includes covered material of a similar type and form, as determined by the department.

(g) "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.

(h) "Department" means the Department of Resources Recycling and Recovery.

(i) "Disadvantaged community" means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area identified as a disadvantaged unincorporated community pursuant to Section 65302.10 of the Government Code.

(j) "Eliminate" or "elimination," with respect to source reduction, means the removal of a plastic component from a covered material without replacing that component with a nonplastic component.

(k) "Expanded polystyrene" means blown polystyrene and expanded or extruded foams that are thermoplastic petrochemical materials using 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).

(*l*) "Lightweighting" means reducing the weight or amount of material used in a specific packaging or food serviceware without functionally changing the packaging or food serviceware. "Lightweighting" 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.

(m) "Local jurisdiction" means a city, county, city and county, 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 special district that provides solid waste collection services.

(n) "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 of the Health and Safety Code.

(o) "Malus fee" means a charge imposed by a PRO on a participant producer for a covered material due to the adverse environmental or public health impacts of the covered material.

(p) "Materials recovery facility" or "MRF" means a recycling facility that receives recyclable material, including, but not limited to, any covered material, for mechanical or manual sorting into specification-grade commodities for processing or for sale to a broker or end market.

(q) "Needs assessment" means a needs assessment prepared pursuant to Section 42067.

(r) "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.

(s) "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 bundle, sell in bulk, brand, or display the product.

(3) Transport packaging or tertiary packaging intended to 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) An element of the packaging or food serviceware with a de minimis weight or volume, which is not an independent plastic component, 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.

(t) “Plastic” means a synthetic or semisynthetic material chemically synthesized by the polymerization of organic substances that can be shaped into various rigid and flexible forms, and includes coatings and adhesives. “Plastic” includes, without limitation, polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), low density polyethylene (LDPE), polypropylene (PP), polystyrene (PS), polylactic acid (PLA), and aliphatic biopolyesters, such as polyhydroxyalkanoate (PHA) and polyhydroxybutyrate (PHB). “Plastic” does not include natural rubber or naturally occurring polymers such as proteins or starches.

(u) “Plastic component” means any single piece of covered material made partially or entirely of plastic. A plastic component may constitute the entirety of the covered material or a separate or separable piece of the covered material.

(v) “Processing” means to sort, segregate, break or flake, and clean material to prepare it to meet the specification for sale to a responsible end market in which the recovery of materials and the disposal of contaminants is conducted in a way that prioritizes benefits to the environment and minimizes risks to public health and worker health and safety.

(w) (1) “Producer” means a person who manufactures a product that uses covered material and who owns or is the licensee of the brand or trademark under which the product is used in a commercial enterprise, sold, offered for sale, or distributed in the state.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered material is the owner or, if the owner is not in the state, the exclusive licensee of a brand or trademark under which the product using the covered material is used in a commercial enterprise, sold, offered for sale, or distributed in the state. For purposes of this subdivision, a licensee is a person holding the exclusive right to use a

trademark or brand in the state in connection with the manufacture, sale, or distribution of the product packaged in or made from the covered material.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered material is the person who sells, offers for sale, or distributes the product that uses the covered material in or into 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.

(5) For purposes of this chapter, the sale of covered materials shall be deemed to occur in the state if the covered materials are delivered to the purchaser in the state.

(x) "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 formed for the purpose of implementing a plan to meet the requirements of this chapter.

(y) "Producer responsibility plan" or "plan," unless context requires otherwise, means the plan produced by a PRO, or by a producer that chooses to assume responsibility to comply with this chapter individually, and submitted to the advisory board and department pursuant to Section 42051.1.

(z) "Rate of inbound contamination" means the amount of nonrecyclable or noncompostable materials arriving at a materials recovery facility or other recycling or composting facility.

(aa) (1) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, including compost, that meet the quality standards necessary to be used in the marketplace.

(2) "Recycle" or "recycling" does not include any of the following:

(A) Combustion.

(B) Incineration.

(C) Energy generation.

(D) Fuel production, except for anaerobic digestion of source separated organic materials.

(E) Other forms of disposal.

(3) To be considered recycled, covered material shall be sent to a responsible end market.

(4) (A) The department may adopt regulations to define guidelines and verification requirements for the PRO and for any producers complying with this chapter pursuant to paragraph (2) of subdivision (b) of Section 42051, for covered material shipped out of state and exported to other countries for recycling, including processing requirements and contamination standards, or to otherwise implement this paragraph. The PRO or producer shall ensure and certify to the department that it has included any applicable

guidelines and verification requirements in any contracts with entities involved in the processing or recycling of covered materials.

(B) For any mixture of plastic waste exported to another country, the PRO or producer shall certify to the department that the processes and recycling technologies used meet both of the following requirements, as determined by the department:

(i) The plastic waste is a mixture of plastic types consisting only of one or more of polyethylene, polypropylene, or polyethylene terephthalate, and the export is destined for separate recycling of each material.

(ii) The plastic waste export is not prohibited by an applicable law or treaty of the destination jurisdiction, and the import of the plastic waste into the destination jurisdiction will be conducted in accordance with all applicable laws and treaties of that destination jurisdiction.

(C) For any mixture of plastic waste exported to other states or countries, the PRO or producer shall certify to the department that the recycling technology used meets the requirements of this subdivision.

(D) In meeting the requirements of subparagraphs (B) and (C), the PRO or producer shall provide documentation necessary to verify this certification and shall make the certification under penalty of perjury.

(5) The department's regulations shall encourage recycling that minimizes generation of hazardous waste, generation of greenhouse gases, environmental impacts, environmental justice impacts, and public health impacts. The regulations shall include criteria to exclude plastic recycling technologies that produce significant amounts of hazardous waste.

(ab) "Recycling rate" means the percentage, overall and by category, of covered material sold, offered for sale, distributed, or imported in the state that is ultimately recycled. The recycling rate shall be calculated as the amount of covered material that is recycled in a given year divided by the total amount of covered material disposed of, as defined in subdivision (b) of Section 40192, and the amount of covered material recycled, unless and until the department adopts a new methodology for calculating the recycling rate by regulation.

(ac) "Recycling service provider" means a solid waste enterprise that provides solid waste handling services on behalf of a local jurisdiction.

(ad) (1) "Responsible end market" means an entity that uses recycled covered material for the manufacturing of products when the manufacturing, including the disposal of contaminates, is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.

(2) "Responsible end market" does not include entities that process covered material in a manner that is prohibited under the definition of "recycling" pursuant to paragraph (2) of subdivision (aa).

(3) The PRO or producer shall ensure and certify to the department that it has included any applicable regulations and guidelines in any contracts with entities providing responsible end markets for covered materials.

(ae) (1) "Retailer" or "wholesaler" means the person or entity who sells covered material in the state to purchasers or offers to purchasers the covered

material in the state through any means, including, but not limited to, any of the following:

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

(B) Electronically through the internet.

(C) Telephone.

(D) Mail.

(E) Direct sales.

(2) A person who sells covered material as a third-party seller using an online marketplace as described in paragraph (3) shall be considered the retailer or wholesaler for purposes of such transactions. The owner or operator of the online marketplace shall not be considered the retailer or wholesaler for such sales.

(3) For purposes of this subdivision, "online marketplace" means a consumer-directed, electronically accessed platform in which all of the following are true:

(A) The platform includes features that enable third-party sellers to sell consumer products directly to consumers in the state without the owner or operator of the platform involved in the transaction other than by providing order processing, payment, storage, shipping, or delivery services.

(B) Third-party sellers use the features described in subparagraph (A) to sell directly to consumers in the state, with title to the consumer product passing from the third-party sellers directly to consumers and not being held by the owner or operator of the online marketplace at any point during the transaction, including upon receipt of the order and throughout the order fulfillment process.

(C) Except as provided by subparagraph (E), the owner or operator of the platform does not directly or indirectly control the covered material used in packaging and shipping of a consumer product in this state.

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

(E) Third-party sellers agree, pursuant to the platform's terms and conditions or other enforceable agreement, that they will not use the platform to offer for sale, sell, or distribute into the state covered material that does not meet the requirements of this chapter.

(af) "Reusable" or "refillable" or "reuse" or "refill," in regard to packaging or food serviceware, means either of the following:

(1) For packaging or food serviceware that is reused or refilled by a producer, it satisfies all of the following:

(A) Explicitly designed and marketed to be used 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 packaging or food serviceware can be conveniently and safely reused or refilled for multiple cycles.

(D) Repeatedly recovered, inspected, and repaired, if necessary, and reissued into the supply chain for reuse or refill for multiple cycles.

(2) For packaging or food serviceware that is reused or refilled by a consumer, it satisfies all of the following:

(A) Explicitly designed and marketed to be used 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 packaging that may be refilled to ensure the packaging or food serviceware can be conveniently and safely reused or refilled by the consumer multiple times.

(ag) "Right-size" or "right-sizing" means reducing the amount of material used to package an item by reducing unnecessary space or eliminating unnecessary components of the packaging.

(ah) "Rural area" has the same meaning as defined in Section 50101 of the Health and Safety Code.

(ai) "Single use" means conventionally disposed of after a single use or not sufficiently durable or washable to be, or not intended to be, reusable or refillable.

(aj) "Source reduction" means the reduction in the amount of covered material created by a producer relative to a baseline established pursuant to subdivision (b) of Section 42057. Methods of source reduction include, but are not limited to, shifting covered material to reusable or refillable packaging or a reusable product or eliminating unnecessary packaging. "Source reduction" does not include either of the following:

(1) 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.

(2) Switching from virgin covered material to postconsumer recycled content.

(ak) "Source reduction plan" means the plan prepared as part of the PRO plan in accordance with Section 42057.

(al) "Unexpended funds" means moneys 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 administrative fees.

SEC. 6. Section 42051.1 of the Public Resources Code is amended to read:

42051.1. (a) As a condition of producer responsibility plan approval, the PRO plan shall comply with the regulations adopted by the department pursuant to Section 42060. The PRO shall submit a plan and budget that includes the provisions necessary for the department to ensure producers covered under the plan comply with this chapter.

(b) The plan shall include all of the following:

(1) Actions and investments that the PRO will implement in order to meet the requirements of this chapter and address the needs and investments identified in the needs assessment.

(2) The source reduction plan required pursuant to Section 42057. For any covered material that is not reasonably anticipated by the PRO to achieve the requirements of this chapter, the PRO shall include in the plan a timeline and actions to discontinue use of the covered material category.

(3) Technologies and means that will be utilized to achieve recycling requirements, including demonstration that the means and technologies meet the conditions specified in subdivision (aa) of Section 42041.

(c) The plan shall include objective and measurable criteria whenever possible, and describe all of the following:

(1) How the 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 the necessary infrastructure and viable responsible end markets to ensure the covered material will achieve the requirements of Section 42050 based on the needs assessments.

(2) How the PRO will support and achieve, and how the budget will fund, the collection, processing, recycling, or composting of, and the development of viable responsible end markets for, covered materials to meet the requirements of this chapter. This includes, but is not limited to, actions necessary to sort, segregate, break or flake, and process material to specifications for sale to a responsible end market. For purposes of this paragraph, "specifications" means the third-party purchasing specifications issued by a buyer or buyers of recycled materials for reprocessing into a new product.

(3) (A) 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, and how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure.

(B) Except as specified in subdivisions (b), (c), (d), and (e) of Section 42060.5, how the plan will be implemented in a manner utilizing solid waste collection programs and solid waste facilities as the designated system for the collection and processing of covered material.

(4) 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.

(5) How covered material will be collected, processed, and managed, and recycled, remanufactured, or composted, consistent with the goals, standards, and practices required by this chapter, including ensuring covered material collected for recycling will be transferred to viable responsible end markets for processing into new packaging or products, including, but not limited to, how the plan will enhance or expand viable responsible end markets in California including manufacturing.

(6) Arrangements with processors or recyclers to ensure that covered materials that are not collected through a curbside collection program or other local collection program are collected and recycled at a viable responsible end market, including any investment that will be made to cover the cost of the covered material being processed or recycled by processors or recyclers.

(7) Arrangements 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 nonplastic covered material category, or any other actions taken, or that will be taken, to implement the source reduction requirements pursuant to Section 42057.

(8) How postconsumer recycled content will be incorporated into covered material, including the amounts of postconsumer recycled content.

(9) How the plan will be implemented in a manner consistent with the waste hierarchy established in Section 40051.

(d) (1) The plan shall include a fee for participants of the PRO consistent with the provisions of Section 42053, set forth the calculation of the fee, and describe the process through which the PRO will collect the fee from producers that are participants of the PRO's approved plan.

(2) The plan shall include a description of the fee structure and a schedule of the fees actually charged to producers who are participants of a PRO's approved plan.

(e) The plan shall include efforts to use education and promotion to encourage proper participation in recycling and composting collection and reuse and refill systems. The PRO shall ensure coordination between these efforts and existing educational and promotional efforts. These may include, but are not limited to, all of the following:

(1) Education and engagement to reduce the rate of inbound contamination or unwanted materials.

(2) Outreach to obtain consistently high levels of public participation in and use of collection services and reuse and refill systems.

(3) Education and engagement with residents on proper recycling, composting, and reuse and refill behaviors.

(4) Support for increased statewide and local outreach needed to achieve the plan's goals.

(f) 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 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, 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 have become a participant of a different PRO's approved plan.

(g) (1) The plan shall include a process for determining the costs that will be incurred by local jurisdictions, recycling service providers, alternative collection systems, and others under this chapter and shall include a mechanism and schedule for transferring the portion of the fee required by paragraph (7) of subdivision (c) of Section 42053 to local jurisdictions. The PRO shall determine the costs based on information provided by local jurisdictions, recycling service providers, and others under this chapter. Payment of these costs shall be reflected in the budget pursuant to subdivision (j).

(2) The plan shall include a process to resolve disputes for determining and paying the reasonable costs pursuant to paragraph (1) that arise between the PRO and a local jurisdiction or a recycling service provider. This process shall be reviewed by the advisory board to ensure the PRO covers costs related to this chapter and shall become effective upon plan approval by the department.

(h) The plan shall include the source reduction data specified in subdivision (c) of Section 42057.

(i) (1) The plan shall include consideration of the needs assessment and any recommended investments to meet the needs identified in the needs assessments and inform the budget.

(2) The budget shall not propose investing in activities in violation of Section 40004 or an agreement entered into pursuant to Section 40059 and shall include a mechanism to disburse funds for identified activities.

(3) The budget 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 collection services in public spaces.

(D) Providing or facilitating deployment of innovative enhanced collection, composting, and recycling systems and innovative recycling systems within a recycling center or MRF that utilizes advanced technology, such as artificial intelligence and robotics, to improve the identification and sorting of covered materials, where feasible.

(E) Creation of on-premises access to recycling or composting services for multifamily residences.

(F) Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable 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 cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet

viable responsible end market quality specifications, or for reducing the rate of 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 rates for all covered material under the plan and ensure covered material is recyclable or compostable.

(4) In developing the budget, the PRO may delineate investments the PRO will make based on covered material categories.

(j) (1) The plan shall include a budget designed to fully fund the costs necessary to implement this chapter. The budget shall include, but not be limited to, fully funding the plan and all other costs associated with implementing the plan, including, but not limited to, all of the following:

(A) Actions and investments identified in the plan to fund the budget and needs and investments identified in the needs assessments.

(B) Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and noncurbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors.

(C) Reimbursing costs incurred by the department and the California Department of Tax and Fee Administration.

(D) Administering the PRO.

(E) Environmental mitigation activities associated with Section 42064.

(F) Investments to develop and sustain viable responsible end markets for each covered material category.

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

(H) 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.

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

(A) To pay an administrative civil penalty pursuant to Section 42081.

(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 calendar days prior to or during a legislative session for the purposes of encouraging the passage, defeat, approval, or modification of legislation that is being considered, or was considered during the previous legislative session.

(D) To subsidize, incentivize, or otherwise support incineration, engineered municipal solid waste conversion, the production of energy or fuels, except for fuels produced using anaerobic digestion of source separated organic materials, or other disposal activities.

(3) (A) A PRO shall not maintain total program reserves exceeding 60 percent of its annual operating expenses, consistent with the requirements of the Financial Accounting Standards Board's Accounting Standards Update 2016-14, Not-for-Profit Entities (Topic 958), and any future updates to that standard.

(B) The department, in approving the annual PRO budget, may authorize the total reserves to be increased to up to 75 percent of the PRO's annual operating expenses if the department determines the increase is necessary to implement the requirements of this chapter.

(C) If a PRO's reserves exceed the amount specified in subparagraph (A) or (B), the department may require the PRO or a participant producer to increase spending on implementing the requirements of this chapter.

(k) Consistent with subdivision (*l*), as part of the plan, the PRO or a participant 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 or other local collection program, including, but not limited to, dropoff recycling services and retailer take-back.

(*l*) (1) A plan shall include curbside recycling and composting collection for covered materials under any of the following circumstances:

(A) The category of covered materials can be made suitable for curbside collection and can be effectively sorted by the facilities receiving the curbside collected material for recycling or composting.

(B) 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 the 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.

(2) If a MRF chooses to send material to another sorting facility for additional sorting and recycling of covered materials, the PRO shall provide the initial MRF a rebate based on criteria the PRO shall develop to cover

transportation costs of the covered materials provided the covered material is free of toxic or hazardous materials.

(m) The plan shall include specific measures to ensure that producers participating in the plan comply with the requirements of the plan and this chapter. Those measures shall include, at a minimum, all of the following elements:

(1) Adequate incentives for compliance, including, but not limited to, 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 (commencing with Section 42080) against individual producers or the PRO in violation of this chapter.

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

(3) Criteria for determining when a producer's performance merits terminating the producer's participation in the PRO's plan, and a process for making that determination.

(4) 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. Those protocols shall ensure that all records remain reasonably accessible by the department upon request.

(5) The plan shall include the specific data information required under subdivision (c) of Section 42057.

(n) The PRO shall ensure that the plan implementation avoids or minimizes negative environmental or public health impacts on disadvantaged or low-income communities or rural areas and vulnerable communities outside the state.

SEC. 7. Section 42053 of the Public Resources Code is amended to read:

42053. (a) (1) As part of its producer responsibility plan pursuant to Section 42051.1, a PRO shall establish a fee for its participants sufficient to ensure the requirements of this chapter are met by the PRO and the plan is fully implemented. The fee shall be based on a fee schedule to be developed by the PRO pursuant to subdivision (c). Development of the fee schedule shall ensure that the PRO budget included in the plan is fully funded. The fee shall not be passed on to consumers as a separate item on a receipt or invoice.

(2) The PRO shall adjust any fee schedules at least every year or more frequently if needed in order to fully cover the expenses in the approved budget.

(3) A producer that is a participant of a PRO's approved plan shall pay the fee required by this section and, upon request, provide the PRO with records or other information necessary for the PRO to meet the PRO's requirements under this chapter.

(b) During the first two years of operation and during the preparation of the plan developed pursuant to Section 42051.1, the PRO shall determine

the fee schedule for each producer based on estimated costs of implementing the plan, operating costs, the cost of completing the needs assessment, and the costs to reimburse the department. 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 subdivision (d).

(c) The fee schedule required pursuant to subdivision (a) shall include all of the following:

(1) Individual assessments imposed on a producer due to unique characteristics of their covered material, as described in subdivision (d).

(2) Any adjustments pursuant to subdivision (e).

(3) The California circular economy administrative fee.

(4) Reimbursing the department for costs to administer the advisory board.

(5) Any fees associated with environmental mitigation activities associated with Section 42064.

(6) The costs of the PRO, including, but not limited to, staff and the costs associated with the development and implementation of the producer responsibility plan.

(7) Any other costs described in subdivision (j) of Section 42051.1.

(d) A PRO shall structure the fee schedule required pursuant to subdivision (a), delineated by covered material category and based on the following factors:

(1) The costs to ensure each covered material category meets the requirements of this chapter. Covered material that is easier and less expensive to recycle or compost or that is designed to be recycled into a similar covered material or a material that is easier to be composted shall be subject to lower fees. The costs may include all of the following:

(A) Costs to develop and sustain viable responsible end markets for each covered material category.

(B) Costs to collect, sort, avoid or remove contamination, aggregate, and transport the covered material into defined streams to support the viable responsible end markets for the remanufacturing of 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 viable responsible end markets. This includes costs incurred by local jurisdictions or recycling service providers to reduce or mitigate the rate of inbound contamination by noncertified compostable products at composting facilities. These costs may vary by local jurisdiction.

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

(E) 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.

(2) If recycling or composting of the covered material is made more difficult by the incorporation of specific elements, including, but not limited to, inks, labels, and adhesives that may be detrimental to recycling or composting according to the Association of Plastic Recyclers design guide or other relevant industry association, or criteria established by the department, the fee for that covered material shall be sufficient to account for the increased cost to manage that covered material.

(3) 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.

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

(e) The fee required pursuant to subdivision (a) shall be adjusted using malus fees or credits for participant producers, with those adjustments based on any of the following, as applicable:

(1) The percentage of postconsumer recycled content in the participant producer's covered materials. The percentage of postconsumer recycled content shall be validated through an independent third party approved by the department to perform validation 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 and refill labeling and instructions, that comply with Chapter 5.7 (commencing with Section 42355), including paragraph (6) of subdivision (d) of Section 42355.51, 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.

(7) Plastic covered materials derived from renewable materials shall be subject to a reduced fee relative to plastic covered material derived from a nonrenewable material.

(8) Certified compostable covered materials that do not contain toxic additives shall be subject to a reduced fee, as determined by the PRO.

(9) Covered material that contains toxic heavy metals, pathogens, or additives shall be subject to an increased fee.

(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 participant 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) Fees paid to the PRO pursuant to subdivision (a) shall be used to implement the plan and fund the budget.

SEC. 8. Section 42061 of the Public Resources Code is amended to read:

42061. The department shall do all of the following:

(a) (1) By July 1, 2024, 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.

(2) The department shall conduct and publish on its internet website a characterization study of covered material categories that are disposed of in California landfills. The department's activities pursuant to this paragraph, including the department's determination of the appropriate facilities to include in the study, are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) (A) For the department's first material characterization study conducted pursuant to paragraph (2), which the department shall complete on or before July 1, 2025, the department shall conduct disposal-based characterization studies to determine the approximate amount of covered material disposed of in California landfills.

(B) The department shall, on or before January 1, 2024, report to the Legislature in compliance with Section 9795 of the Government Code on the status of material types relative to the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51. When updating information pursuant to clause (ii) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 42355.51, the department may identify materials that are trending toward meeting the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51 and measurable increase of statewide collection and sorting rates through either statewide recycling programs or alternative programs, such as take-back systems, and for which the continued increase in the collection, sorting, and viable responsible end market development the department determines will be disrupted by a loss of a recyclable designation. Those material types and forms shall be considered recyclable in the state and may be labeled as recyclable, notwithstanding subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51, so long as the material types and forms

satisfy subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (d) of Section 42355.51 and until the material types and forms are a part of, and in compliance with, a program described in paragraph (6) of subdivision (d) of Section 42355.51.

(4) The department shall update the material characterization study required pursuant to this subdivision in 2028, 2030, 2032, and at least every four years thereafter.

(5) Notwithstanding paragraphs (2) and (3), 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.

(6) For purposes of studying a representative sample of material types and forms in the state, within 90 calendar days of a department request, a transfer, processing, or recycling 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 require a periodic sampling of a transfer, processing, or recycling facility if that facility was sampled during the previous 24 months.

(7) For each material characterization study conducted pursuant to this subdivision, 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 calendar days after the department publishes the preliminary findings. After receiving and considering public comments, and within 60 calendar days of the public meeting, the department shall finalize and publish on its internet website the findings of the study.

(b) (1) By January 1, 2026, the department shall calculate and publish on its internet website the current recycling rates being achieved in the state for each covered material category. These recycling rates 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.

(2) In determining a recycling 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).

(G) Data voluntarily provided by local jurisdictions.

(H) Data and information received from producers.

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

(c) By January 1, 2024, the department shall 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, 2024. 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 subdivision (d) of Section 42355.51.

(d) By January 1, 2024, the department shall create and post on its internet website a list of covered material categories that are deemed compostable as of January 1, 2024. Covered material is deemed compostable if it meets the requirements to be labeled as compostable pursuant to Chapter 5.7 (commencing with Section 42355).

(e) The department shall determine a process for updating the lists created pursuant to subdivisions (c) and (d) to either add covered material categories that are deemed to meet all of the criteria in either subdivision (c) or (d) or remove covered material categories if they can no longer be deemed recyclable or compostable pursuant to subdivision (c) or (d). 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 subdivision (c) or (d) 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 subdivision (c) or (d).

(f) (1) The department shall determine a process for updating the rates published pursuant to subdivision (b). 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.

(2) 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 rate by reference to a recycling rate on the department's list or through another mechanism approved by the department.

(3) 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.

(4) 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.

SEC. 9. Section 42064 of the Public Resources Code is amended to read:

42064. (a) (1) The environmental mitigation surcharge imposed by this section shall be collected annually by the California Department of Tax and

Fee Administration in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For purposes of this chapter, the references in the Fee Collection Procedures Law to "fee" shall include the environmental mitigation surcharge imposed by this section, and references to "feepayer" shall include a person required to pay the environmental mitigation surcharge imposed by this section.

(2) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the department that a person is required to pay an environmental mitigation surcharge, or a determination by the department regarding the amount of that environmental mitigation surcharge, is subject to review under Section 42064.01 and is not subject to a petition for redetermination by the California Department of Tax and Fee Administration.

(3) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the California Department of Tax and Fee Administration shall not accept any claim for refund that is based on the assertion that a determination by the department improperly or erroneously calculated the amount of the environmental mitigation surcharge, or incorrectly determined that the person or entity is subject to the environmental mitigation surcharge, unless that determination has been set aside by the department or a court reviewing the determination of the department.

(4) This section shall not prevent, and shall not be construed to prevent, the California Department of Tax and Fee Administration from accepting a claim for refund for an environmental mitigation surcharge or taking action on its own to correct a mistake or clerical error regarding an environmental mitigation surcharge.

(b) The annual environmental mitigation surcharge shall be due and payable 30 days from the date of assessment by the California Department of Tax and Fee Administration. Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30 of Division 2 of the Revenue and Taxation Code, the environmental mitigation surcharge shall be remitted by electronic funds transfer to the California Department of Tax and Fee Administration.

(c) (1) On or before March 1, 2027, and each March 1 thereafter, the department shall annually transmit to the California Department of Tax and Fee Administration the appropriate name and address of each person who is liable for the environmental mitigation surcharge under this section and the amount of the environmental mitigation surcharge to be assessed, and at the same time shall provide to the California Department of Tax and Fee Administration a contact number for the department to be printed on the notice of determination to respond to questions about the environmental mitigation surcharge.

(2) The California Department of Tax and Fee Administration shall mail the notice of determination to each person identified by the department pursuant to paragraph (1) on or before 90 days after receipt of the information required by paragraph (1).

(d) The California Plastic Pollution Mitigation Fund is hereby established in the State Treasury. The California Plastic Pollution Mitigation Fund shall consist of all environmental mitigation surcharges, interest, penalties, and other amounts collected and paid to the California Department of Tax and Fee Administration pursuant to this section, less payments of refunds and reimbursements to the California Department of Tax and Fee Administration for expenses incurred in the administration and collection of the environmental mitigation surcharges imposed by this section.

(e) (1) Commencing in the 2027 calendar year, and annually thereafter, a PRO shall pay an environmental mitigation surcharge of five hundred million dollars ($500,000,000) each year, as assessed by the California Department of Tax and Fee Administration, and remit that amount to the California Department of Tax and Fee Administration each year to be deposited into the California Plastic Pollution Mitigation Fund.

(2) (A) The PRO may collect up to one hundred fifty million dollars ($150,000,000) from plastic resin manufacturers who sell plastic covered material to producers who are participants of the PRO.

(B) The PRO may require its participants to provide to the PRO a list of plastic resin manufacturers who sell plastic for use in covered material to the participants.

(C) If the PRO does not collect all or any of the one hundred fifty million dollars ($150,000,000) from plastic resin manufacturers, the PRO is still responsible for the total remittance specified in paragraph (2).

(f) The PRO shall establish and impose on its participants who produce 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.

(g) 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.

(h) (1) For producers that are not 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 number and weight of plastic covered material the producer offers for sale, sells, distributes, or imports in or into the state.

(2) Commencing in the 2027 calendar year, and annually thereafter, a producer not in a PRO shall pay an environmental mitigation surcharge in the amount determined by the department, as assessed by the California Department of Tax and Fee Administration each year to be deposited into the California Plastic Pollution Mitigation Fund.

(i) In the 2030 calendar year, the department shall determine whether the environmental mitigation surcharge imposed pursuant to this section should be increased 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 environmental mitigation surcharge a PRO collects in proportion to that change. A PRO shall conform the surcharge imposed on its participant producers to the adjusted amount of the environmental mitigation surcharge established by the department.

(j) (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, the Department of Parks and Recreation, the Natural Resources Agency, and the California Environmental Protection Agency 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 paragraph (1) shall provide benefits to residents living in a disadvantaged or low-income community or rural area.

(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.

(k) (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 Environmental Protection Agency, the Natural Resources Agency, and the Department of Justice to monitor and reduce the historical and current environmental justice and public health impacts of plastics, including to mitigate the historical and current impact of plastics on disadvantaged or low-income communities or rural areas.

(2) Of the moneys appropriated pursuant to paragraph (1), 75 percent shall directly and primarily benefit residents living in disadvantaged or low-income communities.

(3) Moneys appropriated pursuant to paragraph (1) may be used to support grants to local jurisdictions, tribes, nongovernmental organizations, and community-based organizations.

(*l*) Moneys appropriated from the California Plastic Pollution Mitigation Fund pursuant to subdivisions (j) and (k) shall be used to increase and enhance the activities described in subdivisions (j) and (k) and shall not replace or reduce 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).

(m) Each agency or department receiving funding under this section shall, notwithstanding Section 9795 of the Government Code, provide an annual report to the relevant budget committees of the Legislature on how

the funding will be used, progress toward mitigation goals, and relevant details and outcomes from third parties who may be provided funding by the agency or department for mitigation purposes.

(n) This section shall remain in effect only until January 1, 2037, and as of that date is repealed.

SEC. 10. Section 42064.01 of the Public Resources Code is amended to read:

42064.01. (a) A person from whom the environmental mitigation surcharge imposed pursuant to Section 42064 is determined to be due by that section may petition for a redetermination of whether this chapter applies to that person within 30 days after service upon them 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 of the application of this section or Section 42064 shall be in writing and be sent to the department or its designee. The petition shall state the specific grounds upon which the petition is founded and include supporting documentation. The petition may be amended to state additional grounds or provide additional documentation at any time prior to the date that the department issues its order or decision with regard to the petition for redetermination.

(c) If a petition for redetermination of the application of this section or Section 42064 is filed within the 30-day period, the department shall reconsider whether the environmental mitigation surcharge is due and make a determination in writing. The department may eliminate the environmental mitigation surcharge based on a determination that this section or Section 42064 does not apply to the person who filed the petition.

(d) The department shall provide to the California Department of Tax and Fee Administration notice and the result of each petition for redetermination or claim for refund, including the filing date, reporting periods, amount of the environmental mitigation surcharge involved, and details necessary for the California Department of Tax and Fee Administration to perform refund or collection duties.

(e) If a timely petition for redetermination has been filed pursuant to subdivision (a), all legal action to collect the environmental mitigation surcharge imposed pursuant to Section 42064 shall be stayed pending the final determination of the department pursuant to subdivision (g).

(f) Notice of the determination of the department pursuant to subdivision (c) shall be served on the same date to the petitioner and the California Department of Tax and Fee Administration.

(g) The order or decision of the department upon a petition for redetermination of the environmental mitigation surcharge shall become final 30 days after service upon the petitioner of notice of the determination.

(h) The environmental mitigation surcharge imposed pursuant to Section 42064 determined to be due by the department pursuant to this section 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 be applied.

(i) Written notice required by this section shall be served as follows:

(1) The notice shall be placed in a sealed envelope, with postage paid, addressed to the petitioner at the petitioner'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 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.

(2) In lieu of mailing, a notice 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.

(j) A dispute regarding the environmental mitigation surcharge imposed pursuant to Section 42064 shall be resolved pursuant to this section only.

(k) If the department determines that a person is entitled to a refund of all or part of the environmental mitigation surcharge imposed pursuant to Section 42064, the person shall make a claim to the California Department of Tax and Fee Administration pursuant to Chapter 5 (commencing with Section 55221) of Part 30 of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 42067 of the Public Resources Code is amended to read:

42067. (a) The department shall prepare one or more initial statewide needs assessments designed to determine the necessary steps and investment needed for covered material, by covered material category, to achieve the requirements of this chapter. Needs assessments, or components thereof, shall be updated every five years or as necessary to ensure the requirements of this chapter are met. An initial needs assessment for specific covered material shall be completed before the completion and approval of any producer responsibility plan that includes that covered material. The department may select an independent third-party contractor to complete the needs assessment. The department or the third-party contractor shall consult with the PRO and local jurisdictions when developing the needs assessment.

(b) The PRO shall reimburse the department for the cost of developing any needs assessment and any update to a needs assessment.

(c) The department may prepare either several needs assessments, with each assessment specific to one or more covered materials subject to this chapter, or may prepare one comprehensive needs assessment that includes all covered material subject to this chapter.

(d) The department shall guide development of a needs assessment, which shall be developed in collaboration with the PRO and 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.

(e) A needs assessment shall comply with all of the following:

(1) Be designed to inform the PRO budget and PRO plan.

(2) Include an evaluation of all of the following with respect to covered materials and covered material categories:

(A) Existing state statutory provisions and funding sources related to market development and financial incentives to help achieve the state's goals related to recycling, composting, reuse, reduction, and recovery.

(B) The current recycling, composting, collection, and hauling system in the state and the expanded access and additional recycling or composting options needed for enhancements to the system.

(C) The existing access to on-premises recycling and composting for multifamily residences, and the need to expand that access.

(D) 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.

(E) Current market conditions and the need to create viable responsible end markets in the state and regionally.

(F) Consumer education needs for recycling, composting, reuse, and reduction.

(G) Funding needs and actions necessary to achieve the requirements of this chapter, including payments to recyclers, market incentive payments, or other payments necessary to achieve the requirements of this chapter.

(H) Actions and investments necessary to provide sufficient access to collection, recycling, composting, processing, and transportation to viable responsible end markets.

(I) An evaluation of the availability or lack of availability of markets for recycled covered material, the need to incentivize recycled or composted material market development, and the associated investments and actions 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.

(J) Factors contributing to contamination and actions and investments needed to avoid contamination and improve recycled and composted material in order to ensure the material meets quality requirements for remanufacturing.

(K) Availability of responsible end markets and mechanisms to identify and expand responsible end markets. The evaluation shall include identification of measures to avoid and minimize environmental and public health impacts on communities where recycling occurs.

(3) Include an evaluation of all of the following with respect to covered material:

(A) 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 a covered material category that either has a

viable responsible end market or is likely to develop a sustained viable responsible end market.

(B) Actions and investments necessary to improve covered material design to improve recyclability and compostability.

(C) Funding needed to implement the source reduction requirements established in Section 42057, including, but not limited to, investments needed to develop reuse and refill infrastructure and to provide consumers with convenient access to that infrastructure to grow and market the use of reusable and refillable packaging and food service ware.

(D) 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.

(E) An evaluation of actions and investments that would be effective in achieving source reduction requirements.

(4) The needs assessment shall not propose investing in activities contrary to the intent described in Section 40004 or in violation of an agreement entered into pursuant to Section 40059 and shall include a mechanism to disburse funds for identified activities.

(5) The needs assessment 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 collection services in public spaces.

(D) Providing or facilitating deployment of innovative enhanced collection, composting, and recycling systems and innovative recycling systems within a recycling center or MRF that utilizes advanced technology, such as artificial intelligence and robotics, to improve the identification and sorting of covered materials, where feasible.

(E) An evaluation of actions and investments that would be effective in achieving source reduction requirements.

(F) Creation of on-premises access to recycling or composting services for multifamily residences.

(G) Funding, providing, or facilitating the efficient transport of materials from remote or rural areas to centralized sorting facilities, brokers, or viable responsible end markets.

(H) Enhancing existing materials recycling or composting infrastructure by developing a quality incentive payment, grants, and other mechanisms sufficient to cover the cost of separating, processing, baling, recycling, composting, remanufacturing, and transporting desired materials that meet viable responsible end market quality specifications, or for reducing the rate of inbound contamination to composting facilities.

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

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

(f) (1) The initial needs assessment, and any updates, shall be submitted to the advisory board.

(2) Development of a needs assessment by the department pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The initial needs assessment, and any updates, shall be developed through a public process including at least one public meeting at which the department provides the PRO, the advisory board, and any interested members of the public the opportunity for input.

SEC. 12. Section 42081 of the Public Resources Code is amended to read:

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 entity not in compliance with this chapter or any of the regulations the department adopts to implement this chapter, unless the entity meets the criteria of paragraph (5) of subdivision (a) of Section 42060, 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 by a producer or the PRO 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.

(3) Penalties against a PRO or producer shall not begin accruing with respect to a violation until 30 calendar days following the notification of the violation.

(4) The department shall deposit all penalties collected pursuant to this section into the Circular Economy Penalty Account, which is hereby created in the State Treasury. Moneys in the Circular Economy Penalty Account shall be available upon appropriation by the Legislature 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 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 system for the covered material that would increase the recycling 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 12 months if the department sets forth steps and a timeline for the producer or PRO to comply with the corrective action plan and if the producer or PRO made a substantial effort to comply but was reasonably prevented from doing so due to extenuating circumstances.

(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 a producer or PRO has not taken reasonable steps to comply with a corrective action plan, including, but not limited to, providing staff resources and funding necessary for compliance.

(3) The department's authority under this article to impose penalties and to consider a corrective action plan do not affect the department's authority to withdraw its approval of a PRO plan pursuant to Section 42051.2 and the department may impose penalties and consider corrective action plans against the PRO or producers without revoking an approved plan.

(c) The department, in determining the penalty amount and whether to assess a penalty under this section, shall consider, at a minimum, all of the following:

(1) The nature, circumstances, extent, and gravity of the 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 circumstances, including, but not limited to, unforeseen changes in market conditions. This does not include

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 areas reasonably anticipated from the violation.

SEC. 13. Section 42464.3 of the Public Resources Code is amended to read:

42464.3. CalRecycle and DTSC may share information provided pursuant to this article with CDTFA, upon request, as necessary to administer and enforce the covered electronic waste recycling fee and covered battery-embedded waste recycling fee imposed under this article.

SEC. 14. Section 48701 of the Public Resources Code is amended to read:

48701. For purposes of this chapter, the following terms have the following meanings:

(a) (1) "Aerosol coating product" means a pressurized coating product containing pigments or resins dispensed by means of a propellant and packaged and sold in a disposable aerosol container for handheld application, or for use in specialized equipment for ground traffic or marking applications.

(2) "Aerosol coating product" does not include paint thinner, paint remover, graffiti remover, caulking compounds that contain no appreciable level of opaque fillers or pigments, products subject to Article 1 (commencing with Section 94500) or Article 2 (commencing with Section 94507) of Subchapter 8.5 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, or other nonaerosol coating products not regulated under Article 3 (commencing with Section 94520) of Subchapter 8.5 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations.

(3) Aerosol coating products shall not be regulated under this chapter until the implementation date of a plan or plan amendment concerning aerosol coating products approved by the department pursuant to Section 48704, or January 1, 2027, whichever occurs sooner. The department may authorize an extension of this implementation date if the department determines the extension is necessary to implement the requirements of this chapter.

(b) "Architectural paint" includes both of the following:

(1) Interior and exterior architectural coatings, sold in containers of five gallons or less for commercial or homeowner use, but does not include coatings purchased for industrial or original equipment manufacturer use.

(2) Aerosol coating products.

(c) "Consumer" means a purchaser or owner of architectural paint, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(d) "Department" means the Department of Resources Recycling and Recovery.

(e) "Distributor" means a person that has a contractual relationship with one or more manufacturers to market and sell architectural paint to retailers.

(f) "Manufacturer" means a manufacturer of architectural paint.

(g) "Postconsumer paint" means architectural paint not used by the purchaser.

(h) "Retailer" means a person that sells architectural paint in the state to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the internet or any other similar electronic means.

(i) "Stewardship organization" means a nonprofit organization created by the manufacturers to implement the architectural paint stewardship program described in Section 48703.

SEC. 15. Section 48703 of the Public Resources Code is amended to read:

48703. (a) (1) On or before April 1, 2012, a manufacturer or designated stewardship organization shall submit an architectural paint stewardship plan to the department.

(2) (A) On or before July 1, 2026, a manufacturer or stewardship organization shall submit an architectural paint stewardship plan or amendment to an approved architectural paint stewardship plan to the department.

(B) Failure to have a plan or plan amendment approved on or before January 1, 2027, as specified in paragraph (3) of subdivision (a) of Section 48701, shall result in a finding of noncompliance until a plan or plan amendment is approved.

(b) (1) The plan shall demonstrate sufficient funding for the architectural paint stewardship program as described in the plan, including a funding mechanism for securing and disbursing funds to cover administrative, operational, and capital costs, including the assessment of charges on architectural paint sold by manufacturers in this state.

(2) The funding mechanism shall provide for an architectural paint stewardship assessment for each container of architectural paint sold by manufacturers in this state and the assessment shall be remitted to the stewardship organization, if applicable.

(3) The architectural paint stewardship assessment shall be added to the cost of all architectural paint sold to California retailers and distributors, and each California retailer or distributor shall add the assessment to the purchase price of all architectural paint sold in the state.

(4) The architectural paint stewardship assessment shall be approved by the department as part of the plan, and shall be sufficient to recover, but not exceed, the cost of the architectural paint stewardship program. The plan shall require that any surplus funds be put back into the program to reduce the costs of the program, including the assessment amount.

(c) The plan shall address the coordination of the architectural paint stewardship program with existing local household hazardous waste

collection programs as much as this is reasonably feasible and is mutually agreeable between those programs.

(d) The plan shall include goals established by the manufacturer or stewardship organization to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint, including recovery and recycling of postconsumer paint, as practical, based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(e) The plan shall include consumer, contractor, and retailer education and outreach efforts to promote the source reduction and recycling of architectural paint. This information may include, but is not limited to, developing, and updating as necessary, educational and other outreach materials aimed at retailers of architectural paint. These materials shall be made available to the retailers. These materials may include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer.

(2) Written materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery, or both. Written materials shall include information on the prohibition of improper disposal of architectural paint.

(3) Advertising or other promotional materials, or both, that include references to architectural paint recycling opportunities.

(f) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program, if the retailer's paint collection location meets all of the conditions in Sections 25217.2 and 25217.2.1 of the Health and Safety Code for oil-based or recyclable latex paints, or Section 25201.16 of the Health and Safety Code for aerosol paint containers.

SEC. 16. Section 48705 of the Public Resources Code is amended to read:

48705. (a) On or before May 15 of each year, a manufacturer of architectural paint sold in this state shall, individually or through a representative stewardship organization, submit a report to the department describing its architectural paint recovery efforts. At a minimum, the report shall include all of the following:

(1) The total volume of architectural paint sold, excluding aerosol coating products, in this state during the preceding calendar year.

(2) The total volume of postconsumer architectural paint recovered, excluding aerosol coating products, in this state during the preceding calendar year.

(3) A description of methods used to collect, transport, and process postconsumer architectural paint in this state, excluding aerosol coating products.

(4) Commencing with the 2028 report, the total volume of aerosol coating products sold in this state during the preceding calendar year.

(5) Commencing with the 2028 report, the total volume of aerosol coating products recovered, including amount, in this state during the preceding calendar year.

(6) Commencing with the 2028 report, a description of methods used to collect, transport, and process aerosol coating products in this state.

(7) The total cost of implementing the architectural paint stewardship program.

(8) An evaluation of how the architectural paint stewardship program's funding mechanism operated.

(9) An independent financial audit funded from the paint stewardship assessment.

(10) Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.

(b) The department shall review the annual report required pursuant to this section and within 90 days of receipt shall adopt a finding of compliance or noncompliance with this chapter.

SEC. 17. Section 48707 is added to the Public Resources Code, immediately following Section 48706, to read:

48707. The department, in coordination with the Department of Toxic Substances Control, may adopt regulations to clarify and implement this chapter.

SEC. 18. Section 5.5 of this bill incorporates amendments to Section 42041 of the Public Resources Code proposed by both this bill and Senate Bill 303. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 42041 of the Public Resources Code, and (3) this bill is enacted after Senate Bill 303, in which case Section 5 of this bill shall not become operative.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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