

AMENDED IN ASSEMBLY MARCH 18, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 87

Introduced by Assembly Member Davis
(Coauthors: Assembly Members Blumenfield, Chesbro, De Leon, and Nava)

January 5, 2009

An act to amend Sections 42250, 42251, 42252, 42253, and 42254 of, to amend the heading of Chapter 5.1 (commencing with Section 42250) of Part 3 of Division 30 of, to add Sections 42252.5 and 42252.7 to, and to repeal and add Sections 42256 and 42257 of, the Public Resources Code, relating to single-use carryout bags.

LEGISLATIVE COUNSEL'S DIGEST

AB 87, as amended, Davis. Single-use carryout bags: environmental effects: mitigation.

Existing law requires, *until January 1, 2013*, an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

Existing law *also* requires, *until January 1, 2013*, the manufacturer of plastic carryout bags to develop educational materials to encourage the reducing, reusing, and recycling of plastic bags and make those materials available to stores required to comply with the program.

This bill would *instead* prohibit, on and after July 1, 2010, a store, as defined, from providing a single-use carryout bag, including a green

carryout bag, to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of sale. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and, by January 31, 2011, would require a store that collects the single-use carryout bag fees to remit the fees, less a specified amount to be used as required, to the State Board of Equalization for deposit in that fund, and do so on a quarterly basis thereafter.

This bill would instead require the manufacturer of a single-use carryout bag to develop educational materials to encourage the reducing, reusing, and recycling of single-use bags and make those materials available to stores required to comply with the program.

The bill would require moneys in the fund, upon appropriation by the Legislature, to be expended by the ~~board~~ *Integrated Waste Management Board* as specified, including, but not limited to, administrative costs, developing and implementing programs to encourage and support mitigating the environmental effects of single-use carryout bags, and payments to cities and counties for activities to reduce and prevent single-use carryout bag litter and the environmental impacts of single-use carryout bags.

The bill would require the board to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer and collect the fees imposed on those bags. The bill would require *the board* to submit a biennial report to the ~~Legislative the board~~ *Legislature*, in coordination with other state agencies and stakeholders, on the effectiveness of the program and recommendations to further encourage the use of reusable bags.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Single-use carryout bags *that are* provided by stores impose
- 4 hidden costs on consumers, local governments, the state, taxpayers,
- 5 and the environment.
- 6 (b) Litter from plastic carryout bags poses a significant burden
- 7 to California's economy and a serious threat to the marine
- 8 ecosystem. It is estimated that Californians consume 19 billion

1 plastic carryout bags per year. However, according to the California
2 Integrated Waste Management Board, the recycling rate for these
3 bags is less than 5 percent. Public agencies in California also spend
4 more than three hundred seventy-five million dollars
5 (\$375,000,000) annually in litter cleanup, and plastic carryout bags
6 contribute disproportionately to the litter stream.

7 (c) Despite past efforts to control marine debris, the quantity of
8 trash in the coastal and ocean environment is increasing
9 dramatically worldwide. It is estimated that 60 to 80 percent of all
10 marine debris, and 90 percent of floating debris is plastic. It may
11 take hundreds of years for this plastic to break down and some
12 plastics never truly biodegrade in the marine environment. Streams
13 and storm drains carry plastic bags to the ocean where they are
14 frequently mistaken as food by marine life. Over 267 species
15 worldwide have been impacted by plastic litter such as plastic bags
16 through entanglement or ingestion.

17 (d) On February 8, 2007, the California Ocean Protection
18 Council adopted a comprehensive resolution on marine debris
19 calling for statewide action targeting the reduction of single-use
20 plastic packaging, including plastic carryout bags. The council
21 adopted an implementation strategy for this resolution, which in
22 part calls for instituting a statewide fee on single-use plastic grocery
23 bags, with the collected fees utilized to help fund litter abatement
24 and stormwater capture, and reduce the incidence of litter.

25 (e) Over 15 countries and over 40 U.S. states and cities have
26 either taken action or have proposed to take action on plastic
27 carryout bags in the form of bans or point-of-purchase fees.

28 (f) While paper bags are recyclable and degrade in the
29 environment, they are not an acceptable alternative to plastic since
30 the production and transport of paper bags leads to significantly
31 greater water pollution and air emissions, including greenhouse
32 gas emissions.

33 (g) Carryout bags marketed as “biodegradable” or
34 “compostable” are also not a viable alternative because these bags
35 have not proven to biodegrade in the marine environment, are only
36 able to biodegrade under specific conditions found in certain
37 industrial composting facilities that are not widely available
38 throughout the state, and will not reduce the litter problem since
39 they have the same characteristics as plastic bags.

(h) It is the intent of the Legislature to encourage the use of reusable bags by consumers to reduce the consumption of single-use bags, such as conventional plastic, paper, and biodegradable or compostable plastic bags.

(i) The fees imposed pursuant to Section 42252.5 of the Public Resources Code will mitigate the environmental, public health, and other public-financed impacts caused by the use of single-use bags by offsetting the costs of programs to prevent and reduce the littering and environmental impacts of single-use carryout bags and encouraging the reduction of the use of single-use carryout bags.

(j) Requiring stores to end the subsidy of single-use carryout bags and charge their full economic and environmental costs will provide consumers with an appropriate market signal to make informed decisions regarding carryout bag reduction and reuse options.

(k) Requiring stores to charge and remit a fee for the distribution of single-use carryout bags will help the state and local governments to offset the environmental and social costs of single-use carryout bags.

(l) The imposition of the fee pursuant to Section 42252.5 of the Public Resources Code would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution because the amount and nature of the fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of single-use carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the litter of single-use carryout bags, reduce the environmental impacts of single-use carryout bags, and encourage the reduction of the use of single-use carryout bags.

(m) (1) There is a clear nexus between the type and amount of the fees imposed pursuant to this act and the environmental, public health, and societal costs resulting from single-use carryout bags.

(2) It is the intent of the Legislature that the fees that are imposed pursuant to Section 42252.5 of the Public Resources Code be consistent with *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866.

SEC. 2. The heading of Chapter 5.1 (commencing with Section 42250) of Part 3 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5.1. SINGLE-USE CARRYOUT BAGS

SEC. 3. Section 42250 of the Public Resources Code is amended to read:

42250. For purposes of this chapter, the following definitions shall apply:

(a) “Biodegradable or compostable bag” means a carryout bag provided by a store to a customer at the point of sale that is certified and labeled as meeting the current American Society for Testing and Materials (ASTM) Standard Specification pursuant to Chapter 5.7 (commencing with Section 42355).

(b) (1) “Green carryout bag” means a single-use carryout bag that is provided by a store to a customer at the point of sale and meets all of the following requirements:

(A) Is composed of at least 40 percent post-consumer recycled content material.

(B) Is accepted in curbside recycling programs serving at least 80 percent of households in the state.

(C) Is capable of composting within 180 days, as determined by the board.

(2) “Green carryout bag” does not include a reusable bag.

(c) “Manufacturer” means the producer of a single-use carryout bag sold to a store.

(d) “Operator” means a person in control of, or having daily responsibility for, the daily operation of a store, which may include, but is not limited to, the owner of the store.

(e) “Paper carryout bag” means a paper carryout bag provided by a store to a customer at the point of sale that is not a reusable bag as defined in subdivision (g).

(f) “Plastic carryout bag” means a plastic carryout bag provided by a store to a customer at the point of sale that is not a reusable bag as defined in subdivision (g).

(g) “Reusable bag” means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

(h) “Single-use carryout bag” means a carryout bag provided by the store to a customer at the point of sale that is not a reusable bag as defined in subdivision (g), and includes biodegradable or compostable bags.

(i) “Store” means a retail establishment that provides single-use carryout bags to its customers as a result of the sale of a product and that meets any of the following requirements:

(1) Meets the definition of a “supermarket” as found in Section 14526.5.

(2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(3) Is a chain of convenience food stores primarily engaged in retailing a limited line of goods that includes milk, bread, soda, and snacks, with a total combined square footage of 10,000 square feet or more within the state.

SEC. 4. Section 42251 of the Public Resources Code is amended to read:

42251. (a) The operator of a store that provides plastic carryout bags to customers shall establish an at-store plastic carryout bag recycling program pursuant to this chapter that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags.

(b) A retail establishment that does not meet the definition of a store, as specified in Section 42250, and that provides plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program, as specified in this chapter.

SEC. 5. Section 42252 of the Public Resources Code is amended to read:

42252. An at-store plastic carryout bag recycling program provided by the operator of a store shall include all of the following:

(a) A plastic carryout bag provided by the store shall have printed or displayed on the bag, in a manner visible to a consumer,

1 the words “PLEASE RETURN TO A PARTICIPATING STORE
2 FOR RECYCLING.”

3 (b) A plastic carryout bag collection bin shall be placed at each
4 store and shall be visible, easily accessible to the consumer, and
5 clearly marked that the collection bin is available for the purpose
6 of collecting and recycling plastic carryout bags.

7 (c) All plastic bags collected by the store shall be collected,
8 transported, and recycled in a manner that does not conflict with
9 the local jurisdiction’s source reduction and recycling element,
10 pursuant to Chapter 2 (commencing with Section 41000) and
11 Chapter 3 (commencing with Section 41300) of Part 2.

12 (d) The store shall maintain records describing the collection,
13 transport, and recycling of plastic bags collected for a minimum
14 of three years and shall make the records available to the board or
15 the local jurisdiction, upon request, to demonstrate compliance
16 with this chapter.

17 (e) The operator of a store shall make reusable bags available
18 to customers within the store, which may be purchased and used
19 in lieu of using a single-use carryout bag. This subdivision is not
20 applicable to a retail establishment specified pursuant to
21 subdivision (b) of Section 42251.

22 SEC. 6. Section 42252.5 is added to the Public Resources Code,
23 to read:

24 42252.5. (a) Except as provided in subdivision (f), on and after
25 July 1, 2010, a store shall not provide a single-use carryout bag,
26 including a green carryout bag, to a customer at the point of sale,
27 unless the store charges the customer not less than twenty-five
28 cents (\$0.25) per bag.

29 (b) The amount charged pursuant to subdivision (a) shall not
30 be subject to sales tax, shall be separately stated on the receipt
31 provided to the customer at the time of sale, and shall be identified
32 as the Bag Pollution Cleanup Fee.

33 (c) (1) A store charging a fee pursuant to subdivision (a) may
34 retain a portion of the fee, as specified in subdivision (d). The store
35 shall remit the remainder of the fee to the State Board of
36 Equalization pursuant to Section 42252.7.

37 (2) A store shall coordinate with its host jurisdiction in
38 expending any revenue retained pursuant to this subdivision.

39 (3) A store shall not retain more than five cents (\$0.05) of the
40 fee for each single-use carryout bag that is not a green carryout

1 bag. For a single-use carryout bag that is a green carryout bag, a
2 store shall not retain more than seven cents (\$0.07) of the fee for
3 each bag.

4 (d) A store charging a fee pursuant to this section shall use the
5 amount of the fee retained pursuant to subdivision (c) for all of
6 the following:

7 (1) Reimbursement of the store's costs associated with the
8 collection and remittance of the fee.

9 (2) The development of in-store educational materials for
10 distribution to customers encouraging the use of reusable bags.

11 (3) The development and implementation of an educational
12 campaign encouraging the use of reusable bags, including, but not
13 limited to, public service announcements.

14 (4) Reimbursement of the store's costs associated with providing
15 reusable bags to customers or as donations to community
16 organizations, nonprofit organizations, and other similar entities.

17 (5) Reimbursement of the store's costs associated with the
18 purchase of single-use carryout bags.

19 (e) Any other transaction fee charged by a store in relation to
20 providing a single-use carryout bag shall be identified separately
21 from the Bag Pollution Cleanup Fee.

22 (f) The fee imposed pursuant to this section shall not be charged
23 to either of the following:

24 (1) A customer participating in the California Special
25 Supplemental Food Program for Women, Infants, and Children
26 (Article 2 (commencing with Section 123275) of Chapter 1 of Part
27 2 of Division 106 of the Health and Safety Code).

28 (2) A customer participating in the State Department of Social
29 Services Food Stamp Program.

30 SEC. 7. Section 42252.7 is added to the Public Resources Code,
31 to read:

32 42252.7. (a) The Bag Pollution Fund is hereby established in
33 the State Treasury. All fees collected by the State Board of
34 Equalization pursuant to this chapter shall be deposited in the fund.
35 By January 31, 2011, and quarterly thereafter, a store that collects
36 the Bag Pollution Cleanup Fee pursuant to subdivision (a) of
37 Section 42252.5 shall calculate the amount of moneys collected
38 and shall remit the moneys to the State Board of Equalization for
39 deposit into the Bag Pollution Fund, less funds retained by the
40 store pursuant to subdivision (c) of Section 42252.5.

1 (b) The moneys in the Bag Pollution Fund shall be expended
2 by the board, upon appropriation by the Legislature, for the
3 following purposes:

4 (1) The board shall expend no more than 3 percent of the
5 revenue deposited into the Bag Pollution Fund for reimbursement
6 of the board's costs for administration, collection, enforcement,
7 and auditing requirements associated with this chapter, as well as
8 making refunds associated with the chapter.

9 (2) The board shall, in consultation with the California
10 Environmental Protection Agency, the State Water Resources
11 Control Board, and the Department of Toxic Substances Control,
12 expend no more than 5 percent of the revenue deposited into the
13 Bag Pollution Fund to develop and implement programs related
14 to the use of single-use carryout bags to encourage and support
15 pollution prevention, abatement and cleanup, enforcement, green
16 chemistry, water quality protection and cleanup, and environmental
17 and public education and outreach.

18 (3) The board shall expend the remaining moneys for payments
19 to counties and cities, on a per capita basis, for the following
20 activities to prevent and reduce the litter and environmental impacts
21 of single-use carryout bags:

22 (A) To establish and maintain local programs, including those
23 in partnership with nonprofit community-based organizations, for
24 purposes of litter cleanup activities, source reduction and recycling
25 efforts, educational and litter prevention programs, and other
26 programs to mitigate the environmental impacts of single-use
27 carryout bags.

28 (B) Mitigation projects relating to stormwater pollution,
29 including devices to prevent single-use carryout bag litter from
30 entering storm drain systems.

31 (C) Reusable bag giveaway programs, including those targeting
32 low-income residents.

33 (c) To receive these funds, a city, county, or city and county
34 shall fill out and return a funding request form to the board. The
35 form shall specify the activities to prevent and reduce the litter
36 and environmental impacts of single-use carryout bags for which
37 the funds will be used. Jurisdictions may also jointly fill out a
38 funding request for the purposes of pooling their funds.

39 (d) The board shall annually prepare and distribute a funding
40 request form to each city, county, or city and county. The form

1 shall specify the amount of funds for which the jurisdiction is
2 eligible. The form shall not exceed four double-sided pages in
3 length, and may be submitted electronically. If a city, county, or
4 city and county submits the funding request form and the board
5 deems that the proposed projects meet the funding purposes
6 specified in subdivision (b), the board shall distribute the funds
7 on a per capita basis as defined in subdivision (e). If a city, county,
8 or city and county does not return the funding request form within
9 120 days of receipt of the form from the board, the city, county,
10 or city and county is not eligible to receive the funds for that
11 funding cycle.

12 (e) For the purposes of this section, per capita population shall
13 be based on the total population of the incorporated area of a city
14 and the unincorporated area of a county.

15 (f) The revenues deposited in the Bag Pollution Fund that are
16 generated from the fee imposed pursuant to this chapter shall not
17 be expended for activities unrelated to the prevention or reduction
18 of litter or the environmental impacts of single-use carryout bags.

19 (g) If a city, county, or city and county prohibits the use of all
20 single-use carryout bags, including green carryout bags, and no
21 fees are collected pursuant to Section 42252.5 within that
22 jurisdiction, that city, county, or city and county shall not be
23 eligible for grant funds pursuant to this section.

24 SEC. 8. Section 42253 of the Public Resources Code is
25 amended to read:

26 42253. The manufacturer of a single-use carryout bag shall
27 develop educational materials to encourage the reducing, reusing,
28 and recycling single-use carryout bags and shall make those
29 materials available to stores required to comply with this chapter.

30 SEC. 9. Section 42254 of the Public Resources Code is
31 amended to read:

32 42254. (a) The Legislature finds and declares that all of these
33 are matters of statewide interest and concern:

34 (1) Requiring a store to collect, transport, or recycle plastic
35 carryout bags.

36 (2) Imposing a plastic carryout bag fee upon a store.

37 (3) Requiring a store to conduct auditing or reporting with regard
38 to plastic carryout bags.

1 (b) Unless expressly authorized by this chapter, a city, county,
2 or other public agency shall not adopt, implement, or enforce an
3 ordinance, resolution, regulation, or rule to do any of the following:

4 (1) Require a store that is in compliance with this chapter to
5 collect, transport, or recycle plastic carryout bags.

6 (2) Impose a single-use carryout bag fee upon a store that is in
7 compliance with this chapter.

8 (3) Require auditing or reporting requirements that are in
9 addition to what is required by subdivision (d) of Section 42252,
10 upon a store that is in compliance with this chapter.

11 (c) This section does not prohibit the adoption, implementation,
12 or enforcement of any local ordinance, resolution, regulation, or
13 rule governing curbside or drop off recycling programs operated
14 by, or pursuant to a contract with, a city, county, or other public
15 agency, including any action relating to fees for these programs.

16 (d) This section does not affect any contract, franchise, permit,
17 license, or other arrangement regarding the collection or recycling
18 of solid waste or household hazardous waste.

19 SEC. 10. Section 42256 of the Public Resources Code is
20 repealed.

21 SEC. 11. Section 42256 is added to the Public Resources Code,
22 to read:

23 42256. On or before January 1, 2012, and biennially thereafter,
24 the board, in coordination with the State Water Resources Control
25 Board, the State Air Resources Board, the regional water quality
26 control boards and stakeholders, shall submit a report to the
27 Legislature regarding the effectiveness of this chapter. The report
28 shall also include recommendations to further encourage the use
29 of reusable bags by consumers and retailers and to reduce the
30 consumption of single-use carryout bags, including, at a minimum,
31 the following:

32 (a) Expanding the definition of stores that are subject to this
33 chapter to all other stores and retail establishments distributing
34 single-use carryout bags, including the retail establishments
35 specified pursuant to subdivision (b) of Section 42251.

36 (b) Increasing the fee imposed pursuant to Section 42252.5 to
37 increase this chapter's effectiveness.

38 SEC. 12. Section 42257 of the Public Resources Code is
39 repealed.

1 SEC. 13. Section 42257 is added to the Public Resources Code,
2 to read:

3 42257. (a) Except as otherwise provided by this chapter, the
4 board shall administer and enforce this chapter.

5 (b) The State Board of Equalization shall administer and collect
6 the Bag Pollution Cleanup Fee pursuant to the Fee Collection
7 Procedures Law (Part 30 (commencing with Section 55001) of
8 Division 2 of the Revenue and Taxation Code).

9 (c) The State Board of Equalization may adopt rules and
10 regulations to carry out this chapter, including, but not limited to,
11 provisions governing collections, reporting, refunds, and appeals.

12 (d) (1) The Bag Pollution Cleanup Fee shall be due and payable
13 quarterly on or before the 25th day of the month following each
14 calendar quarter.

15 (2) Payments shall be accompanied by a form, as prescribed by
16 the State Board of Equalization, including, but not limited to,
17 electronic media.

18 (e) The State Board of Equalization may require the payment
19 of the fee for other than quarterly periods.