

AMENDED IN ASSEMBLY APRIL 27, 2009

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 Integrated Waste Management Board (*board*) as specified, including, but not limited to, *for* 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 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.

1 (b) Litter from plastic carryout bags poses a significant burden
2 to California's economy and a serious threat to the marine
3 ecosystem. It is estimated that Californians consume 19 billion
4 plastic carryout bags per year. However, according to the California
5 Integrated Waste Management Board, the recycling rate for these
6 bags is less than 5 percent. Public agencies in California also spend
7 more than three hundred seventy-five million dollars
8 (\$375,000,000) annually in litter cleanup, and plastic carryout bags
9 contribute disproportionately to the litter stream.

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

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

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

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

36 (g) Carryout bags marketed as "biodegradable" or
37 "compostable" are also not a viable alternative because these bags
38 have not proven to biodegrade in the marine environment, are only
39 able to biodegrade under specific conditions found in certain
40 industrial composting facilities that are not widely available

1 throughout the state, and will not reduce the litter problem since
2 they have the same characteristics as plastic bags.

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

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

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

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

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

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

37 (2) It is the intent of the Legislature that the fees that are
38 imposed pursuant to Section 42252.5 of the Public Resources Code
39 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
40 (1997) 15 Cal.4th 866.

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

4
5 CHAPTER 5.1. SINGLE-USE CARRYOUT BAGS
6

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

9 42250. For purposes of this chapter, the following definitions
10 shall apply:

11 (a) "Biodegradable or compostable bag" means a carryout bag
12 provided by a store to a customer at the point of sale that is certified
13 and labeled as meeting the current American Society for Testing
14 and Materials (ASTM) Standard Specification pursuant to Chapter
15 5.7 (commencing with Section 42355).

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

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

21 (B) Is accepted in curbside recycling programs serving at least
22 80 percent of households in the state.

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

25 (2) "Green carryout bag" does not include a reusable bag.

26 (c) "Manufacturer" means the producer of a single-use carryout
27 bag sold to a store.

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

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

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

37 (g) "Reusable bag" means either of the following:

38 (1) A bag made of cloth or other machine washable fabric that
39 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 State Board of Equalization shall expend no more than*
10 *3 percent of the revenue deposited into the Bag Pollution Fund*
11 *for reimbursement of the state board's costs for administration*
12 *and collection of the fee.*

13 ~~(2)~~

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

23 ~~(3)~~

24 (4) The board shall expend the remaining moneys for payments
25 to counties and cities, on a per capita basis, for the following
26 activities to prevent and reduce the litter and environmental impacts
27 of single-use carryout bags:

28 (A) To establish and maintain local programs, including those
29 in partnership with nonprofit community-based organizations, for
30 purposes of litter cleanup activities, source reduction and recycling
31 efforts, educational and litter prevention programs, and other
32 programs to mitigate the environmental impacts of single-use
33 carryout bags.

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

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

39 (c) To receive these funds, a city, county, or city and county
40 shall fill out and return a funding request form to the board. The

1 form shall specify the activities to prevent and reduce the litter
2 and environmental impacts of single-use carryout bags for which
3 the funds will be used. Jurisdictions may also jointly fill out a
4 funding request for the purposes of pooling their funds.

5 (d) The board shall annually prepare and distribute a funding
6 request form to each city, county, or city and county. The form
7 shall specify the amount of funds for which the jurisdiction is
8 eligible. The form shall not exceed four double-sided pages in
9 length, and may be submitted electronically. If a city, county, or
10 city and county submits the funding request form and the board
11 deems that the proposed projects meet the funding purposes
12 specified in subdivision (b), the board shall distribute the funds
13 on a per capita basis as defined in subdivision (e). If a city, county,
14 or city and county does not return the funding request form within
15 120 days of receipt of the form from the board, the city, county,
16 or city and county is not eligible to receive the funds for that
17 funding cycle.

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

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

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

30 SEC. 8. Section 42253 of the Public Resources Code is
31 amended to read:

32 42253. The manufacturer of a single-use carryout bag shall
33 develop educational materials to encourage the reducing, reusing,
34 and recycling single-use carryout bags and shall make those
35 materials available to stores required to comply with this chapter.

36 SEC. 9. Section 42254 of the Public Resources Code is
37 amended to read:

38 42254. (a) The Legislature finds and declares that all of these
39 are matters of statewide interest and concern:

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

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

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

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

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

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

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

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

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

24 SEC. 10. Section 42256 of the Public Resources Code is
25 repealed.

26 SEC. 11. Section 42256 is added to the Public Resources Code,
27 to read:

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

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

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

3 SEC. 12. Section 42257 of the Public Resources Code is
4 repealed.

5 SEC. 13. Section 42257 is added to the Public Resources Code,
6 to read:

7 42257. (a) Except as otherwise provided by this chapter, the
8 board shall administer and enforce this chapter.

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

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

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

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

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