

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1998**

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**Introduced by Assembly Member Brownley**

*(Principal coauthor: Senator Leno)*

*(Coauthors: Assembly Members Ammiano, Chesbro, DeLeon, Evans, Feuer, Hill, Bonnie Lowenthal, Nava, Ruskin, Skinner, Torlakson, and Yamada)*

*(Coauthors: Senators DeSaulnier and Pavley)*

February 17, 2010

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An act to amend Section 42257 of, and to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Brownley. ~~Recycling: plastic and paper~~ *Solid waste: single-use* carryout bags.

~~(1) Existing~~

*Existing* law requires 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. This requirement is repealed on January 1, 2013.

~~A violation of the enforcement provisions of the existing Fee Collection Procedures Law is a crime.~~

This bill would instead make those at-store recycling program requirements inoperative on July 1, 2011, ~~and~~ would repeal them on January 1, 2012, and would instead, on and after ~~July 1, 2011~~ *January 1, 2012*, prohibit a store, as defined, from providing a ~~plastic single-use~~ carryout bag to a customer. ~~The bill would require a store, on and after~~

July 1, 2011, with regard to providing carryout bags to a customer at the point of sale, to either make reusable bags available for purchase by the customer or provide a paper carryout bag that is subject to the green bag fee that would be imposed by the bill.

The bill would require a store to charge a green bag fee of not less than \$0.25 for each paper carryout bag distributed at the point of sale. The bill would establish the Paper Bag Pollution Cleanup Fund in the State Treasury and would require a store to remit these fees, less a specified amount, to the State Board of Equalization for deposit in that fund.

The moneys in the fund would be required to be expended, upon appropriation by the Legislature, in a specified order of priority, by the department for grants to cities and counties for programs related to paper carryout bags and reusable bag giveaway programs, by the department, in consultation with specified state agencies, to develop and implement specified programs related to paper carryout bags, by the State Board of Equalization to reimburse its costs associated with collecting the green bag fees, and by the department for purposes of implementing the bill's provisions. The bill would expressly prohibit the expenditure of revenues from the fund for activities unrelated to the prevention or reduction of paper carryout bag pollution.

The bill would require the department, on or before January 1, 2015, to submit to the Legislature a report regarding the effectiveness of the bill's provisions and recommendations to further encourage the use of reusable bags. *The requirement for submitting the report would become inoperative on January 1, 2019.*

The bill would require the State Board of Equalization to administer the collection of the green bag fees pursuant to the Fee Collection Procedures Law, thereby imposing a state-mandated local program by creating a new crime.

(2) 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:

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: *yes-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) The prohibition imposed by this act, pursuant to Section  
4 42281 of the Public Resources Code, is necessary for the  
5 environmental, public health, and societal burdens imposed by the  
6 use of single-use plastic carryout bags.

7 (b) Despite global treaties to prevent dumping at sea and  
8 minimize land-based sources of pollution, and increasing efforts  
9 worldwide to protect water quality, the quantity of marine debris  
10 in the world's oceans is increasing.

11 (c) Despite recycling and voluntary solutions to control pollution  
12 from plastic bags in California, only 5 percent of plastic carryout  
13 bags are recycled and the rest either take up valuable landfill space  
14 or are discarded in the environment.

15 (d) The North Pacific Gyre in the Pacific Ocean is home to  
16 largest garbage dump of plastic trash, now estimated to be the size  
17 of the United States and is increasing rapidly.

18 (e) According to the California Coastal Commission, the  
19 majority of marine debris is composed of plastic materials; 60 to  
20 80 percent overall and 90 percent of floating debris is plastic.

21 (f) It is estimated that at least 267 species of wildlife have been  
22 threatened by marine debris through ingestion or entanglement,  
23 including sea turtles, fish, marine mammals, and various species  
24 of sea birds.

25 (g) Paper bags made from virgin materials are not sustainable  
26 alternatives to plastic carryout bags because the production of these  
27 types of bags contributes to deforestation, natural resource  
28 depletion, greenhouse gas emissions, and additional waterborne  
29 wastes.

30 ~~(h) Paper carryout bags that contain no old-growth fiber are~~  
31 ~~100-percent recyclable and contain a minimum of 40 percent~~  
32 ~~postconsumer recycled content have fewer negative impacts than~~  
33 ~~virgin paper bags.~~

34 *(h) Though paper carryout bags that contain no old-growth*  
35 *fiber and that contain a minimum of 40 percent postconsumer*  
36 *recycled content are 100-percent recyclable and have fewer*  
37 *negative impacts than virgin paper bags, paper bags are not*  
38 *sustainable alternatives to plastic carryout bags, because the*

1 *production of these types of bags contributes to deforestation,*  
2 *greenhouse gas emissions, and additional waterborne wastes.*

3 (i) Plastics made from bio-based sources that are marketed as  
4 “compostable” or “biodegradable” *are not sustainable alternatives*  
5 *to plastic carryout bags because they* have not been shown to  
6 degrade in aquatic environments and require conditions only  
7 available in composting facilities to rapidly break down into  
8 constituents that assimilate back into the environment.

9 (j) With the exception of the City and County of San Francisco,  
10 the City of Oakland, and a few other communities, these  
11 composting facilities are not typically available to local  
12 jurisdictions and compostable plastic in communities without  
13 commercial composting would be disposed of as waste.

14 (k) On September 18, 2006, the West Coast Governor’s  
15 Agreement on Ocean Health was signed by Governor  
16 Schwarzenegger of California, Governor Kulongoski of Oregon,  
17 and Governor Gregoire of Washington to address the challenges  
18 of the Pacific coast’s declining health and to establish its protection  
19 as a regional priority.

20 (l) On February 8, 2007, the California Ocean Protection Council  
21 approved a resolution to call for statewide action to reduce the  
22 amount of land-based sources of marine debris and the resulting  
23 implementation strategy was adopted by the Ocean Protection  
24 Council in November 2008, which called for aggressive actions  
25 to reduce the use of single-use plastic products, including plastic  
26 bags.

27 (m) On World Oceans Day 2009, the Under-Secretary General  
28 and Executive Director of the United Nations Environmental  
29 Programme called for an outright ban or rapid phase-out of thin  
30 film plastic carryout bags worldwide.

31 (n) In the United States, and in California, many cities have  
32 already enacted bans, or are seriously considering banning plastic  
33 single-use bags.

34 (o) The Legislature finds and declares that proliferation of these  
35 bans should be of statewide interest and concern and that the state  
36 should take action regulating the use of plastic *and paper* single-use  
37 bags.

38 ~~(p) The imposition of the fees pursuant to Section 42282 of the~~  
39 ~~Public Resources Code would not result in the imposition of a tax~~  
40 ~~within the meaning of Article XIII A of the California Constitution~~

1 because the amount and nature of the fee have a fair and reasonable  
2 relationship to the environmental, public health, and societal  
3 burdens imposed by the use of paper carryout bags, and there is a  
4 sufficient nexus between the fees imposed and the use of those  
5 fees to support programs to prevent the litter of paper carryout  
6 bags, to clean up the litter caused by paper carryout bags, and to  
7 encourage the reduction of the use of paper bags.

8 (q) (1) There is a clear nexus between the type and amount of  
9 the fees imposed pursuant to this act and the environmental, public  
10 health, and societal costs resulting from paper carryout bags.

11 (2) It is the intent of the Legislature that the fees that are  
12 imposed pursuant to Section 42282 of the Public Resources Code  
13 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*  
14 (1997) 15 Cal.4th 866.

15 SEC. 2. Section 42257 of the Public Resources Code is  
16 amended to read:

17 42257. This chapter shall remain operative only until July 1,  
18 2011, ~~and~~, and as of January 1, 2012, is repealed, unless a later  
19 enacted statute, that is enacted before January 1, 2012, deletes or  
20 extends that date.

21 SEC. 3. Chapter 5.3 (commencing with Section 42280) is added  
22 to Part 3 of Division 30 of the Public Resources Code, to read:

23  
24 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

25  
26 Article 1. Definitions

27  
28 42280. For purposes of this chapter, the following definitions  
29 shall apply:

30 (a) ~~“Compostable carryout bag” means a carryout bag provided~~  
31 ~~by a store to a customer at a point of sale that meets either of the~~  
32 ~~following requirements:~~

33 (1) ~~Is composed of bio-based sources, such as that derived from~~  
34 ~~corn or other plant sources.~~

35 (2) ~~Meets the American Society for Testing and Materials~~  
36 ~~(ASTM) Standard Specification for Compostable Plastics as~~  
37 ~~specified in subparagraph (A) of paragraph (1) of subdivision (b)~~  
38 ~~of Section 42356.~~

39 (b) ~~“Department” means the Department of Resources Recycling~~  
40 ~~and Recovery.~~

- 1 (e) ~~“Fund” means the Paper Bag Pollution Cleanup Fund~~  
2 ~~established pursuant to subdivision (a) of Section 42283.~~
- 3 (d) ~~“Green bag fee” means a fee imposed pursuant to Section~~  
4 ~~42282 upon customers for receipt of a paper carryout bag at point~~  
5 ~~of sale.~~
- 6 (e) ~~“Paper carryout bag” means a carryout bag provided by a~~  
7 ~~store to a customer at point of sale that meets all of the following~~  
8 ~~requirements:~~
- 9 (1) ~~Contains no old-growth fiber.~~  
10 (2) ~~Is 100-percent recyclable.~~  
11 (3) ~~Contains a minimum of 40 percent postconsumer recycled~~  
12 ~~content.~~
- 13 (f) ~~“Plastic carryout bag” means a plastic bag designed for single~~  
14 ~~use, including a compostable carryout bag as defined in subdivision~~  
15 ~~(a), that is provided by a store to a customer at the point of sale~~  
16 ~~that is not a reusable bag.~~
- 17 (g) ~~“Reusable bag” means a bag that is specifically designed~~  
18 ~~and manufactured for multiple reuse, meaning 50 or more uses.~~
- 19 (h) ~~“State board” means the State Board of Equalization.~~
- 20 (i) ~~“Store” means a retail establishment that provides paper or~~  
21 ~~plastic carryout bags to its customers as a result of the sale of a~~  
22 ~~product and that meets any of the following requirements:~~
- 23 (a) *“Department” means the Department of Resources*  
24 *Recycling and Recovery.*
- 25 (b) *“Reusable bag” means a bag that meets both of the following*  
26 *requirements:*
- 27 (1) *Is designed and manufactured for at least 100 uses.*
- 28 (2) (A) *Is made of a washable material that does not contain*  
29 *lead or any other heavy metal in a toxic amount, as determined*  
30 *by the department.*
- 31 (B) *The requirement of subparagraph (A) shall not affect any*  
32 *authority of the Department of Toxic Substances Control pursuant*  
33 *to Article 14 (commencing with Section 25251) of Chapter 6.5 of*  
34 *Division 20 of the Health and Safety Code and notwithstanding*  
35 *subdivision (c) of Section 25257.1 of the Health and Safety Code,*  
36 *shall not be considered as a product category already regulated*  
37 *or subject to regulation.*
- 38 (c) *“Single-use carryout bag” means a bag that meets all of the*  
39 *following conditions:*
- 40 (1) *Is designed for one or more uses, but fewer than 100 uses.*

- 1 (2) *Is made of plastic, paper, or other material.*
- 2 (3) *Is provided by a store to a customer at the point of sale.*
- 3 (d) *“Store” means a retail establishment that provides single-use*
- 4 *carryout bags to its customers as a result of the sale of a product*
- 5 *and that meets any of the following requirements:*
- 6 (1) *Meets the definition of a “supermarket” in Section 14526.5.*
- 7 (2) *Has over 10,000 square feet of retail space that generates*
- 8 *sales or use tax pursuant to the Bradley-Burns Uniform Local Sales*
- 9 *and Use Tax Law (Part 1.5 (commencing with Section 7200) of*
- 10 *Division 2 of the Revenue and Taxation Code) and has a pharmacy*
- 11 *licensed pursuant to Chapter 9 (commencing with Section 4000)*
- 12 *of Division 2 of the Business and Professions Code.*
- 13 ~~(3) *Is a chain convenience food store or foodmart primarily*~~
- 14 ~~*engaged in retailing a limited line of goods that generally includes*~~
- 15 ~~*milk, bread, soda, and snacks, and has a total cumulative square*~~
- 16 ~~*footage of 10,000 square feet or more.*~~
- 17 (3) *Is a convenience food store or foodmart engaged in retailing*
- 18 *a limited line of goods that generally includes milk, bread, soda,*
- 19 *and snacks.*

20  
21 Article 2. Carryout Bag Regulation

- 22
- 23 ~~42281. (a) On and after July 1, 2011, a store shall not provide~~
- 24 ~~a plastic carryout bag to a customer at the point of sale~~
- 25 ~~(b) (1) On and after July 1, 2011, with regard to providing~~
- 26 ~~carryout bags to a customer at the point of sale, a store shall make~~
- 27 ~~reusable bags available for purchase by a customer or provide to~~
- 28 ~~the customer a paper carryout bag that is subject to the fee specified~~
- 29 ~~in Section 42282.~~
- 30 ~~(2) A store shall only provide paper carryout bags that meet the~~
- 31 ~~definition specified in subdivision (e) of Section 42280.~~
- 32 ~~42282. (a) A store shall not provide a paper carryout bag to a~~
- 33 ~~customer at the point of sale, unless the store charges the customer~~
- 34 ~~a green bag fee of not less than twenty-five cents (\$0.25) per bag.~~
- 35 ~~(b) The amount charged pursuant to subdivision (a) shall not~~
- 36 ~~be subject to sales tax, shall be separately stated on the receipt~~
- 37 ~~provided to the customer at the time of sale, and shall be identified~~
- 38 ~~as the “Green Bag Fee.”~~
- 39 ~~(c) A store may retain not more than five cents (\$0.05) of the~~
- 40 ~~green bag fee for each paper carryout bag and shall remit the~~

1 remainder of the green bag fee to the state board pursuant to  
2 Section 42284.

3 (d) A store charging a green bag fee pursuant to subdivision (a)  
4 may only use the amount of the fee retained pursuant to subdivision  
5 (e) for the following purposes:

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

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

10 (3) The development and implementation of an educational  
11 campaign targeting low-income communities and  
12 non-English-speaking communities to encourage greater use of  
13 reusable bags.

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

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

19 -

20 Article 3. Paper Bag Pollution Cleanup Fund

21 -

22 42283. (a) The Paper Bag Pollution Cleanup Fund is hereby  
23 established in the State Treasury. All green bag fees collected by  
24 the state board pursuant to this chapter shall be deposited in the  
25 fund.

26 (b) The moneys in the fund shall be expended, upon  
27 appropriation by the Legislature in the annual Budget Act, in the  
28 manner and in the order of priority as follows:

29 (1) (A) By the department, 80 percent of the moneys in the  
30 fund, for grants to cities and counties, on a per capita basis, for the  
31 following purposes:

32 (i) Establishing and maintaining local programs to control  
33 pollution from paper carryout bags, including those programs in  
34 partnership with nonprofit community-based organizations, for  
35 purposes of litter cleanup activities.

36 (ii) Source reduction efforts to help implement zero waste  
37 programs, litter prevention programs, and litter prevention  
38 education and outreach programs related to paper carryout bags.

1 (iii) Mitigation projects relating to stormwater pollution caused  
2 by paper carryout bags, including devices to prevent paper carryout  
3 bag litter from entering storm drain systems.

4 (iv) Reusable bag giveaway programs, including those targeting  
5 low-income residents.

6 (B) The amount for which a city or a county is eligible shall be  
7 based on the total population of the incorporated area of the city  
8 or the total unincorporated area of the county, whichever is  
9 applicable.

10 (2) By the department, 14 percent of the moneys in the fund, in  
11 consultation with the Ocean Protection Council, the State Water  
12 Resources Control Board, and the Department of Toxic Substances  
13 Control, to develop and implement programs to encourage and  
14 support pollution prevention, abatement, cleanup, enforcement,  
15 green chemistry and product redesign, water quality protection  
16 and cleanup, and public education and outreach related to the use  
17 of paper carryout bags.

18 (3) No more than 3 percent of the funds shall be expended by  
19 the state board, to reimburse the state board's costs of administering  
20 Section 42285.

21 (4) No more than 3 percent shall be expended by the department  
22 for purposes of administering the requirements of this chapter.

23 (e) The revenue from the Paper Bag Pollution Cleanup Fund  
24 for the purposes of this section shall not be expended on activities  
25 unrelated to the prevention or reduction of paper carryout bag  
26 pollution pursuant to *Sinclair Paint Co. v. State Bd. of Equalization*  
27 (1997) 15 Cal.4th 866.

28 -

29 Article 4. Report

30 -

31 42284. On or before January 1, 2015, the department shall  
32 submit a report to the Legislature regarding the effectiveness of  
33 this chapter. The report shall also include recommendations to  
34 further encourage the use of reusable bags by consumers and  
35 retailers and to reduce the consumption of single-use carryout  
36 bags, including at a minimum, both of 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 bags.

1 ~~(b) Increasing the green bag fee imposed pursuant to Section~~  
2 ~~42282, including necessary adjustments for inflation, to increase~~  
3 ~~the effectiveness of this chapter.~~

4 -

5 ~~Article 5. Administration and Enforcement~~

6 -

7 ~~42285. (a) The state board shall administer and collect the~~  
8 ~~green bag fee pursuant to the Fee Collection Procedures Law (Part~~  
9 ~~30 (commencing with Section 55001) of Division 2 of the Revenue~~  
10 ~~and Taxation Code).~~

11 ~~(b) The state board may adopt rules and regulations to carry out~~  
12 ~~this article, including, but not limited to, provisions governing~~  
13 ~~collections, reporting, refunds, and appeals.~~

14 ~~(c) The green bag fee shall be due and payable quarterly on or~~  
15 ~~before the 25th day of the month following each calendar quarter.~~  
16 ~~Payments shall be accompanied by a form, as prescribed by the~~  
17 ~~state board, including, but not limited to, electronic media.~~

18 ~~(d) The state board may require the payment of the green bag~~  
19 ~~fee for other than quarterly periods.~~

20 *42281. (a) On and after January 1, 2012, a store shall not*  
21 *provide a single-use carryout bag to a customer at the point of*  
22 *sale.*

23 *(b) A store shall make reusable bags available for purchase by*  
24 *a customer.*

25  
26 *Article 3. Report and Administration*

27  
28 *42282. (a) On or before January 1, 2015, the department shall*  
29 *submit a report to the Legislature regarding the effectiveness of*  
30 *this chapter. The report shall also include recommendations to*  
31 *further encourage the use of reusable bags by consumers and*  
32 *retailers and to reduce the consumption of single-use carryout*  
33 *bags, including at a minimum, expanding the definition of stores*  
34 *that are subject to this chapter to all other stores and retail*  
35 *establishments distributing single-use bags.*

36 *(b) The requirement for submitting a report imposed under*  
37 *subdivision (a) is inoperative on January 1, 2019, pursuant to*  
38 *Section 10231.5 of the Government Code.*

1 (c) A report to be submitted pursuant to subdivision (a) shall  
2 be submitted in compliance with Section 9895 of the Government  
3 Code.

4 ~~42286. Except as otherwise provided by this chapter, the~~  
5 ~~42283. The department shall administer and enforce this~~  
6 ~~chapter.~~

7 ~~SEC. 4. No reimbursement is required by this act pursuant to~~  
8 ~~Section 6 of Article XIII B of the California Constitution because~~  
9 ~~the only costs that may be incurred by a local agency or school~~  
10 ~~district will be incurred because this act creates a new crime or~~  
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
13 ~~the Government Code, or changes the definition of a crime within~~  
14 ~~the meaning of Section 6 of Article XIII B of the California~~  
15 ~~Constitution.~~