

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 68

Introduced by Assembly Member Brownley

(Principal coauthor: Senator Pavley)

**(Coauthors: Assembly Members Blumenfield, Chesbro, Feuer,
Huffman, Krekorian, Ma, Nava, John A. Perez, and Yamada)**

(Coauthor: Senator DeSaulnier)

December 12, 2008

An act 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 68, as amended, Brownley. Solid waste: single-use carryout bags.

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. 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.

Under existing law, the California Integrated Waste Management Board (board) administers laws related to waste management. ~~Existing law establishes in the Natural Resources Agency (agency) the Department of Conservation, which, among other things, administers laws related to beverage container recycling.~~

This bill would, on and after July 1, ~~2011~~ 2010, prohibit a store, as defined, from providing a single-use 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 would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund. *The bill would prohibit a store from distributing a single-use carryout bag that is not a plastic or compostable carryout bag that meets specific requirements.*

The bill would require ~~the agency and~~ the board to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer the collection of the fees imposed on those bags.

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

The bill would require the board, on or before January 1, 2013, to submit to the Legislature a report regarding the effectiveness of the above provisions 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 provided by stores impose hidden
- 4 costs on consumers, local governments, the state, taxpayers, and
- 5 the environment.
- 6 (b) Litter from plastic carryout bags poses a significant burden
- 7 to California's economy and a serious threat to our marine
- 8 ecosystem. It is estimated that Californians consume 19 billion
- 9 plastic carryout bags per year. However, according to the California
- 10 Integrated Waste Management Board, the recycling rate for these

1 bags is less than five percent and it currently costs the state
2 twenty-five million dollars (\$25,000,000) annually to landfill
3 discarded plastic bags. Public agencies in California also spend
4 more than three hundred million dollars (\$300,000,000) annually
5 in litter cleanup.

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

16 (d) *Imposing a fee on carryout bags has proven successful in*
17 *significantly reducing the number of single-use carryout bags.*
18 *Since 2002, Ireland has implemented a twenty-two euro-cent*
19 *(€0.22) levy, which is equivalent to thirty-three cents (\$0.33), on*
20 *single-use plastic bags and reported a significant decrease in*
21 *consumer use and pollution from carryout bags by over 90 percent.*
22 *The levy has generated more than one hundred seventeen million*
23 *euros (€117,000,000), which is equivalent to one hundred fifty*
24 *million dollars (\$150,000,000), to support waste reduction and*
25 *prevention programs, promote environmentally friendly products,*
26 *implement local waste management plans, and implement*
27 *environmental education and awareness initiatives.*

28 (e) *Paper bags made from virgin materials are not sustainable*
29 *alternatives to plastic carryout bags because the production of*
30 *these types of bags contributes to deforestation, natural resource*
31 *depletion, greenhouse gas emissions, and additional waterborne*
32 *wastes. Paper carryout bags that contain no old-growth fiber are*
33 *100 percent recyclable and contain a minimum of 40 percent*
34 *postconsumer recycled content have fewer negative impacts than*
35 *virgin paper bags.*

36 (f) *Plastics made from biobased sources that are marketed as*
37 *“compostable” or “biodegradable” have not been shown to*
38 *degrade in aquatic environments and require conditions only*
39 *available in composting facilities to rapidly break down into*
40 *constituents that assimilate back into the environment. With the*

1 *exception of the City and County of San Francisco, the City of*
2 *Oakland, and a few other communities, these composting facilities*
3 *are not typically available to local jurisdictions and compostable*
4 *plastic in communities without commercial composting would be*
5 *disposed of as waste.*

6 *(g) On February 8, 2007, the Ocean Protection Council adopted*
7 *a comprehensive resolution to reduce marine debris by targeting*
8 *specific actions on single-use plastic packaging. On November*
9 *20, 2008, the Ocean Protection Council adopted a final*
10 *implementation strategy for that resolution that includes a*
11 *legislative recommendation to charge consumers a fee on all*
12 *single-use plastic and paper carryout bags as an incentive for*
13 *consumers to switch to reusable bags. The Ocean Protection*
14 *Council further recommended that fees on commonly littered items,*
15 *such as single-use bags, should fund litter abatement, stormwater*
16 *capture, and litter prevention and outreach programs to reduce*
17 *the incidence of marine debris.*

18 ~~(d)~~

19 *(h) Requiring stores to end the subsidy of single-use carryout*
20 *bags and charge their full economic and environmental costs will*
21 *provide consumers with an appropriate market signal to make*
22 *informed decisions regarding carryout bag reduction and reuse*
23 *options will encourage consumers to opt for reusable bags.*

24 ~~(e)~~

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

29 ~~(f)~~

30 *(j) There is a need for a long-term shift away from litter control*
31 *and waste management and towards pollution prevention and*
32 *sustainable materials in the development of consumer products.*

33 ~~(g)~~

34 *(k) Green chemistry, material science, and sustainable design*
35 *offer a new approach to solving environmental damage caused by*
36 *single-use carryout bags.*

37 ~~(h)~~

38 *(l) The imposition of the fees pursuant to Section 42281 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 single-use carryout bags, and there
4 is a sufficient nexus between the fees imposed and the use of those
5 fees to support programs to prevent the litter of single-use carryout
6 bags, to clean up the litter caused by single-use carryout bags, and
7 to encourage the reduction of the use of single-use carryout bags.

8 (i)

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

12 (2) It is the intent of the Legislature that the fees that are
13 imposed pursuant to Section 42281 of the Public Resources Code
14 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
15 (1997) 15 Cal.4th 866.

16 SEC. 2. Chapter 5.3 (commencing with Section 42280) is added
17 to Part 3 of Division 30 of the Public Resources Code, to read:

18
19 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

20
21 Article 1. Definitions

22
23 42280. For purposes of this chapter, the following definitions
24 shall apply:

25 (a) ~~“Agency” means the Natural Resources Agency.~~

26 (b) ~~“Bag Pollution Cleanup Fee” means the fee imposed~~
27 ~~pursuant to Section 42281.~~

28 (c) ~~“Board” means the California Integrated Waste Management~~
29 ~~Board.~~

30 (d) ~~“Cal-EPA” means the California Environmental Protection~~
31 ~~Agency.~~

32 (e) ~~“Fund” means the Bag Pollution Fund, established pursuant~~
33 ~~to subdivision (a) of Section 42285.~~

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

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

39 (B) ~~Is accepted in curbside recycling programs serving at least~~
40 ~~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.~~

~~(g) “Reusable bag” means a reusable bag that is made of cloth or other machine washable fabric that is specifically designed and manufactured for multiple reuse.~~

~~(h) “Single-use carryout bag” means a single-use carryout bag that is provided by a store to a customer at the point of sale and that is not a reusable bag and includes a “biodegradable” or “compostable” carryout bag meeting the requirements specified in Section 42357.~~

(a) “Bag Pollution Cleanup Fee” means the fee imposed pursuant to Section 42281.

(b) “Board” means the California Integrated Waste Management Board.

(c) “Compostable carryout bag” means a carryout bag provided by a store to a customer at point of sale that meets both of the following requirements:

(1) Is derived from 100 percent biobased sources containing no products derived from genetically modified feedstocks.

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

(d) “Fund” means the Bag Pollution Fund established pursuant to subdivision (a) of Section 42285.

(e) “Paper carryout bag” means a carryout bag provided by a store to a customer at point of sale that meets all of the following requirements:

(1) Contains no old-growth fiber.

(2) Is 100 percent recyclable.

(3) Contains a minimum of 40 percent postconsumer recycled content.

(f) “Plastic carryout bag” means a plastic bag designed for single use that is provided by a store to a customer at the point of sale.

(g) “Reusable bag” means a bag that is made of cloth or other machine washable fabric that is specifically designed and manufactured for multiple reuse.

(i)

(h) “State board” means the State Board of Equalization.

(j)

(i) “Store” means a retail establishment that provides ~~single-use carryout bags or green~~ *paper, compostable, or plastic* 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” 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* convenience food store or foodmart primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks, and has a total ~~combined~~ *cumulative* square footage of 10,000 square feet or more.

Article 2. Bag Pollution Cleanup Fee

42281. (a) Except as provided in Section 42283, on and after July 1, 2010, a store shall not provide a single-use carryout bag; ~~including a green carryout bag;~~ to a customer at the point of sale, unless the store charges the customer not less than twenty-five cents (\$0.25) per bag.

(b) *A store shall only distribute reusable bags, or single-use carryout bags that are paper, compostable, or plastic carryout bags.*

(b)

(c) The amount charged pursuant to ~~paragraph (1) of~~ subdivision (a) shall not be subject to sales tax, shall be separately stated on the receipt provided to the customer at the time of sale, and shall be identified as the Bag Pollution Cleanup Fee.

(e)

(d) (1) A store charging a fee pursuant to subdivision (a) may retain a portion of the fee, as specified in paragraph (2), in an amount necessary to reimburse the store’s costs associated with complying with this chapter, in accordance with Section 42284.5. The store shall remit the remainder of the fee to the state board pursuant to Section 42284.

1 (2) ~~(A) Before January 1, 2013, a~~ A store may retain not more
2 than five cents (\$0.05) of the fee for each ~~single-use plastic or~~ *plastic or*
3 ~~compostable carryout bag that is not a green carryout bag. For a~~
4 ~~single-use carryout bag that is a green carryout bag, a bag.~~ A store
5 may retain not more than ten cents (\$0.10) of the fee for each bag.

6 ~~(B) On and after January 1, 2013, a store may retain an amount~~
7 ~~established by the department, based on the department's~~
8 ~~determination of the costs of complying with Section 42284.5.~~

9 ~~(d)~~

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

13 42283. The fee imposed pursuant to Section 42281 shall not
14 be charged to either of the following:

15 (a) A customer participating in the California Special
16 Supplemental Food Program for Women, Infants, and Children
17 (Article 2 (commencing with Section 123275) of Chapter 1 of Part
18 2 of Division 106 of the Health and Safety Code).

19 (b) A customer participating in the State Department of Social
20 Services Food Stamp Program.

21 42284. A store that collects the Bag Pollution Cleanup Fee
22 pursuant to Section 42281 shall calculate the amount of money
23 collected and, after deducting the amount specified in subdivision
24 (c) of Section 42281, shall, in accordance with Section 42288,
25 remit the remainder to the state board for deposit into the fund.

26 42284.5. A store charging a fee pursuant to Section 42281 shall
27 use the amount of the fee retained pursuant to subdivision (c) of
28 Section 42281 for all of the following:

29 (a) Reimbursement of the store's costs associated with the
30 collection and remittance of the fee pursuant to Sections 42281
31 and 42284.

32 (b) The development of in-store educational materials for
33 distribution to customers encouraging the use of reusable bags.

34 (c) The development and implementation of an educational
35 campaign encouraging the use of reusable bags, including, but not
36 limited to, public service announcements.

37 (d) Reimbursement of the store's costs associated with providing
38 reusable bags to customers participating in programs described in
39 subdivisions (a) and (b) of Section 42283.

1 (e) Reimbursement of the store's costs associated with providing
2 reusable bags as donations to community organizations, nonprofit
3 organizations, and other similar entities.

4 (f) Reimbursement of the store's costs associated with the use
5 ~~purchase of single-use~~ *plastic, compostable, and paper* carryout
6 bags.

7 42285. (a) The Bag Pollution Fund is hereby established in
8 the State Treasury. All fees collected by the state board pursuant
9 to this chapter shall be deposited in the fund.

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

13 (1) (A) By the board, 80 percent of the moneys in the fund, for
14 grants to cities and counties, on a per capita basis, for the following
15 purposes:

16 (i) Establishing and maintaining local programs to control
17 pollution from single-use carryout bags, including those programs
18 in partnership with nonprofit community-based organizations, for
19 purposes of litter cleanup activities.

20 (ii) Source reduction efforts to help implement zero waste
21 programs, litter prevention programs, and litter prevention
22 education and outreach programs related to single-use carryout
23 bags.

24 (iii) Mitigation projects relating to stormwater pollution caused
25 by single use carryout bag, including devices to prevent single-use
26 carryout bag litter from entering storm drain systems.

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

29 (B) Except as provided in subparagraph (C), the amount for
30 which a city or a county is eligible shall be based on the total
31 population of the incorporated area of the city or the total
32 unincorporated area of the county, whichever is applicable.

33 (C) If a city or county prohibits the use of all single-use carryout
34 bags, including ~~green~~ *plastic, paper, and compostable* carryout
35 bags, and no fees are collected pursuant to Section 42281 within
36 that jurisdiction, that city or county shall not be eligible for grant
37 funds pursuant to this paragraph.

38 (2) No more than 5 percent of the funds shall be expended by
39 the state board, to reimburse the state board's costs of administering
40 Section 42288.

1 (3) No more than 5 3 percent shall be expended by the ~~agency~~
2 ~~and the board~~, *board* for purposes of administering the
3 requirements of this chapter.

4 (4) The remainder of the moneys in the funds shall be allocated
5 on an equal basis to the ~~agency, the board, and Cal-EPA board,~~
6 *the State Water Resources Control Board, the Department of Toxic*
7 *Substances Control, and the Ocean Protection Council* for the
8 purposes of ~~Section~~ Sections 42287 and 42287.1.

9 (c) *The revenue from the Bag Pollution Cleanup Fund for the*
10 *purposes of this section shall not be expended on activities*
11 *unrelated to the prevention or reduction of single-use bag pollution*
12 *pursuant to Sinclair Paint Co. v. State Bd. of Equalization (1997)*
13 *15 Cal.4th 866.*

14 42286. (a) The Legislature finds and declares that imposing
15 a single-use carryout bag fee upon a store is a matter of statewide
16 interest and concern.

17 (b) Unless expressly authorized by this chapter, a city, county,
18 or other public agency shall not adopt, implement, or enforce an
19 ordinance, resolution, regulation, or rule to impose a single-use
20 carryout bag fee upon a store that is ~~in compliance with~~ *subject to*
21 this chapter.

22 (c) This chapter does not preempt a city or county from
23 prohibiting the use, import, sale, or distribution of any plastic,
24 paper, or compostable carryout bag.

25 26 Article 3. Program and Report 27

28 42287. The board shall, in consultation with ~~Cal-EPA the~~
29 *Ocean Protection Council*, the State Water Resources Control
30 Board, and the Department of Toxic Substances Control, develop
31 and implement programs to encourage and support pollution
32 prevention, abatement ~~and~~, cleanup, enforcement, green chemistry
33 *and product design*, water quality protection and cleanup, and
34 environmental and public education and outreach related to the
35 use of single-use carryout bags.

36 42287.1. On or before January 1, ~~2012, the board, in~~
37 ~~consultation with Cal-EPA, 2013, the board~~ shall submit a report
38 to the Legislature regarding the effectiveness of this chapter, the
39 report shall also include recommendations to further encourage
40 the use of reusable bags by consumers and retailers and to reduce

1 the consumption of single-use bags, including at a minimum, both
2 of the following:

3 (a) Expanding the definition of stores that are subject to this
4 chapter to all other stores and retail establishments distributing
5 single-use bags, including the retail establishments specified in
6 subdivision (b) of Section 42251.

7 (b) Increasing the fee imposed pursuant to Section 42281,
8 *including necessary adjustments for inflation*, to increase the
9 effectiveness of this chapter.

10
11 Article 4. Administration and Enforcement
12

13 42288. (a) The state board shall administer and collect the Bag
14 Pollution Cleanup Fee pursuant to the Fee Collection Procedures
15 Law (Part 30 (commencing with Section 55001) of Division 2 of
16 the Revenue and Taxation Code).

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

20 (c) The Bag Pollution Cleanup Fee shall be due and payable
21 quarterly on or before the 25th day of the month following each
22 calendar quarter. Payments shall be accompanied by a form, as
23 prescribed by the state board, including, but not limited to,
24 electronic media.

25 (d) The state board may require the payment of the fee for other
26 than quarterly periods.

27 42288.5. Except as otherwise provided by this chapter, the
28 ~~agency and the~~ board shall administer and enforce this chapter.