



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Lindy Coe-Juell, Assistant to the City Manager

DATE: April 7, 2009

SUBJECT: Authorize the Mayor to Sign Support and Opposition Letters on Behalf of the City Council Related to Pending Single-Use Carry-Out Bag Legislation

RECOMMENDATION:

Staff recommends that the City Council authorize the Mayor to sign letters on behalf of the City Council in support of AB 68 and AB 87 (which would require supermarkets and pharmacies to charge \$0.25 for plastic and paper carry-out bags) and in opposition of AB 1141 and SB 531 (which preempt local authority to regulate single-use carry-out bags). These letters will be consistent with the City Council's program to encourage the use of reusable bags and effort to ban plastic bags.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

Several cities in California, including San Francisco, Oakland, Malibu and Manhattan Beach, have passed ordinances to ban the distribution of plastic carry-out bags due to their communities' concern for the impact plastic bag pollution has on the marine environment. In response to this movement, the plastic bag industry has formed a coalition to prevent these bans from being implemented, both through lawsuits and by sponsoring legislation that would preempt local authority to regulate the use and distribution of single-use carry-out bags.

Of importance to note, the City of Manhattan Beach, along with other communities, seeks to encourage the widespread use of reusable bags rather than single-use plastic or paper bags. However, our collective efforts to advance policies to achieve this sustainable path have been slowed by the lawsuit activity of the "Save the Plastic Bag Coalition." The current pending legislation sponsored by the plastic bag industry and the American Chemistry Council would also have the effect of slowing the progress of local jurisdictions to influence consumer behavior to carry reusable bags rather than rely on single-use plastic and paper bags.

AB 1141 and SB 531 are sponsored by the plastic bag industry, the American Chemistry Council and the Biodegradable Products Institute. The content of these bills is summarized below and the

points of opposition, consistent with the City Council's policy, are listed. SB 531 has been scheduled for hearing on April 20, 2009 by the Senate Environmental Quality Committee. AB 1141 has not yet been scheduled for hearing, but will likely be on the agenda for the Assembly Natural Resources Committee in the coming months.

The County of Los Angeles and Heal the Bay are sponsoring AB 87 and AB 68, which contain similar policies to require supermarkets and pharmacies to charge \$0.25 per plastic and paper carry-out bag distributed. The Assembly Natural Resources Committee will hold a hearing to consider these bills on April 13, 2009. The County and Heal the Bay have appealed for letters of support for this legislation and hope that the bills will be merged after the hearing. The content AB 87 and AB 68 is summarized below and the points of support, consistent with our current policy, are listed.

DISCUSSION:

Summary of SB 531

- Proposes to charge a fee of \$0.001 per bag on suppliers and manufacturers for plastic and paper single-use bags supplied to supermarkets and pharmacies.
- Funds would be appropriated in accordance with future legislation to support single-use carry-out bag litter abatement.
- Preempts cities, counties or other public agencies from adopting or enforcing any regulations prohibiting the use, import, sale or distribution of carry-out bags or imposing a fee on carry-out bags unless that regulation was adopted prior to January 1, 2009.

Points of Opposition

- A fee on bag suppliers and manufacturers does not provide an incentive for consumers to change their behavior to adopt reusable bags as an alternative to single-use carry-out bags.
- The sole focus on educational programs has proven to be ineffective in changing behavior.¹
- Preempting local regulation ties the hands of municipalities trying to create effective policies for their own communities.
- Our own plastic bag ban ordinance was passed before January 1, 2009. However, it has been effectively dissolved due to the February 20, 2009 ruling of the Los Angeles Superior Court.

Summary of AB 1141

- Prohibits a city, county, or other public agency from adopting, implementing, or enforcing ordinances, resolutions, regulations or rules related to single-use carry-out bags
- Would establish a 50% single-use carry-out bag waste reduction goal by 2014.
- Would require, a yet undetermined, producer fee for single-use bags not to exceed \$25,000,000 annually.
- Would distribute funds to cities and counties for single-use bag litter abatement.
- Exempts durable plastic bags from the requirements defined as 1.1 mils thick (a reduction from

¹ A nationwide voluntary program in Australia that began in 2002 resulted in moderately increased recycling rates of plastic bags, but had no effect on reducing litter and had little positive influence on consumer behavior despite an expenditure of \$50 million for public outreach on the program.

2.5 mils thick used in previous laws).

- Requires 30% post-recycled consumer content for plastic carry-out bags by 2014

Points of Opposition

- This legislation would directly preempt local regulation of single-use bags. We would not be able to enforce a plastic bag ban or implement a paper bag fee.
- The focus on waste reduction and producer fees does not provide an incentive for consumers to change their behavior to adopt the use of reusable bags.
- A 50% waste reduction goal by 2014 would not prevent plastic bag litter.
- Education programs have proven to be ineffective in changing behavior.

Summary of AB 68 (Sponsored by Heal the Bay)

- Requires a \$0.25 fee on plastic and paper carry-out bags distributed at supermarkets, pharmacies and chain convenience food stores.
- Would establish a fund for grants to cities and counties for single-use bag litter abatement.
- These funds would not be available to cities and counties that ban single-use carryout bags as no fees would be collected from those jurisdictions.
- Expressly states that this legislation would not preempt a city or county from prohibiting the use, import, sale, or distribution of single-use carry-out bags.

Points of Support

- Allows cities and counties to move forward with local regulation of single-use carry-out bags that they deem effective for their communities.
- Follows the lessons learned related to influencing consumer behavior in Ireland where a \$0.33 fee on plastic bags reduced use by 90%.

Summary of AB 87

- Requires a \$0.25 fee on plastic and paper carry-out bags distributed at supermarkets, pharmacies and chain convenience food stores.
- Would establish a bag pollution fund for cities and counties for single-use bag litter abatement.
- These funds would not be available to cities and counties that ban single-use carryout bags as no fees would be collected from those jurisdictions.
- Does not expressly state that the legislation would not preempt local regulation of single-use bags.

Points of Support

- The City of Manhattan Beach would support this bill with the caveat that language to provide for local regulation of single-use bags should be added.
- Similarly to AB 68, this legislation would provide an incentive for consumers to shift their behavior to using reusable bags due to the proposed fee.

CONCLUSION:

Staff recommends that the City Council authorize the Mayor to sign letters on behalf of the City

Council related to pending single-use bag legislation (in support of AB 68 and AB 87 and in opposition of AB 1141 and SB 531). These letters are to be consistent with the City's program to encourage the use of reusable bags and will emphasize the importance of local jurisdiction.

Staff also recommends that the City Council authorize the Mayor to sign future support and opposition letters, related to this issue, on behalf of the City Council. It is possible that the current pending bills may be reassigned or merged and additional letters consistent with the City Council's program could prove useful.

Attachments:

1. Text of AB 1141
2. Text of SB 531
3. Text of AB 68
4. Text of AB 87

ASSEMBLY BILL

No. 1141

Introduced by Assembly Member Charles Calderon

February 27, 2009

An act to amend Sections 42250, 42253, and 42254 of, to amend and renumber Section 42257 of, to repeal Section 42256 of, and to add Sections 42258, 42259, 42260, 42261, and 42262 to, the Public Resources Code, relating to carryout bags.

LEGISLATIVE COUNSEL'S DIGEST

AB 1141, as introduced, Charles Calderon. Carryout bags.

The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, among other things, until January 1, 2013, requires the operator of a store, as defined, to establish an at-store recycling program that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags, as defined. The act imposes requirements for that program. The act includes legislative findings and declarations that certain matters concerning plastic carryout bags are matters of statewide interest and concern and generally prohibits a city, county, or other public agency from adopting, implementing, or enforcing specified related ordinances, resolutions, regulations, or rules, unless otherwise authorized.

This bill would extend the provisions regarding the at-store recycling program for plastic carryout bags until January 1, 2017, and define the term "single use carryout bag" for those purposes.

The bill would require a manufacturer or distributor who sells a plastic carryout bag to a store to make arrangements with the operator, upon the operator's request, for the collection, transport, and recycling of

plastic carryout bags and other film plastic collected consistent with the program.

The bill would revise the legislative findings and declarations of statewide interest and concern, and related prohibition upon local action, to refer to single use carryout bags, rather than plastic carryout bags, and additionally would prohibit a city, county, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that prohibits the use, import, sale, or distribution of a single use carryout bag.

The bill would require the board to establish a 50% single use carryout bag waste reduction goal by 2014, using 2010 as an initial baseline, to reduce empty single use carryout bags going to landfill or becoming litter. The bill would require the board and others to work to increase the availability of plastic bag recycling and collection programs in areas throughout the state.

The bill would require, on and after July 1, 2011, a manufacturer or distributor of a single use carryout bag to pay a single use bag extended producer responsibility fee, in an undetermined amount, for each single use carryout bag that it sells directly or indirectly to a store. The bill would prohibit the total fees collected annually from exceeding the total annual costs to the state of administering and implementing certain actions related to single use carryout bags, and from exceeding \$25,000,000 annually. The bill would require the fee revenue to be expended, upon appropriation by the Legislature, for collecting and processing the fee and administering and implementing certain actions related to single use carryout bags. The bill would require the board to convene an advisory panel to provide guidance and assist the board in determining how the fee revenue should be distributed.

The bill would require every plastic carryout bag sold or supplied to a store in the state and provided to a consumer to contain specified percentages of recycled material beginning on July 1, 2011, with the amount increasing on July 1, 2013, and July 1, 2014. The bill would require a single use carryout bag provided to a consumer on and after July 1, 2011, to have printed on it a specified statement concerning recycled content. If a manufacturer is unable to obtain sufficient amounts of recycled post consumer material, the bill would authorize the board to grant the manufacturer an exemption.

The bill would require manufacturers to obtain specified information from their suppliers of recycled post consumer material for use in the manufacture of plastic carryout bags, and, on or before June 30, 2012,

and annually thereafter, to report to the board specified information concerning carryout bags.

The bill would require wholesalers and distributors of single use plastic carryout bags sold in this state, on and after July 1, 2011, to certify to the board the name and physical location of each manufacturer from whom it purchased the carryout bags, together with any other information the board may require.

The bill would require the board, on or before December 31, 2012, to survey manufacturers and report back to the Legislature on specified information obtained from those manufacturers.

The bill would require the board to refer specified false or misleading information to the Attorney General for prosecution for fraud.

The bill would make other related changes.

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. Section 42250 of the Public Resources Code is
- 2 amended to read:
- 3 42250. For purposes of this chapter, the following definitions
- 4 shall apply:
- 5 (a) "Manufacturer" means the producer of a plastic carryout
- 6 bag sold to a store.
- 7 (b) "Operator" means a person in control of, or having daily
- 8 responsibility for, the daily operation of a store, which may include,
- 9 but is not limited to, the owner of the store.
- 10 (c) "Plastic carryout bag" means a plastic carryout bag provided
- 11 by a store to a customer at the point of sale.
- 12 (d) "Reusable bag" means either of the following:
- 13 (1) A bag made of cloth or other machine washable fabric that
- 14 has handles.
- 15 (2) A durable plastic bag ~~with handles~~ that is at least ~~2.25~~ *1.1*
- 16 mils thick, *has handles, can carry 15 pounds,* and is specifically
- 17 designed and manufactured for multiple reuse.
- 18 (e) "*Single use carryout bag*" means a plastic, paper, or other
- 19 carryout bag provided by a store to a customer at the point of sale.
- 20 (e)

1 (f) “Store” means a retail establishment that provides plastic
2 carryout bags to its customers as a result of the sale of a product
3 and that meets either of the following requirements:

4 (1) ~~Meet~~ *Meets* the definition of a “supermarket” as found in
5 Section 14526.5.

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

12 SEC. 2. Section 42253 of the Public Resources Code is
13 amended to read:

14 42253. The manufacturer of a plastic carryout bag shall develop
15 educational materials to encourage the reducing, reusing, and
16 recycling of plastic bags and shall make those materials available
17 to stores required to comply with this chapter. *A manufacturer or*
18 *distributor who sells a plastic carryout bag to a store subject to*
19 *this chapter shall make arrangements with the operator, upon the*
20 *operator’s request, for the collection, transport, and recycling of*
21 *all plastic carryout bags and other film plastic collected consistent*
22 *with this chapter. The arrangements may include contracts or*
23 *other agreements with third parties.*

24 SEC. 3. Section 42254 of the Public Resources Code is
25 amended to read:

26 42254. (a) The Legislature finds and declares that all of these
27 are matters of statewide interest and concern:

28 (1) Requiring a store to collect, transport, or recycle ~~plastic~~
29 *single use* carryout bags.

30 (2) Imposing a ~~plastic~~ *single use* carryout bag fee upon a store.

31 (3) Requiring a store to conduct auditing or reporting with regard
32 to ~~plastic~~ *single use* carryout bags.

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

36 (1) Require a store that is in compliance with this chapter to
37 collect, transport, or recycle ~~plastic~~ *single use* carryout bags.

38 (2) Impose a ~~plastic~~ *single use* carryout bag fee upon a store
39 that is in compliance with this chapter.

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

4 (4) *Prohibit the use, import, sale, or distribution of a single use*
5 *carryout bag.*

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

11 (d) This section does not affect ~~any~~ a contract, franchise, permit,
12 license, or other arrangement regarding the collection or recycling
13 of solid waste or household hazardous waste.

14 SEC. 4. Section 42256 of the Public Resources Code is
15 repealed.

16 ~~42256. This chapter shall become operative on July 1, 2007.~~

17 SEC. 5. Section 42257 of the Public Resources Code is
18 amended and renumbered to read:

19 ~~42257.~~

20 42265. This chapter shall remain in effect only until January
21 1, ~~2013~~ 2017, and as of that date is repealed, unless a later enacted
22 statute, that is enacted before January 1, ~~2013~~ 2017, deletes or
23 extends that date.

24 SEC. 6. Section 42258 is added to the Public Resources Code,
25 to read:

26 42258. The Legislature finds and declares all of the following:

27 (a) In order to complement California's existing plastic carryout
28 bag recycling program, established pursuant to Chapter 845 of the
29 Statutes of 2006, there is a need to further encourage market
30 development programs to stimulate a steady demand for this
31 material.

32 (b) Minimum recycled content requirements for plastic carryout
33 bags will help spur domestic markets for collected plastic bags
34 and film.

35 (c) Policies developed to reduce plastic bag waste should not
36 increase the use of alternative single use bags that have been shown
37 to have a greater life-cycle environmental impact.

38 (d) California has a unique and critical role in protecting the
39 Pacific Ocean and preventing marine debris.

1 SEC. 7. Section 42259 is added to the Public Resources Code,
2 to read:

3 42259. The board shall establish a 50 percent single use
4 carryout bag waste reduction goal by 2014 using 2010 as an initial
5 baseline. The goal is to reduce empty single use carryout bags
6 going to a landfill or becoming litter. The goal shall take into
7 account single use carryout bag reduction and reuse of single use
8 carryout bags by consumers for other purposes, provided that it
9 can be clearly demonstrated that the reuse of single use carryout
10 bags avoids the need for the use of additional products, recycling
11 efforts, and recycled content. The board, in conjunction with bag
12 manufacturers, retailers, local governments, recyclers, waste
13 haulers, and end-users of recycled material, shall work to increase
14 the availability of plastic bag recycling and collection programs
15 in areas throughout the state.

16 SEC. 8. Section 42260 is added to the Public Resources Code,
17 to read:

18 42260. (a) On and after July 1, 2011, a manufacturer or
19 distributor of a single use carryout bag shall pay a single use bag
20 extended producer responsibility fee for each single use carryout
21 bag that it sells directly or indirectly to a store.

22 (b) The amount of the fee shall be _____. The total fees collected
23 annually under this chapter shall not exceed the total administrative
24 annual costs to the state of administering this section and all
25 programs authorized under this chapter, and in no event shall
26 exceed twenty-five million dollars (\$25,000,000) annually.

27 (c) The manufacturer or distributor shall remit the fee directly
28 to the state pursuant to regulations that the board shall establish.
29 The fee revenue shall be expended, upon appropriation by the
30 Legislature in the annual Budget Act or other statute, in the manner
31 and in the order of priority as follows:

32 (1) No more than 5 percent shall be expended by the state for
33 the costs of collecting and processing the fee.

34 (2) An amount shall be allocated to the board that the Legislature
35 determines to be necessary to administer and implement this
36 chapter.

37 (3) The remainder, upon appropriation to the board, shall be
38 allocated by the board to state agencies and to cities and counties
39 on a per capita basis, for the following purposes:

1 (A) Establishing and maintaining programs to cleanup single
2 use carryout bag litter, including programs in partnership with
3 nonprofit community-based organizations.

4 (B) Litter education and outreach programs related to single use
5 carryout bags.

6 (C) Mitigation projects relating to stormwater pollution caused
7 by single use carryout bags, including devices to prevent single
8 use plastic carryout bag litter from entering storm drain systems.

9 (D) Public education efforts that promote recycling of single
10 use carryout bags.

11 (E) Reusable bag giveaway programs.

12 (F) In conjunction with the advisory panel established pursuant
13 to subdivision (d), the board shall develop a voluntary best
14 practices educational program geared primarily for retailers to use
15 at their discretion, that may help with the efficient use of single
16 use carryout bags by retailers. These best practices
17 recommendations shall be posted on the board's Internet Web site
18 and may include, but are not limited to, the following suggestions
19 or recommendations for use by retail establishments:

20 (i) A single use carryout bag should not be provided to a
21 consumer for a single item.

22 (ii) A consumer purchasing two items should be asked whether
23 he or she needs a single use carryout bag.

24 (iii) No double bagging.

25 (iv) A single use carryout bag should be filled with the
26 maximum item count or weight per bag.

27 (v) A cashier or bagger should remind customers to return plastic
28 carryout bags and other recyclable plastic bags to the store for
29 recycling and point out the location of recycling bins.

30 (vi) A store should strive to ensure that the plastic carryout bag
31 collection bins are highly visible and clearly marked with a single
32 logo approved by the board for all stores in the state.

33 (vii) Stores may allocate space on bags for prominent printed
34 messages to educate, request, and encourage consumers to use
35 plastic carryout bag recycling bins.

36 (d) The board shall convene an advisory panel, appointed by
37 the executive director of the board, to provide guidance and assist
38 the board in determining how the fee revenue should be distributed.
39 The advisory panel shall consist of representatives from the plastic
40 and paper bag manufacturing industry, recyclers, waste haulers,

1 local government, retailers, anti-litter organizations, manufacturers
2 that utilize recycled plastic film in the manufacturing of recycled
3 content products, and environmental organizations. Advisory
4 members shall serve without compensation. Any costs incurred
5 by the board pursuant to this subdivision shall be funded by
6 revenue from the fee.

7 SEC. 9. Section 42261 is added to the Public Resources Code,
8 to read:

9 42261. (a) Every plastic carryout bag sold or supplied to a
10 store in this state shall contain the following percentages of
11 recycled material:

12 (1) Plastic carryout bags provided to consumers on and after
13 July 1, 2011, shall contain at least 20 percent recycled material of
14 which at least 10 percent shall be post consumer.

15 (2) Plastic carryout bags provided to consumers on and after
16 July 1, 2013, shall contain at least 25 percent recycled material of
17 which at least 15 percent shall be post consumer.

18 (3) Plastic carryout bags provided to consumers on and after
19 July 1, 2014, shall contain at least 30 percent recycled material of
20 which at least 20 percent shall be post consumer.

21 (b) On and after July 1, 2011, all single use carryout bags
22 provided to consumers shall have printed thereon a statement of
23 the amount of the recycled content in letters at least half an inch
24 high using the following words: "This bag is made from __ percent
25 recycled material of which __ percent is post consumer."

26 (c) Each manufacturer shall obtain from its suppliers of recycled
27 post consumer material for use in the manufacture of plastic
28 carryout bags, a statement identifying the quantity, source location,
29 proximate prior usage of, and the actual post consumer material
30 content of, each shipment of recycled post consumer material
31 purchased by the manufacturer, and any other information that the
32 board may, by regulation, require the manufacturer to obtain from
33 its suppliers, for purposes of inclusion in the annual report required
34 by Section 42262.

35 SEC. 10. Section 42262 is added to the Public Resources Code,
36 to read:

37 42262. (a) (1) On or before June 30, 2012, and annually
38 thereafter, each manufacturer subject to this chapter shall submit
39 a report to the board certifying that it has complied with this chapter
40 during the preceding 12 months, certifying the name and physical

1 location of each of its suppliers of recycled post consumer material
2 for use in the manufacture of plastic carryout bags, and containing
3 the information obtained pursuant to subdivision (c) of Section
4 42261 and any other information that the board may require by
5 regulation. A manufacturer that processes its own recycled post
6 consumer material shall certify to the board that it is the supplier
7 of the material.

8 (2) If a manufacturer subject to this section is unable to obtain
9 sufficient amounts of recycled post consumer material to comply
10 with this chapter within a reporting period because of unavailability
11 or because the available material did not meet recycled post
12 consumer material quality standards that may be adopted by the
13 board, the manufacturer shall certify that fact to the board. Price
14 shall not be a valid basis for that certification. A manufacturer
15 making that certification shall make reasonable efforts to identify
16 available supplies of material before submitting the certification
17 to the board and shall describe all efforts in detail and provide the
18 board with supporting documentation. The board shall determine
19 in its discretion whether to grant the manufacturer an exemption
20 based on the certification. The board shall apply consistent criteria
21 to manufacturers in granting those exemptions.

22 (b) On and after July 1, 2011, every wholesaler and distributor
23 of single use plastic carryout bags sold in this state shall certify to
24 the board the name and physical location of each manufacturer
25 from whom it purchased the carryout bags, together with any other
26 information that the board may require by regulation.

27 (c) On or before December 31, 2012, the board shall survey
28 manufacturers subject to this chapter and report back to the
29 Legislature. The survey shall do all of the following:

30 (1) Identify the name and physical location of suppliers certified
31 by manufacturers pursuant to subdivision (a).

32 (2) Identify the quantity of recycled post consumer material
33 provided by suppliers within the state and the quantity of recycled
34 post consumer material provided by suppliers outside the state.

35 (3) Provide recommendations regarding recycled post consumer
36 material content requirements based on the availability of that
37 material.

38 (d) Each recycler, supplier, manufacturer, wholesaler, and
39 distributor required to provide a report, certification, or any
40 information pursuant to this chapter is subject to audit by the board.

1 (e) (1) If a recycler or supplier provides a manufacturer with
2 false or misleading certification or other information regarding
3 recycled material, the board, within 30 days of determining that
4 fact, shall refer the false or misleading information to the Attorney
5 General for prosecution for fraud.

6 (2) If a manufacturer, wholesaler, or distributor provides the
7 board with a false or misleading certification or other information,
8 the board, within 30 days of determining that fact, shall refer the
9 false or misleading certification or information to the Attorney
10 General for prosecution for fraud.

11 (e) If a manufacturer places false or misleading information
12 regarding recycled content on a single use plastic carryout bag,
13 including the statement required by subdivision (b) of Section
14 42261, the board, within 30 days of determining that fact, shall
15 refer the false or misleading information to the Attorney General
16 for prosecution for fraud, and those bags shall be subject to seizure
17 and forfeiture without compensation.

Introduced by Senator DeSaulnierFebruary 27, 2009

An act to add and repeal Chapter 5.2 (commencing with Section 42260) of Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as introduced, DeSaulnier. 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. Under existing law, the California Integrated Waste Management Board (board) administers laws related to waste management.

This bill would establish the Single-use Carryout Bag Responsibility Act and would require, on and after July 1, 2011, the suppliers, as defined, of plastic or paper single-use carryout bags to remit a Single-use Carryout Bag Responsibility Fee of \$0.001, to the State Board of Equalization, for each paper or plastic single-use carryout bag supplied directly to a store. The State Board of Equalization would be required to deposit the fee into the Single-use Carryout Bag Responsibility Fund that would be established in the State Treasury.

The bill would require the board to administer and enforce the provisions of the act, excluding the administration and collection of the fees which would be done by the State Board of Equalization. On or before January 1, 2013, the board would be required to submit a report to the Legislature evaluating the effectiveness of this chapter.

The bill would require the moneys in the fund to be expended, upon appropriation, by the Legislature for the Single-Use Carryout Bag Litter

Abatement Program under which grant awards would be allocated to specified entities for the purpose of abating and cleaning up single-use carryout bags that become litter and encouraging the proper disposal and collection of single-use carryout bags, and by the board for implementation of the program and for administrative costs not to exceed 5% of the funds made available annually for the program or an amount otherwise specified in the annual Budget Act.

The act would be repealed as of January 1, 2018.

The bill would authorize the board to develop a voluntary best practices program.

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) Many products, including single-use carryout bags, become
- 4 litter.
- 5 (b) Requiring manufacturers or suppliers of those products to
- 6 pay an appropriate share of litter abatement and cleanup costs is
- 7 appropriate.
- 8 (c) Charging commercial suppliers of single-use carryout bags
- 9 to stores a fee of \$0.001 per bag would fairly compensate taxpayers
- 10 for abatement and cleanup of single-use carryout bag litter based
- 11 on litter characterization studies.
- 12 (d) Plastic bag manufacturers are encouraged to incorporate
- 13 recycled content in plastic bags to the extent that it is
- 14 technologically feasible and cost efficient.
- 15 (e) The imposition of the fee pursuant to Section 42261 of the
- 16 Public Resources Code would not result in the imposition of a tax
- 17 within the meaning of Article XIII A of the California Constitution
- 18 because the amount and nature of the fee have a fair and reasonable
- 19 relationship to the environmental, public health, and societal
- 20 burdens imposed by the littering of single-use carryout bags, and
- 21 there is a sufficient nexus between the fees imposed and the use
- 22 of those fees to support programs to abate and clean up single-use
- 23 carryout bag litter.

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

4 (2) It is the intent of the Legislature that the fee that is imposed
5 pursuant to Section 42261 of the Public Resources Code be
6 consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
7 (1997) 15 Cal.4th 866.

8 SEC. 2. Chapter 5.2 (commencing with Section 42260) is added
9 to Part 3 of Division 30 of the Public Resources Code, to read:

10
11 CHAPTER 5.2. SINGLE-USE CARRYOUT BAG RESPONSIBILITY
12 ACT

13
14 Article 1. Definitions

15
16 42260. For purposes of this chapter, the following definitions
17 shall apply:

18 (a) “Board” means the California Integrated Waste Management
19 Board.

20 (b) “Carryout bag” means a single-use carryout bag that is
21 provided by a store to a customer at the point of sale and that is
22 not a reusable bag as defined in subdivision (d) of Section 42250.

23 (c) “Distributor” means a person other than a manufacturer who
24 distributes or supplies single-use carryout bags to one or more
25 stores in this state.

26 (d) “Fund” means the Single-use Carryout Bag Responsibility
27 Fund, established pursuant to Section 42262.

28 (e) “Manufacturer” means a person who manufactures single-use
29 carryout bags that are sold to or used by one or more stores in this
30 state.

31 (f) “Reusable bag” means the same as subdivision (b) of Section
32 42250.

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

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

37 (1) Meets the definition of a “supermarket” as found in Section
38 14526.5.

39 (2) Has over 10,000 square feet of retail space that generates
40 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales

1 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
2 Division 2 of the Revenue and Taxation Code) and has a pharmacy
3 licensed pursuant to Chapter 9 (commencing with Section 4000)
4 of Division 2 of the Business and Professions Code.

5 (i) “Supplier” means the manufacturer, distributor, or other
6 person that sells or supplies single-use carryout bags directly to a
7 store.

8

9 Article 2. Single-use Carryout Bag Responsibility Fee

10

11 42261. (a) On and after July 1, 2011, the supplier of carryout
12 bags shall remit a Single-use Carryout Bag Responsibility Fee, to
13 the State Board of Equalization for deposit into the fund, for each
14 carryout bag that it supplies directly to a store.

15 (b) The amount of the fee shall be one-tenth of one cent (\$0.001)
16 per carryout bag.

17 (c) The supplier shall remit the fee directly to the state board.

18 (d) Carryout bags shall not be delivered to or accepted by a store
19 unless the supplier has provided written certification to the store
20 operator that the supplier has paid, or agrees to pay, the fee to the
21 state board for those bags. Store operators shall not be liable for
22 paying the fee if they obtain the certification.

23 42262. (a) The Single-use Carryout Bag Responsibility Fund
24 is hereby established in the State Treasury. All fees collected by
25 the state board pursuant to this chapter shall be deposited in the
26 fund.

27 (b) Moneys in the fund shall be expended, upon appropriation
28 by the Legislature, for the purposes of Article 3 and for the
29 administrative costs incurred by the board in administering the
30 program. Those administrative costs shall not exceed 5 percent of
31 the funds made available annually for the program or an amount
32 otherwise specified in the annual Budget Act.

33

34 Article 3. Litter Abatement Program

35

36 42263. (a) A Single-Use Carryout Bag Litter Abatement
37 Program is hereby established and administered by the board for
38 the purpose of allocating grant awards for the purpose of abating
39 and cleaning up carryout bags that become litter and encouraging
40 the proper disposal and collection of carryout bags.

1 (b) Moneys in the fund shall be available for all of the following
2 purposes:

3 (1) Litter abatement programs designed to lead to reduced
4 release of carryout bags into the environment.

5 (2) Litter cleanup programs designed to clean up carryout bag
6 litter.

7 (3) Investments in equipment, technologies, and practices
8 designed to lead to enhanced carryout bag containment at landfills
9 and other solid waste disposal facilities, including garbage and
10 recycling collection vehicles.

11 (4) Mitigation projects relating to stormwater pollution caused
12 by carryout bag litter, including devices to prevent carryout bag
13 litter from entering storm drain systems.

14 (5) Other collection and abatement programs further identified
15 by the board that achieve the intent of this chapter.

16 (6) Public education regarding the use of the bins required by
17 subdivision (b) of Section 42252.

18 (c) Entities eligible for this funding shall include cities, counties,
19 special districts, nonprofit organizations, the California
20 Conservation Corps, and private entities.

21 (d) Communities with demonstrated high levels of carryout bag
22 litter may receive additional funding consideration.

23 (e) Minimum allocations of two hundred fifty thousand dollars
24 (\$250,000) shall be available to all cities with populations of
25 greater than 250,000 and counties with populations of greater than
26 one million. The balance of the funds shall be available on a
27 competitive basis to all eligible entities.

28 42264. The program established by this article shall be
29 implemented by the board with moneys, appropriated by the
30 Legislature, from the fund or with other funds made available
31 specifically for this program.

32

33

Article 4. Waste Reduction

34

35 42265. The board is authorized to develop a voluntary best
36 practices program that may include any of the following:

37 (a) Encouraging stores not to provide carryout bags to customers
38 for one item unless appropriate under the circumstances.

39 (b) Encouraging stores to ask customers purchasing two items
40 whether they need a carryout bag.

- 1 (c) Encouraging stores to refrain from double bagging.
- 2 (d) Encouraging stores to attempt to fill the maximum item
- 3 count or weight per carryout bag.
- 4 (e) Encouraging stores to ask cashiers or baggers to advise
- 5 customers to be sure to return plastic carryout bags and other
- 6 recyclable plastic bags to the store for recycling and point out the
- 7 location of recycling bins.
- 8 (f) Encouraging stores to ensure that the bins required by
- 9 subdivision (b) of Section 42252 are highly visible and clearly
- 10 marked with a single logo approved by the board for all stores in
- 11 this state.
- 12 (g) Encouraging stores to allocate space on bags for prominent
- 13 printed messages to educate, request, and encourage consumers
- 14 to use plastic bag recycling bins in addition to the requirement in
- 15 subdivision (a) of Section 42252.
- 16 (h) Creating a dedicated Internet Web site with an online training
- 17 program including a video for store personnel to educate them on
- 18 implementing the voluntary best practices.
- 19 (i) Creating a dedicated Internet Web site for the public to learn
- 20 about the voluntary best practices program.

21
22 Article 5. Waste Diversion

- 23
- 24 42266. (a) If a store operator is unable to sell or transfer the
- 25 contents of the bin that complies with subdivision (b) of Section
- 26 42252 to a recycler, the supplier of plastic bags to the store shall
- 27 make arrangements for recycling or take the contents.
- 28 (b) The supplier shall not dispose of the plastic film contents
- 29 of those bins in a solid waste stream or in a landfill.

30
31 Article 6. Heavy Metals Prohibition

- 32
- 33 42267. A reusable bag shall not be sold or provided to
- 34 consumers in this state if it contains lead or any other heavy metals.

35
36 Article 7. Administration and Enforcement

- 37
- 38 42268. (a) The state board shall administer and collect the
- 39 Single-use Carryout Bag Responsibility Fee pursuant to the Fee

1 Collection Procedures Law (Part 30 (commencing with Section
2 55001) of Division 2 of the Revenue and Taxation Code).

3 (b) The state board may adopt rules and regulations to carry out
4 this chapter, including, but not limited to, provisions governing
5 supplier certification forms, collections, enforcement, reporting,
6 refunds, and appeals.

7 42269. Except as otherwise provided by this chapter, the board
8 shall administer and enforce this chapter. The board may adopt
9 such regulations as it determines to be necessary to implement this
10 chapter.

11 42269.1. On or before January 1, 2013, the board shall submit
12 a report to the Legislature evaluating the effectiveness of this
13 chapter.

14
15 Article 8. Preemption

16
17 42269.3. (a) The Legislature finds and declares that imposing
18 a single-use carryout bag responsibility fee upon suppliers is a
19 matter of statewide interest and concern.

20 (b) A city, county, or other public agency shall not adopt or
21 enforce an ordinance, resolution, regulation, or rule prohibiting
22 the use, import, sale, or distribution of carryout bags or imposing
23 a fee on carryout bags or requiring any specifications for carryout
24 bags unless that ordinance, resolution, regulation, or rule was
25 adopted prior to January 1, 2009.

26 (c) A city, county, or public agency that does not repeal an
27 ordinance, resolution, regulation, or rule prohibiting the use,
28 import, sale, or distribution of carryout bags or imposing a fee on
29 carryout bags, or requiring any specifications for carryout bags
30 that was adopted prior to January 1, 2009 shall not be eligible for
31 funds pursuant to paragraph (3) of subdivision (b) of Section 42263
32 as long as it remains in effect.

33
34 Article 9. Repeal

35
36 42269.5. This chapter shall remain in effect only until January
37 1, 2018, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2018, deletes or extends
2 that date.

O

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.~~

- 1 ~~(C) Is capable of composting within 180 days, as determined~~
2 ~~by the board.~~
- 3 ~~(2) “Green carryout bag” does not include a reusable bag.~~
- 4 ~~(g) “Reusable bag” means a reusable bag that is made of cloth~~
5 ~~or other machine washable fabric that is specifically designed and~~
6 ~~manufactured for multiple reuse.~~
- 7 ~~(h) “Single-use carryout bag” means a single-use carryout bag~~
8 ~~that is provided by a store to a customer at the point of sale and~~
9 ~~that is not a reusable bag and includes a “biodegradable” or~~
10 ~~“compostable” carryout bag meeting the requirements specified~~
11 ~~in Section 42357.~~
- 12 *(a) “Bag Pollution Cleanup Fee” means the fee imposed*
13 *pursuant to Section 42281.*
- 14 *(b) “Board” means the California Integrated Waste*
15 *Management Board.*
- 16 *(c) “Compostable carryout bag” means a carryout bag provided*
17 *by a store to a customer at point of sale that meets both of the*
18 *following requirements:*
- 19 *(1) Is derived from 100 percent biobased sources containing*
20 *no products derived from genetically modified feedstocks.*
- 21 *(2) Meets the American Society for Testing and Materials*
22 *(ASTM) Standard Specification for Compostable Plastics as*
23 *specified in subparagraph (A) of paragraph (1) of subdivision (b)*
24 *of Section 42356.*
- 25 *(d) “Fund” means the Bag Pollution Fund established pursuant*
26 *to subdivision (a) of Section 42285.*
- 27 *(e) “Paper carryout bag” means a carryout bag provided by a*
28 *store to a customer at point of sale that meets all of the following*
29 *requirements:*
- 30 *(1) Contains no old-growth fiber.*
- 31 *(2) Is 100 percent recyclable.*
- 32 *(3) Contains a minimum of 40 percent postconsumer recycled*
33 *content.*
- 34 *(f) “Plastic carryout bag” means a plastic bag designed for*
35 *single use that is provided by a store to a customer at the point of*
36 *sale.*
- 37 *(g) “Reusable bag” means a bag that is made of cloth or other*
38 *machine washable fabric that is specifically designed and*
39 *manufactured for multiple reuse.*
- 40 ~~(i)~~

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

2 ~~(j)~~

3 (i) “Store” means a retail establishment that provides ~~single-use~~
4 ~~carryout bags or green paper, compostable, or plastic~~ carryout
5 bags to its customers as a result of the sale of a product and that
6 meets any of the following requirements:

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

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

14 (3) Is a *chain* convenience food store or foodmart primarily
15 engaged in retailing a limited line of goods that generally includes
16 milk, bread, soda, and snacks, and has a total ~~combined~~ *cumulative*
17 square footage of 10,000 square feet or more.

18

19 Article 2. Bag Pollution Cleanup Fee

20

21 42281. (a) Except as provided in Section 42283, on and after
22 July 1, 2010, a store shall not provide a single-use carryout bag;
23 ~~including a green carryout bag,~~ to a customer at the point of sale,
24 unless the store charges the customer not less than twenty-five
25 cents (\$0.25) per bag.

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

29 ~~(b)~~

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

34 ~~(e)~~

35 (d) (1) A store charging a fee pursuant to subdivision (a) may
36 retain a portion of the fee, as specified in paragraph (2), in an
37 amount necessary to reimburse the store’s costs associated with
38 complying with this chapter, in accordance with Section 42284.5.
39 The store shall remit the remainder of the fee to the state board
40 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~~
 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~~ 3 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.

ASSEMBLY BILL

No. 87

Introduced by Assembly Member Davis

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 introduced, Davis. Single-use carryout bags: environmental effects: mitigation.

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.

Existing law requires 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 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 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 to submit a biennial report to the Legislative the board, 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 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 the 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
11 bags is less than 5 percent. Public agencies in California also spend
12 more than three hundred seventy-five million dollars

1 (\$375,000,000) annually in litter cleanup, and plastic carryout bags
2 contribute disproportionately to the litter stream.

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

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

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

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

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

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

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

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

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

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

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

31 (2) It is the intent of the Legislature that the fees that are
32 imposed pursuant to Section 42252.5 of the Public Resources Code
33 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
34 (1997) 15 Cal.4th 866.

35 SEC. 2. The heading of Chapter 5.1 (commencing with Section
36 42250) of Part 3 of Division 30 of the Public Resources Code is
37 amended to read:

38

39 CHAPTER 5.1. ~~AT-STORE RECYCLING PROGRAM~~ SINGLE-USE
40 CARRYOUT BAGS

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

3 42250. For purposes of this chapter, the following definitions
4 shall apply:

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

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

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

15 (B) *Is accepted in curbside recycling programs serving at least*
16 *80 percent of households in the state.*

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

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

20 ~~(a)~~

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

23 ~~(b)~~

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

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

30 ~~(e)~~

31 (f) *“Plastic carryout bag” means a plastic 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 ~~(d)~~

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

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

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

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

5 (e)

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

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

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

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

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

23 42251. (a) The operator of a store that provides plastic
24 carryout bags to customers shall establish an at-store plastic
25 carryout bag recycling program pursuant to this chapter that
26 provides an opportunity for a customer of the store to return to the
27 store clean plastic carryout bags.

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

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

34 42252. An at-store plastic carryout bag recycling program
35 provided by the operator of a store shall include all of the
36 following:

37 (a) A plastic carryout bag provided by the store shall have
38 printed or displayed on the bag, in a manner visible to a consumer,
39 the words “PLEASE RETURN TO A PARTICIPATING STORE
40 FOR RECYCLING.”

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

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

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

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

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

23 42252.5. (a) Except as provided in subdivision (f), on and after
24 July 1, 2010, a store shall not provide a single-use carryout bag,
25 including a green carryout bag, to a customer at the point of sale,
26 unless the store charges the customer not less than twenty-five
27 cents (\$0.25) per bag.

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

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

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

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

1 store shall not retain more than seven cents (\$0.07) of the fee for
2 each bag.

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

6 (1) Reimbursement of the store’s costs associated with the
7 collection and remittance of the 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 encouraging the use of reusable bags, including, but not
12 limited to, public service announcements.

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

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

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

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

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

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

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

31 42252.7. (a) The Bag Pollution Fund is hereby established in
32 the State Treasury. All fees collected by the State Board of
33 Equalization pursuant to this chapter shall be deposited in the fund.
34 By January 31, 2011, and quarterly thereafter, a store that collects
35 the Bag Pollution Cleanup Fee pursuant to subdivision (a) of
36 Section 42252.5 shall calculate the amount of moneys collected
37 and shall remit the moneys to the State Board of Equalization for
38 deposit into the Bag Pollution Fund, less funds retained by the
39 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 ~~plastic~~ *single-use* carryout bag
27 shall develop educational materials to encourage the reducing,
28 reusing, and recycling ~~plastic~~ *single-use carryout* bags and shall
29 make those materials available to stores required to comply with
30 this chapter.

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

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

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

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

38 (3) Requiring a store to conduct auditing or reporting with regard
39 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 ~~plastic~~ *single-use* carryout bag fee upon a store
7 that is in 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 ~~42256. This chapter shall become operative on July 1, 2007.~~

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

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

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

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

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

1 ~~42257. This chapter shall remain in effect only until January~~
2 ~~1, 2013, and as of that date is repealed, unless a later enacted~~
3 ~~statute, that is enacted before January 1, 2013, deletes or extends~~
4 ~~that date.~~

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.