

AMENDED IN SENATE AUGUST 28, 2008

AMENDED IN SENATE AUGUST 22, 2008

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2769

Introduced by Assembly Members ~~Levine, Brownley, and Davis~~
Member Levine

February 22, 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 single-use carryout bags. An act to amend Sections 175 and 181 of the Water Code, relating to the State Water Resources Control Board, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2769, as amended, Levine. ~~Single-use carryout bags. State Water Resources Control Board: membership.~~

Existing law establishes within the California Environmental Protection Agency the State Water Resources Control Board, consisting of 5 members appointed by the Governor and subject to Senate confirmation, 4 of whom are required to have specific qualifications. Under existing law, 3 members of the board constitute a quorum for the purpose of transacting any business of the board.

This bill would expand the board to 7 members by requiring one additional member to be appointed by the Senate Committee on Rules, and one additional member to be appointed by the Speaker of the

Assembly. The bill would increase the quorum to 4 members of the board.

This bill would declare that it is to take effect immediately as an urgency statute.

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 administers laws related to waste management. Existing law establishes in the Resources Agency the Department of Conservation, which, among other things, administers laws related to beverage container recycling.

This bill would, on and after January 1, 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 purchase. 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 require the Resources Agency and the Department of Conservation 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 State Board of Equalization to reimburse its costs associated with collecting the fees, by the Resources Agency and Department of Conservation for purposes of providing financial assistance for projects and activities related to mitigating the effects of single-use carryout bags, and by the California Integrated Waste Management Board for grants to cities and counties for programs that encourage and support recycling of single-use carryout bags and single-use carryout bag pollution prevention and outreach programs.

Vote: majority $\frac{2}{3}$. 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 175 of the Water Code is amended to*
2 *read:*

3 175. (a) There is in the ~~Resources~~ *California Environmental*
4 *Protection Agency* the State Water Resources Control Board,
5 consisting of five members appointed by the Governor, *one member*
6 *appointed by the Senate Committee on Rules, and one member*
7 *appointed by the Speaker of the Assembly.* ~~One of the members~~
8 ~~appointed~~ *Of the five members appointed by the Governor, one*
9 *shall be an attorney admitted to practice law in this state who is*
10 *qualified in the fields of water supply and water rights, one shall*
11 *be a registered civil engineer under the laws of this state who is*
12 *qualified in the fields of water supply and water rights, one shall*
13 *be a registered professional engineer under the laws of this state*
14 *who is experienced in sanitary engineering and who is qualified*
15 *in the field of water quality, and one shall be qualified in the field*
16 *of water quality. One of the* ~~above-appointed persons~~ *members*
17 *appointed by the Governor, in addition to having the specified*
18 *qualifications, shall be qualified in the field of water supply and*
19 *water quality relating to irrigated agriculture.* ~~One member shall~~
20 *Three members are not be required to have specialized experience.*

21 ~~Each~~

22 (b) *Each* member shall represent the state at large and not any
23 particular portion ~~thereof~~ *of the state* and shall serve full time. The
24 board shall, to the extent possible, be composed of members from
25 different regions of the state. The appointments ~~so~~ made by the
26 Governor shall be subject to confirmation by the Senate in
27 accordance with Article 2 (commencing with Section 1770) of
28 Chapter 4 of Division 4 of Title 1 of the Government Code.

29 *SEC. 2. Section 181 of the Water Code is amended to read:*

30 181. The board shall maintain its headquarters at Sacramento
31 and may establish branch offices in ~~such~~ *those* parts of the state
32 as the board ~~deems~~ *determines to be* necessary. The board shall
33 hold meetings at ~~such~~ *those* times and at ~~such~~ places as shall be
34 determined by ~~it~~ *the board*. The Governor shall designate the time
35 and place for the first meeting of the board. ~~Three~~ *Four* members
36 of the board shall constitute a quorum for the purpose of transacting
37 any business of the board.

1 SEC. 3. *This act is an urgency statute necessary for the*
2 *immediate preservation of the public peace, health, or safety within*
3 *the meaning of Article IV of the Constitution and shall go into*
4 *immediate effect. The facts constituting the necessity are:*

5 *In order to ensure the effective administration of the State Water*
6 *Resources Control Board at the earliest possible time, it is*
7 *necessary that this act take effect immediately.*

8 SECTION 1. ~~The Legislature finds and declares all of the~~
9 ~~following:~~

10 ~~(a) Single-use carryout bags provided by stores impose hidden~~
11 ~~costs on consumers, local governments, the state, taxpayers, and~~
12 ~~the environment.~~

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

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

22 ~~(d) The imposition of the fees pursuant to Section 42281 of the~~
23 ~~Public Resources Code would not result in the imposition of a tax~~
24 ~~within the meaning of Article XIII A of the California Constitution~~
25 ~~because the amount and nature of the fee have a fair and reasonable~~
26 ~~relationship to the environmental, public health, and societal~~
27 ~~burdens imposed by the use of single-use carryout bags, and there~~
28 ~~is a sufficient nexus between the fees imposed and the use of those~~
29 ~~fees to support programs to prevent the litter of single-use carryout~~
30 ~~bags, cleaning up the litter caused by single-use carryout bags, and~~
31 ~~encouraging the reduction of the use of single-use carryout bags.~~

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

35 ~~(2) It is the intent of the Legislature that the fees that are~~
36 ~~imposed pursuant to Section 42281 of the Public Resources Code~~
37 ~~be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*~~
38 ~~(1997) 15 Cal.4th 866.~~

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

~~CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS~~

Article 1. Definitions

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

(a) “Agency” means the Resources Agency.

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

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

(d) “Department” means the Department of Conservation.

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

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

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

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

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

(2) “Green carryout bag” does not include a reusable bag, as defined in subdivision (d) of Section 42250.

(g) “Reusable bag” means a reusable bag as defined in subdivision (d) of Section 42250.

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

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

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

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

(2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of

1 Division 2 of the Revenue and Taxation Code) and has a pharmacy
2 licensed pursuant to Chapter 9 (commencing with Section 4000)
3 of Division 2 of the Business and Professions Code.

4

5

Article 2. Bag Pollution Cleanup Fee

6

7

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

12

(2) Before January 1, 2014, the total amount charged to a
13 customer pursuant to paragraph (1) shall not exceed two dollars
14 (\$2.00) per transaction and on and after January 1, 2014, this
15 restriction shall not apply.

16

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

20

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

26

(2) (A) Before January 1, 2013, a store may retain not more
27 than five cents (\$0.05) of the fee for each single-use carryout bag
28 that is not a green carryout bag. For a single-use carryout bag that
29 is a green carryout bag, a store may retain not more than ten cents
30 (\$0.10) of the fee for each bag.

31

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

34

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

37

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

39

(a) A customer participating in the Special Supplemental Food
40 Program for Women, Infants, and Children (Article 2 (commencing

1 with Section 123275) of Chapter 1 of Part 2 of Division 106 of
2 the Health and Safety Code).

3 (b) A customer participating in the State Department of Social
4 Services Food Stamp Program:

5 42284. A store that collects the Bag Pollution Cleanup Fee
6 pursuant to Section 42281 shall calculate the amount of money
7 collected and, after deducting the amount specified in subdivision
8 (e) of Section 42281, shall, in accordance with Section 42288,
9 remit the remainder to the state board for deposit into the fund.

10 42284.5. A store charging a fee pursuant to Section 42281 shall
11 use the amount of the fee retained pursuant to subdivision (e) of
12 Section 42281 for all of the following:

13 (a) Reimbursement of the store's costs associated with the
14 collection and remittance of the fee pursuant to Sections 42281
15 and 42284.

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

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

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

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

27 (f) Reimbursement of the store's costs associated with the use
28 of single-use carryout bags.

29 42285. (a) The Bag Pollution Fund is hereby established in
30 the State Treasury. All fees collected by the state board pursuant
31 to this chapter shall be deposited in the fund.

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

35 (1) By the state board, to reimburse the state board's costs of
36 implementing Section 42288.

37 (2) (A) By the board, 50 percent of the moneys in the fund, for
38 grants to cities and counties, on a per capita basis, for purposes of
39 programs that encourage and support recycling of single-use
40 carryout bags and single-use carryout bag pollution prevention

1 and outreach programs. Except as provided in subparagraphs (B)
2 and (C), the amount for which each city or county is eligible shall
3 be based on the total population of the incorporated area of the
4 city or the total unincorporated area of the county, whichever is
5 applicable.

6 ~~(B) If a city or a county prohibits the use of all single-use~~
7 ~~carryout bags and no fees are collected pursuant to Section 42281~~
8 ~~within that jurisdiction, that city or county shall not be eligible for~~
9 ~~grant funds pursuant to this paragraph.~~

10 ~~(C) If a city or a county prohibits the use of plastic single-use~~
11 ~~carryout bags, but not all single-use carryout bags, that city or~~
12 ~~county shall be eligible for 75 percent of its per capita share of~~
13 ~~grant funds pursuant to this paragraph.~~

14 ~~(3) By the agency and the department, the remainder of the~~
15 ~~moneys in the fund, for purposes of Section 42287.~~

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

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

24
25 ~~Article 3. Financial Assistance Program~~

26
27 ~~42287. (a) The agency and the department shall develop and~~
28 ~~implement a financial assistance program to provide financial~~
29 ~~assistance for projects that encourage and support recycling of~~
30 ~~single-use carryout bags, activities for the cleanup and restoration~~
31 ~~of waterways to mitigate the effects of single-use carryout bags,~~
32 ~~and pollution prevention and outreach related to single-use carryout~~
33 ~~bags. At a minimum, the financial assistance program shall do all~~
34 ~~of the following:~~

35 ~~(1) Provide guidelines for providing financial assistance,~~
36 ~~including criteria for eligibility and additional consideration.~~

37 ~~(2) Provide criteria for determining the amount of financial~~
38 ~~assistance to be awarded.~~

39 ~~(3) Provide technical assistance for preparation of applications~~
40 ~~for financial assistance.~~

1 ~~(b) The development and adoption of guidelines and selection~~
2 ~~criteria for the financial assistance program shall not be subject to~~
3 ~~the requirements of Chapter 3.5 (commencing with Section 11340)~~
4 ~~of Part 1 of Division 3 of Title 2 of the Government Code.~~

5 ~~(c) Prior to adopting the guidelines or providing financial~~
6 ~~assistance pursuant to subdivision (a), the agency shall hold two~~
7 ~~public hearings to consider public comments. One public hearing~~
8 ~~shall be conducted at a location in northern California and one~~
9 ~~public hearing shall be conducted at a location in southern~~
10 ~~California. The agency shall publish draft guidelines on its Internet~~
11 ~~Web site at least 30 days before the first public hearing. Upon~~
12 ~~adoption, the agency shall transmit copies of the guidelines to the~~
13 ~~fiscal committees and the appropriate policy committees of the~~
14 ~~Legislature.~~

15 ~~(d) Activities and projects financed pursuant to this section shall~~
16 ~~be in compliance with the California Environmental Quality Act~~
17 ~~(Division 13 (commencing with Section 21000)).~~

18 ~~(e) Not more than 5 percent of the funds allocated to the~~
19 ~~financial assistance program may be used to pay the agency's and~~
20 ~~the department's costs of administering the program.~~

21 ~~(f) The Secretary of the Resources Agency shall provide for an~~
22 ~~independent audit of expenditures pursuant to this chapter every~~
23 ~~three years to ensure that all moneys appropriated for purposes of~~
24 ~~the financial assistance program are expended in accordance with~~
25 ~~this chapter. The Secretary of the Resources Agency shall annually~~
26 ~~publish a list of all projects receiving financial assistance pursuant~~
27 ~~to this section on the agency's Internet Web site.~~

28
29 ~~Article 4. Administration and Enforcement~~
30

31 ~~42288. (a) The state board shall administer and collect the Bag~~
32 ~~Pollution Cleanup Fee pursuant to the Fee Collection Procedures~~
33 ~~Law (Part 30 (commencing with Section 55001) of Division 2 of~~
34 ~~the Revenue and Taxation Code).~~

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

38 ~~(c) The Bag Pollution Cleanup Fee shall be due and payable~~
39 ~~quarterly on or before the 25th day of the month following each~~
40 ~~calendar quarter. Payments shall be accompanied by a form, as~~

1 ~~prescribed by the state board, including, but not limited to,~~
2 ~~electronic media.~~

3 ~~(d) The state board may require the payment of the fee for other~~
4 ~~than quarterly periods.~~

5 ~~42288.5. Except as otherwise provided by this chapter, the~~
6 ~~agency and the department shall administer and enforce this~~
7 ~~chapter.~~

8
9 ~~Article 5. Operative Date~~

10
11 ~~42289. This chapter shall become operative on January 1, 2010.~~