

BILL NUMBER: AB 2829 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 7, 2008
AMENDED IN ASSEMBLY MARCH 28, 2008

INTRODUCED BY Assembly Member Davis
(Coauthors: Assembly Members
Price and Swanson)

FEBRUARY 22, 2008

An act to amend Sections 42250, 42252, and 42254 of, to add Sections ~~42252.4, 42252.5,~~ 42252.4 and 42252.6 to, and to repeal Section 42257 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2829, as amended, Davis. Recycling: plastic carryout bags.

(1) Existing law requires an 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 clean plastic carryout bags to that store (at-store recycling program). Existing law requires a plastic carryout bag provided by a store to have printed or displayed on the bag the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING." A local agency or the state is authorized to enforce these provisions by imposing a civil penalty for a violation of these requirements. These provisions are repealed on January 1, 2013.

This bill would delete that repeal date and additionally require each plastic carryout bag provided by the store, on and after July 1, 2009, to have printed or displayed on the bag an environmental awareness message describing the negative impacts on the environment and wildlife caused by littered plastic carryout bags and encouraging the use of reusable bags. The board would be required by July 1, 2009, to develop that environmental awareness message, in consultation with specified stakeholders.

~~The bill would prohibit the operator of a store, on and after July 1, 2010, from providing a plastic carryout bag to a customer unless the operator demonstrates that the store has achieved a diversion rate of not less than 30%. The bill would also prohibit the operator of a store, on and after July 1, 2013, from providing a plastic carryout bag to a customer unless the operator demonstrates that the store has achieved a diversion rate of not less than 65%. The bill would specify a formula for determining the diversion rate and would authorize an operator of a store to comply with these diversion requirements by reducing the quantity of plastic carryout bags provided by the store, by increasing the quantity of plastic carryout bags recycled at that store, or by taking any other action to achieve the diversion rate.~~

The bill would require, on and after July 1, 2009, a person who is provided a plastic carryout bag by a store to pay the store a plastic carryout bag impact fee of \$0.25 per bag. A store would be required to collect the plastic carryout bag impact fee from the customer at the time of sale and would be authorized to retain 3% of the fee as reimbursement for any costs associated with the collection of the fee.

The bill would require the store to remit the remainder of the fee collected to the board on a quarterly schedule for deposit in the California Plastic Carryout Bag Impact Fund, which the bill would

create in the State Treasury. The board would be authorized to expend the moneys in the fund, upon appropriation by the Legislature, as reimbursement for the board's costs of collection, auditing, and making refunds associated with the fund and to make payments to counties and cities for plastic carryout bag litter prevention, plastic carryout bag litter cleanup activities, and source reduction efforts to reduce the use of plastic carryout bags. The bill would specify a procedure for the disbursement of those payments on a per capita basis.

(2) Existing law prohibits a city, county, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that, among other things, imposes a plastic carryout bag fee upon a store that has established an at-store recycling provision.

This bill would delete the prohibition on a city, county, or other public agency from imposing a plastic carryout bag fee upon a store.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The fee imposed pursuant to Section 42252.6 of the Public Resources Code will mitigate the environmental, public health, and other public-financed impacts caused by the use of plastic bags by offsetting the costs of programs to prevent the littering of plastic carryout bags, cleaning up the litter caused by plastic carryout bags, and encouraging the reduction of the use of plastic carryout bags.

(2) The imposition of the fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution because the amount and nature of the fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of plastic carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the littering of plastic carryout bags, cleaning up the litter caused by plastic carryout bags, and encouraging the reduction of the use of plastic carryout bags.

(b) It is the intent of the Legislature that the fee that is imposed pursuant to Section 42252.6 of the Public Resources Code be consistent with *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866.

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

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

~~—(a) (1) Notwithstanding Section 40124, "diversion rate" means a percentage calculated using the sum of the following amounts:~~

~~—(A) The base year consumption, minus the reporting year consumption, divided by the base year consumption.~~

~~—(B) The amount of plastic carryout bags recycled during the reporting year, divided by the base year consumption.~~

~~—(2) "Base year consumption" means the amount of plastic carryout bags provided to consumers during the 2007-08 fiscal year, based on the data reported to the board pursuant to Section 42252 and as determined in accordance with subdivision (d) of Section 42252.5.~~

~~(3) "Reporting year consumption" is the amount of plastic carryout bags provided to consumers during a specified fiscal year, based on data reported to the board pursuant to Section 42252 and as determined in accordance with subdivision (d) of Section 42252.5.~~

~~(b)~~

(a) "Fund" means the California Plastic Carryout Bag Impact Fund created pursuant to Section 42252.6.

~~(c)~~

(b) "Litter" means the litter resulting from the improper disposal of plastic carryout bags.

~~(d)~~

(c) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

~~(e)~~

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

~~(f)~~

(e) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

~~(g)~~

(f) "Plastic carryout bag impact fee" means the fee imposed pursuant to Section 42252.6.

~~(h)~~

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

(1) A bag that has handles and is made of cloth or other machine washable fabric.

(2) A durable plastic bag that has handles and at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

~~(i)~~

(h) "Source reduction" means a decrease in the use of plastic carryout bags.

~~(j)~~

(i) "Store" means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and that meets either of the following requirements:

(1) Meet the definition of a "supermarket" as found in Section 14526.5.

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

SEC. 3. Section 42252 of the Public Resources Code is amended to read:

42252. An at-store recycling program provided by the operator of a store shall include all of the following:

(a) Each plastic carryout bag provided by the store shall have printed or displayed on the bag, in a manner visible to a consumer, both of the following:

(1) The words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING."

(2) On and after July 1, 2009, an environmental awareness message developed by the board pursuant to Section 42252.4, describing the negative impacts on the environment and wildlife caused by littered plastic carryout bags and encouraging the use of reusable bags.

(b) A plastic carryout bag collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose

of collecting and recycling plastic carryout bags.

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

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

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

SEC. 4. Section 42252.4 is added to the Public Resources Code, to read:

42252.4. On or before July 1, 2009, the board shall develop an environmental awareness message, for purposes of paragraph (2) of subdivision (a) of Section 42252, in consultation with representatives of the League of California Cities, the California State Association of Counties, manufacturers, operators, the California Grocers Association, environmental organizations, and other interested stakeholders.

~~SEC. 5. Section 42252.5 is added to the Public Resources Code, to read:~~

~~42252.5. (a) On and after July 1, 2010, except as provided in subdivision (b), the operator of a store shall not provide a plastic carryout bag to a customer unless the operator demonstrates that the store has achieved a diversion rate of not less than 30 percent for the 12 month period ending June 30, 2010, and for the 12 month period commencing annually thereafter, as compared to the 12 month period ending June 30, 2008.~~

~~(b) On and after July 1, 2013, the operator of a store shall not provide a plastic carryout bag to a customer unless the operator demonstrates that the store has achieved a diversion rate of not less than 65 percent for the 12 month period ending June 30, 2013, and annually thereafter, as compared to the 12 month period ending June 30, 2008.~~

~~(c) The operator of a store may comply with this section by reducing the quantity of plastic carryout bags provided by the store, by increasing the quantity of plastic carryout bags recycled at that store, or by taking any other action to achieve the diversion rate required by this section.~~

~~(d) The operator of a store may demonstrate compliance with the diversion rate requirements of this section by using any of the following means of quantifying the amount of plastic carryout bags provided to consumers and the amount of plastic carryout bags recycled:~~

~~(1) The amount of plastic carryout bags provided and the amount of plastic carryout bags recycled for an individual store.~~

~~(2) The amount of plastic carryout bags provided and the amount of plastic carryout bags recycled for a chain of stores.~~

~~(3) The amount of plastic carryout bags provided and the amount of plastic carryout bags recycled within a city, county, or specified region of the state.~~

~~(4) The amount of plastic carryout bags provided and the amount of plastic carryout bags recycled for the state.~~

~~SEC. 6. SEC. 5. Section 42252.6 is added to the Public Resources Code, to read:~~

42252.6. (a) On and after July 1, 2009, a person who is provided a plastic carryout bag by a store shall pay the store a plastic

carryout bag impact fee of twenty-five cents (\$.25) per bag.

(1) The plastic carryout bag impact fee imposed pursuant to subdivision (a) shall be separately stated by the store on the receipt given to the customer at the time of sale.

(2) The store shall collect the plastic carryout bag impact fee from the customer at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The store shall remit the remainder to the board on a quarterly schedule for deposit in the California Plastic Carryout Bag Impact Fund, which is hereby created in the State Treasury.

(b) The moneys deposited in the fund may be expended by the board, upon appropriation by the Legislature, for the following purposes:

(1) The board may expend not more than 3 percent of the total annual revenue deposited in the fund as reimbursement for the board's costs of collection, auditing, and making refunds associated with the fund.

(2) The board may expend the remaining moneys in the fund to make payments to counties and cities for litter prevention, litter cleanup activities, and source reduction efforts related to plastic carryout bags on a per capita basis for those activities, in accordance with all of the following:

(A) The payments made pursuant to this paragraph may not be expended for activities unrelated to litter prevention, litter cleanup activities, or source reduction efforts related to plastic carryout bags.

(B) To receive funds pursuant to this section, a city or county shall fill out and return a funding request form to the board. The form shall specify the litter prevention, litter cleanup activities, or source reduction efforts related to plastic carryout bags for which the funds will be used.

(C) The board shall annually prepare and distribute a funding request form to each city and county. The form shall specify the amount of funds available for litter prevention, litter cleanup activities, and source reduction efforts related to plastic carryout bags for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city or county does not return the funding request form within 120 days of receipt of the form from the board, the city or county is not eligible to receive the funds for that funding cycle.

(D) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city and the unincorporated area of a county.

~~SEC. 7.~~ SEC. 6. Section 42254 of the Public Resources Code is amended to read:

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

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

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

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

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

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

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

(c) This section does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or

rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency, including any action relating to fees for these programs.

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

~~SEC. 8.~~ SEC. 7. Section 42257 of the Public Resources Code is repealed.