

ASSEMBLY BILL

No. 68

Introduced by Assembly Member Brownley

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 introduced, 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, 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 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.

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
11 bags is less than five percent and it currently costs the state
12 twenty-five million dollars (\$25,000,000) annually to landfill
13 discarded plastic bags. Public agencies in California also spend
14 more than three hundred million dollars (\$300,000,000) annually
15 in litter cleanup.
16 (c) Despite past efforts to control ocean litter, the quantity of
17 trash in the coastal and ocean environment is increasing
18 dramatically worldwide. It is estimated that 60 to 80 percent of all
19 marine debris, and 90 percent of floating debris is plastic. It may
20 take hundreds of years for this plastic to break down and some
21 plastics never truly biodegrade in the marine environment. Streams
22 and storm drains carry plastic bags to the ocean where they are

1 frequently mistaken as food by marine life. Over 267 species
2 worldwide have been impacted by plastic litter such as plastic bags
3 through entanglement or ingestion.

4 (d) Requiring stores to end the subsidy of single-use carryout
5 bags and charge their full economic and environmental costs will
6 provide consumers with an appropriate market signal to make
7 informed decisions regarding carryout bag reduction and reuse
8 options.

9 (e) Requiring stores to charge and remit a fee for the distribution
10 of single-use carryout bags will help the state and local
11 governments to offset the environmental and social costs of
12 single-use carryout bags.

13 (f) There is a need for a long-term shift away from litter control
14 and waste management and towards pollution prevention and
15 sustainable materials in the development of consumer products.

16 (g) Green chemistry, material science, and sustainable design
17 offer a new approach to solving environmental damage caused by
18 single-use carryout bags.

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

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

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

36 SEC. 2. Chapter 5.3 (commencing with Section 42280) is added
37 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 Natural 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) “Cal-EPA” means the California Environmental Protection Agency.

(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.

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

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

(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 any of the following requirements:

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

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

7 (3) Is a convenience food store or foodmart primarily engaged
8 in retailing a limited line of goods that generally includes milk,
9 bread, soda, and snacks, and has a total combined square footage
10 of 10,000 square feet or more.

11
12 Article 2. Bag Pollution Cleanup Fee
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14 42281. (a) Except as provided in Section 42283, on and after
15 July 1, 2010, a store shall not provide a single-use carryout bag,
16 including a green carryout bag, to a customer at the point of sale,
17 unless the store charges the customer not less than twenty-five
18 cents (\$0.25) per bag.

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

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

29 (2) (A) Before January 1, 2013, a store may retain not more
30 than five cents (\$0.05) of the fee for each single-use carryout bag
31 that is not a green carryout bag. For a single-use carryout bag that
32 is a green carryout bag, a store may retain not more than ten cents
33 (\$0.10) of the fee for each bag.

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

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

1 42283. The fee imposed pursuant to Section 42281 shall not
2 be charged to either of the following:

3 (a) A customer participating in the California Special
4 Supplemental Food Program for Women, Infants, and Children
5 (Article 2 (commencing with Section 123275) of Chapter 1 of Part
6 2 of Division 106 of the Health and Safety Code).

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

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

14 42284.5. A store charging a fee pursuant to Section 42281 shall
15 use the amount of the fee retained pursuant to subdivision (c) of
16 Section 42281 for all of the following:

17 (a) Reimbursement of the store's costs associated with the
18 collection and remittance of the fee pursuant to Sections 42281
19 and 42284.

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

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

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

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

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

33 42285. (a) The Bag Pollution Fund is hereby established in
34 the State Treasury. All fees collected by the state board pursuant
35 to this chapter shall be deposited in the fund.

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

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

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

8 (ii) Source reduction efforts to help implement zero waste
9 programs, litter prevention programs, and litter prevention
10 education and outreach programs related to single-use carryout
11 bags.

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

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

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

21 (C) If a city or county prohibits the use of all single-use carryout
22 bags, including green carryout bags, and no fees are collected
23 pursuant to Section 42281 within that jurisdiction, that city or
24 county shall not be eligible for grant funds pursuant to this
25 paragraph.

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

29 (3) No more than 5 percent shall be expended by the agency
30 and the board, for purposes of administering the requirements of
31 this chapter.

32 (4) The remainder of the moneys in the funds shall be allocated
33 on an equal basis to the agency, the board, and Cal-EPA for the
34 purposes of Section 42287 and 42287.1.

35 42286. (a) The Legislature finds and declares that imposing
36 a single-use carryout bag fee upon a store is a matter of statewide
37 interest and concern.

38 (b) Unless expressly authorized by this chapter, a city, county,
39 or other public agency shall not adopt, implement, or enforce an
40 ordinance, resolution, regulation, or rule to impose a single-use

1 carryout bag fee upon a store that is in compliance with this
2 chapter.

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

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Article 3. Program and Report

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10 42287. The board shall, in consultation with Cal-EPA, the State
11 Water Resources Control Board, and the Department of Toxic
12 Substances Control, develop and implement programs to encourage
13 and support pollution prevention, abatement and cleanup,
14 enforcement, green chemistry, water quality protection and cleanup,
15 and environmental and public education and outreach related to
16 the use of single-use carryout bags.

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Article 4. Administration and Enforcement

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

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

(c) The Bag Pollution Cleanup Fee shall be due and payable
quarterly on or before the 25th day of the month following each
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 board shall administer and enforce this chapter.