

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.