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.


The people of the State of California do enact as follows:

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

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

(b) Litter from plastic carryout bags poses a significant burden to California’s economy and a serious threat to our marine ecosystem. It is estimated that Californians consume 19 billion plastic carryout bags per year. However, according to the California Integrated Waste Management Board, the recycling rate for these bags is less than five percent and it currently costs the state twenty-five million dollars ($25,000,000) annually to landfill discarded plastic bags. Public agencies in California also spend more than three hundred million dollars ($300,000,000) annually in litter cleanup.

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

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

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

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

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

(h) The imposition of the fees pursuant to Section 42281 of the Public Resources Code 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 single-use carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the litter of single-use carryout bags, to clean up the litter caused by single-use carryout bags, and to encourage the reduction of the use of single-use carryout bags.

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

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

SEC. 2. Chapter 5.3 (commencing with Section 42280) is added 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.
(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.

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

Article 2. Bag Pollution Cleanup Fee

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

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

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

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

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

(d) Any other transaction fee charged by a store in relation to
providing a single-use carryout bag shall be identified separately
from the Bag Pollution Cleanup Fee.
42283. The fee imposed pursuant to Section 42281 shall not be charged to either of the following:
(a) A customer participating in the California Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code).
(b) A customer participating in the State Department of Social Services Food Stamp Program.

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

42284.5. A store charging a fee pursuant to Section 42281 shall use the amount of the fee retained pursuant to subdivision (c) of Section 42281 for all of the following:
(a) Reimbursement of the store’s costs associated with the collection and remittance of the fee pursuant to Sections 42281 and 42284.
(b) The development of in-store educational materials for distribution to customers encouraging the use of reusable bags.
(c) The development and implementation of an educational campaign encouraging the use of reusable bags, including, but not limited to, public service announcements.
(d) Reimbursement of the store’s costs associated with providing reusable bags to customers participating in programs described in subdivisions (a) and (b) of Section 42283.
(e) Reimbursement of the store’s costs associated with providing reusable bags as donations to community organizations, nonprofit organizations, and other similar entities.
(f) Reimbursement of the store’s costs associated with the use of single-use carryout bags.

42285. (a) The Bag Pollution Fund is hereby established in the State Treasury. All fees collected by the state board pursuant to this chapter shall be deposited in the fund.
(b) The moneys in the fund shall be expended, upon appropriation by the Legislature in the annual Budget Act, in the manner and in the order of priority as follows:
(1) (A) By the board, 80 percent of the moneys in the fund, for grants to cities and counties, on a per capita basis, for the following purposes:

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

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

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

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

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

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

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

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

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

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

   (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 impose a single-use
carryout bag fee upon a store that is in compliance with this chapter.

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

Article 3. Program and Report

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

42287.1. On or before January 1, 2012, the board, in consultation with Cal-EPA, shall submit a report to the Legislature regarding the effectiveness of this chapter, the report shall also include recommendations to further encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags, including at a minimum, both of the following:

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

(b) Increasing the fee imposed pursuant to Section 42281 to increase the effectiveness of this chapter.

Article 4. Administration and Enforcement

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

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

42288.5. Except as otherwise provided by this chapter, the agency and the board shall administer and enforce this chapter.