

Introduced by Senator DeSaulnier

February 27, 2009

An act to add and repeal Chapter 5.2 (commencing with Section 42260) of Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as introduced, DeSaulnier. 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. Under existing law, the California Integrated Waste Management Board (board) administers laws related to waste management.

This bill would establish the Single-use Carryout Bag Responsibility Act and would require, on and after July 1, 2011, the suppliers, as defined, of plastic or paper single-use carryout bags to remit a Single-use Carryout Bag Responsibility Fee of \$0.001, to the State Board of Equalization, for each paper or plastic single-use carryout bag supplied directly to a store. The State Board of Equalization would be required to deposit the fee into the Single-use Carryout Bag Responsibility Fund that would be established in the State Treasury.

The bill would require the board to administer and enforce the provisions of the act, excluding the administration and collection of the fees which would be done by the State Board of Equalization. On or before January 1, 2013, the board would be required to submit a report to the Legislature evaluating the effectiveness of this chapter.

The bill would require the moneys in the fund to be expended, upon appropriation, by the Legislature for the Single-Use Carryout Bag Litter

Abatement Program under which grant awards would be allocated to specified entities for the purpose of abating and cleaning up single-use carryout bags that become litter and encouraging the proper disposal and collection of single-use carryout bags, and by the board for implementation of the program and for administrative costs not to exceed 5% of the funds made available annually for the program or an amount otherwise specified in the annual Budget Act.

The act would be repealed as of January 1, 2018.

The bill would authorize the board to develop a voluntary best practices program.

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) Many products, including single-use carryout bags, become
4 litter.

5 (b) Requiring manufacturers or suppliers of those products to
6 pay an appropriate share of litter abatement and cleanup costs is
7 appropriate.

8 (c) Charging commercial suppliers of single-use carryout bags
9 to stores a fee of \$0.001 per bag would fairly compensate taxpayers
10 for abatement and cleanup of single-use carryout bag litter based
11 on litter characterization studies.

12 (d) Plastic bag manufacturers are encouraged to incorporate
13 recycled content in plastic bags to the extent that it is
14 technologically feasible and cost efficient.

15 (e) The imposition of the fee pursuant to Section 42261 of the
16 Public Resources Code would not result in the imposition of a tax
17 within the meaning of Article XIII A of the California Constitution
18 because the amount and nature of the fee have a fair and reasonable
19 relationship to the environmental, public health, and societal
20 burdens imposed by the littering of single-use carryout bags, and
21 there is a sufficient nexus between the fees imposed and the use
22 of those fees to support programs to abate and clean up single-use
23 carryout bag litter.

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

4 (2) It is the intent of the Legislature that the fee that is imposed
5 pursuant to Section 42261 of the Public Resources Code be
6 consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
7 (1997) 15 Cal.4th 866.

8 SEC. 2. Chapter 5.2 (commencing with Section 42260) is added
9 to Part 3 of Division 30 of the Public Resources Code, to read:

10
11 CHAPTER 5.2. SINGLE-USE CARRYOUT BAG RESPONSIBILITY
12 ACT

13
14 Article 1. Definitions

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16 42260. For purposes of this chapter, the following definitions
17 shall apply:

18 (a) “Board” means the California Integrated Waste Management
19 Board.

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

23 (c) “Distributor” means a person other than a manufacturer who
24 distributes or supplies single-use carryout bags to one or more
25 stores in this state.

26 (d) “Fund” means the Single-use Carryout Bag Responsibility
27 Fund, established pursuant to Section 42262.

28 (e) “Manufacturer” means a person who manufactures single-use
29 carryout bags that are sold to or used by one or more stores in this
30 state.

31 (f) “Reusable bag” means the same as subdivision (b) of Section
32 42250.

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

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

37 (1) Meets the definition of a “supermarket” as found in Section
38 14526.5.

39 (2) Has over 10,000 square feet of retail space that generates
40 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales

1 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
2 Division 2 of the Revenue and Taxation Code) and has a pharmacy
3 licensed pursuant to Chapter 9 (commencing with Section 4000)
4 of Division 2 of the Business and Professions Code.

5 (i) “Supplier” means the manufacturer, distributor, or other
6 person that sells or supplies single-use carryout bags directly to a
7 store.

8 9 Article 2. Single-use Carryout Bag Responsibility Fee

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11 42261. (a) On and after July 1, 2011, the supplier of carryout
12 bags shall remit a Single-use Carryout Bag Responsibility Fee, to
13 the State Board of Equalization for deposit into the fund, for each
14 carryout bag that it supplies directly to a store.

15 (b) The amount of the fee shall be one-tenth of one cent (\$0.001)
16 per carryout bag.

17 (c) The supplier shall remit the fee directly to the state board.

18 (d) Carryout bags shall not be delivered to or accepted by a store
19 unless the supplier has provided written certification to the store
20 operator that the supplier has paid, or agrees to pay, the fee to the
21 state board for those bags. Store operators shall not be liable for
22 paying the fee if they obtain the certification.

23 42262. (a) The Single-use Carryout Bag Responsibility Fund
24 is hereby established in the State Treasury. All fees collected by
25 the state board pursuant to this chapter shall be deposited in the
26 fund.

27 (b) Moneys in the fund shall be expended, upon appropriation
28 by the Legislature, for the purposes of Article 3 and for the
29 administrative costs incurred by the board in administering the
30 program. Those administrative costs shall not exceed 5 percent of
31 the funds made available annually for the program or an amount
32 otherwise specified in the annual Budget Act.

33 34 Article 3. Litter Abatement Program

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36 42263. (a) A Single-Use Carryout Bag Litter Abatement
37 Program is hereby established and administered by the board for
38 the purpose of allocating grant awards for the purpose of abating
39 and cleaning up carryout bags that become litter and encouraging
40 the proper disposal and collection of carryout bags.

(b) Moneys in the fund shall be available for all of the following purposes:

(1) Litter abatement programs designed to lead to reduced release of carryout bags into the environment.

(2) Litter cleanup programs designed to clean up carryout bag litter.

(3) Investments in equipment, technologies, and practices designed to lead to enhanced carryout bag containment at landfills and other solid waste disposal facilities, including garbage and recycling collection vehicles.

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

(5) Other collection and abatement programs further identified by the board that achieve the intent of this chapter.

(6) Public education regarding the use of the bins required by subdivision (b) of Section 42252.

(c) Entities eligible for this funding shall include cities, counties, special districts, nonprofit organizations, the California Conservation Corps, and private entities.

(d) Communities with demonstrated high levels of carryout bag litter may receive additional funding consideration.

(e) Minimum allocations of two hundred fifty thousand dollars (\$250,000) shall be available to all cities with populations of greater than 250,000 and counties with populations of greater than one million. The balance of the funds shall be available on a competitive basis to all eligible entities.

42264. The program established by this article shall be implemented by the board with moneys, appropriated by the Legislature, from the fund or with other funds made available specifically for this program.

Article 4. Waste Reduction

42265. The board is authorized to develop a voluntary best practices program that may include any of the following:

(a) Encouraging stores not to provide carryout bags to customers for one item unless appropriate under the circumstances.

(b) Encouraging stores to ask customers purchasing two items whether they need a carryout bag.

- 1 (c) Encouraging stores to refrain from double bagging.
2 (d) Encouraging stores to attempt to fill the maximum item
3 count or weight per carryout bag.
4 (e) Encouraging stores to ask cashiers or baggers to advise
5 customers to be sure to return plastic carryout bags and other
6 recyclable plastic bags to the store for recycling and point out the
7 location of recycling bins.
8 (f) Encouraging stores to ensure that the bins required by
9 subdivision (b) of Section 42252 are highly visible and clearly
10 marked with a single logo approved by the board for all stores in
11 this state.
12 (g) Encouraging stores to allocate space on bags for prominent
13 printed messages to educate, request, and encourage consumers
14 to use plastic bag recycling bins in addition to the requirement in
15 subdivision (a) of Section 42252.
16 (h) Creating a dedicated Internet Web site with an online training
17 program including a video for store personnel to educate them on
18 implementing the voluntary best practices.
19 (i) Creating a dedicated Internet Web site for the public to learn
20 about the voluntary best practices program.
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22 Article 5. Waste Diversion

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- 24 42266. (a) If a store operator is unable to sell or transfer the
25 contents of the bin that complies with subdivision (b) of Section
26 42252 to a recycler, the supplier of plastic bags to the store shall
27 make arrangements for recycling or take the contents.
28 (b) The supplier shall not dispose of the plastic film contents
29 of those bins in a solid waste stream or in a landfill.
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31 Article 6. Heavy Metals Prohibition

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- 33 42267. A reusable bag shall not be sold or provided to
34 consumers in this state if it contains lead or any other heavy metals.
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36 Article 7. Administration and Enforcement

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- 38 42268. (a) The state board shall administer and collect the
39 Single-use Carryout Bag Responsibility Fee pursuant to the Fee

1 Collection Procedures Law (Part 30 (commencing with Section
2 55001) of Division 2 of the Revenue and Taxation Code).

3 (b) The state board may adopt rules and regulations to carry out
4 this chapter, including, but not limited to, provisions governing
5 supplier certification forms, collections, enforcement, reporting,
6 refunds, and appeals.

7 42269. Except as otherwise provided by this chapter, the board
8 shall administer and enforce this chapter. The board may adopt
9 such regulations as it determines to be necessary to implement this
10 chapter.

11 42269.1. On or before January 1, 2013, the board shall submit
12 a report to the Legislature evaluating the effectiveness of this
13 chapter.

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15 Article 8. Preemption
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17 42269.3. (a) The Legislature finds and declares that imposing
18 a single-use carryout bag responsibility fee upon suppliers is a
19 matter of statewide interest and concern.

20 (b) A city, county, or other public agency shall not adopt or
21 enforce an ordinance, resolution, regulation, or rule prohibiting
22 the use, import, sale, or distribution of carryout bags or imposing
23 a fee on carryout bags or requiring any specifications for carryout
24 bags unless that ordinance, resolution, regulation, or rule was
25 adopted prior to January 1, 2009.

26 (c) A city, county, or public agency that does not repeal an
27 ordinance, resolution, regulation, or rule prohibiting the use,
28 import, sale, or distribution of carryout bags or imposing a fee on
29 carryout bags, or requiring any specifications for carryout bags
30 that was adopted prior to January 1, 2009 shall not be eligible for
31 funds pursuant to paragraph (3) of subdivision (b) of Section 42263
32 as long as it remains in effect.

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34 Article 9. Repeal
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36 42269.5. This chapter shall remain in effect only until January
37 1, 2018, and as of that date is repealed, unless a later enacted

- 1 statute, that is enacted before January 1, 2018, deletes or extends
- 2 that date.

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