Date of Hearing: May 14, 2014

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Wesley Chesbro, Chair
SB 270 (Padilla) – As Amended: March 27, 2014

SENATE VOTE: N/A

SUBJECT: Solid waste: single-use carryout bags

SUMMARY: Prohibits stores, as defined, from distributing lightweight, single-use plastic bags after specified dates. Establishes requirements for reusable bags and prohibits stores from distributing reusable bags for less than 10 cents per bag.

EXISTING LAW:

1) Establishes the At-Store Recycling Program, which:

   a) Requires operators of stores, defined as supermarkets and stores over 10,000 square feet that includes a pharmacy, to establish an at-store recycling program. Under the program:

      i) Plastic bags provided by the store must include a label encouraging customers to return the bag to the store for recycling.

      ii) Stores must provide clearly labeled and easily accessible recycling bins for plastic bags.

      iii) All plastic bags collected must be recycled in a manner consistent with the local jurisdiction’s recycling plan.

      iv) The store must maintain records relating to the program for at least three years and must make the records available to the local jurisdiction or the Department of Resources Recycling and Recovery (CalRecycle) upon request.

      v) The operator of the store must make reusable bags available to customers.

   b) Requires plastic carryout bag manufacturers to develop educational materials to encourage reducing and recycling of plastic carryout bags and make those materials available to stores.

   c) Authorizes a city, county, or the state to levy fines for stores in violation of this law.

   d) Sunsets the above provisions on January 1, 2020.

2) Establishes the Toxics in Packaging Prevention Act, which:

   a) Prohibits a person from offering for sale or for promotional purposes in this state a product in a package that includes a regulated metal in the package itself or in a packaging component if the regulated metal has been intentionally introduced into the
package or packaging component during manufacturing or distribution.

b) Defines "regulated metal" as lead, mercury, cadmium, or hexavalent chromium.

c) Defines "package" as any container, produced either domestically or in a foreign country that provides a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package, or a shipping container. "Package" also includes unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags (including single-use carryout bags), and tubs.

d) Excludes reusable bags from the definition of "package."

3) Establishes the Recycling Market Development Revolving Loan Program to provide low-interest loans to businesses within one of the state's Recycled Market Development Zones (RMDZ) for the purchase of equipment and other relevant business costs.

THIS BILL:

1) Defines terms in the bill, including:

a) “Postconsumer recycled material” as material that would otherwise be destined for solid waste disposal.

b) “Recycled paper bag” as a paper carryout bag provided by a store to a customer at the point of sale and contains a minimum of 40 percent postconsumer recycled materials. For a bag with the capacity to hold eight pounds or less, the bag must contain at least 20 percent postconsumer recycled materials. A recycled paper bag must be accepted for recycling in a majority of households in curbside recycling programs in the state, as well as have specified information printed on the bag.

c) “Reusable grocery bag” as, on and after July 1, 2016, a bag that meets requirements specified in (2) below.

d) “Single-use carryout bag” as a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale with specified exceptions including a bag provided by a pharmacy for a prescription purchase, a nonhandled bag used to protect an item from damaging or contaminating other items when placed in a recycled paper bag or reusable grocery bag, and a dry-cleaning or garment bag.

e) “Store” as a full-line self-service retail store with gross annual sales of at least $2 million and sells a line of dry grocery, canned goods, or nonfood items and some perishables (a typical grocery store); has at least 10,000 square feet of retail space and a pharmacy; or, a convenience food store or foodmart. Includes in the definition of store a retail establishment that voluntarily agrees to comply with the requirements of the bill.

2) Beginning July 1, 2016, requires that a reusable grocery bag be able to be used a minimum of 125 times, as specified; can be cleaned; have specified information visible on the bag; cannot contain lead, cadmium, or any other heavy metal in toxic amounts; and, must be consistent
with federal regulations related to recyclable claims if the bag producer claims the bag is recyclable.

3) Provides additional requirements of a reusable grocery bag if made from plastic.

4) Establishes certification requirements for producers of reusable bags and suppliers of postconsumer recycled content.

5) Requires CalRecycle to:

   a) Establish a schedule and procedures for reusable bag producers and suppliers of postconsumer recycled content to provide the required certifications.

   b) Establish a certification fee that will generate sufficient revenues to cover, but not exceed, CalRecycle's "reasonable costs to implement and enforce the certification provisions of the bill."

   c) Publish a list of approved reusable bag producers and suppliers of postconsumer recycled content, including the types of bags and contact information, and a list of the third-party certification entities approved by CalRecycle on its website.

6) Authorizes CalRecycle to:

   a) Test any reusable bag manufactured by a reusable bag producer.

   b) Inspect and audit a certified reusable bag producer.

   c) Enter into an agreement with other state entities to conduct inspections and provide necessary enforcement.

7) Prohibits stores from making single-use carryout bags available at the point of sale on the following timeline:

   a) On and after January 1, 2015, at either a grocery store or retailer with at least 10,000 square feet of retail space and a pharmacy.

   b) On and after July 1, 2016, at a convenience food store and foodmart.

8) Authorizes a store to make available a reusable grocery bag at the point of sale. Requires that reusable bags may not be sold to a consumer for less than 10 cents per bag.

9) Authorizes a store to make available a recycled paper bag for purchase at the point of sale for not less than 10 cents per bag.

10) Requires a store to provide a customer participating in California’s Special Supplemental Food Program for Women, Infants, and Children with a reusable grocery bag or recycled paper bag at no cost.
11) Authorizes a store to make a compostable bag (i.e., meeting certain compostable and other requirements) available for purchase for not less than 10 cents per bag.

12) Authorizes stores that are not included in the bill to voluntarily participate in the bill's requirements.

13) Authorizes a city, county, city and county, or the state to impose civil liability of $500 for the first violation of the proposed law, $1,000 for the second violation, and $2,000 for each subsequent violation. Collected penalties must be paid to whichever agency brought the action.

14) Preempts local ordinances adopted on or after September 1, 2014 relating to reusable grocery bags, single-use carryout bags, or recycled paper bags.

15) Appropriates $2 million from the Recycled Market Development Revolving Loan Subaccount for loans and grants for the creation and retention of jobs and economic activity in the state for the manufacture and recycling of plastic reusable grocery bags that use recycled content. Requires recipients of a grant to retain and retrain existing employees for the manufacturing of reusable grocery bags that meet the requirements of the bill.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Purpose of bill.** The author states, “California uses an estimated 14 billion single-use plastic bags a year. According to CalRecycle, less than five percent of single-use plastic bags are recycled. Plastic bags cause litter, slow sorting and jam machinery at recycling centers costing California more than an estimated $25 million each year to collect and bury the plastic bag waste. By banning plastic bags on a statewide level, the amount of litter and plastic marine debris caused by plastic bags can be significantly reduced.”

2) **Background.** Plastic bags and plastic film together represent just over two percent of the waste stream, and every year California taxpayers spend $25 million disposing of the 14 billion plastic bags used annually. Although plastic represents a relatively small fraction of the overall waste stream in California, plastic waste is the predominate form of marine debris. Plastics are estimated to comprise 60-80 percent of all marine debris and 90 percent of all floating debris. According to the California Coastal Commission, the primary source of marine debris is urban runoff, of which lightweight plastic bags and plastic film are particularly susceptible. Due to the interplay of ocean currents, marine debris preferentially accumulates in certain areas throughout the ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. A study by the Algalita Marine Research Foundation found an average of more than 300,000 plastic pieces per square mile of the Gyre and that the mass of plastic was six times greater than zooplankton floating on the water’s surface.

Most plastic marine debris exists as small plastic particles due to excessive UV radiation exposure and subsequent photo-degradation. These plastic pieces are ingested by aquatic organisms and have already negatively affected over 250 animal species worldwide. In addition, hydrophobic chemicals present in the ocean in trace amounts (e.g., from
contaminated runoff and oil and chemical spills) have an affinity for, and can bind to, plastic particles and may also enter and accumulate in the food chain through the same mechanism.

3) Local bag responses. Over 77 cities and counties throughout California have adopted ordinances banning plastic bags, including San Francisco, San Jose, Long Beach, Los Angeles County, Santa Clara County, and Alameda County. Many of these local governments also require stores to charge a fee for a paper carryout bag, and a few have banned both single-use plastic and paper carryout bags. This bill does not pre-empt existing ordinances; however, it does provide uniformity moving forward by pre-empting any local ordinance adopted after September 1, 2014.

4) No corresponding litter and pollution program funded by fees. SB 270 requires stores to charge not less than 10 cents for both paper bags and reusable bags. Some of the previous bills on this issue directed fee revenues to be used for litter and pollution prevention, as well as stormwater, sewer and water treatment facility problems associated with bag debris.

On the other hand, some local governments place requirements on how stores may expend the money collected from bag purchases. For example, Los Angeles County allows the money generated by bag purchases and retained by stores to be used only for the stores' costs of compliance, actual costs of providing recyclable paper carryout bags, or costs for educational materials/campaigns encouraging the use of reusable bags.

This bill is silent with regard to any funds generated by the charge. Presumably, any funds collected would be kept by the store.

5) Related and past legislation. A significant number of bills related to single-use bags have been introduced.

a) AB 2058 (Levine) of 2007 would have prohibited the free dispensing of carryout plastic bags by a store to its customers, unless the store can demonstrate to the California Integrated Waste Management Board (CIWMB) that 70% of the plastic bags it dispensed had been diverted from the waste stream. AB 2058 was held in Senate Appropriations Committee.

b) SB 531 (DeSaulnier) of 2009 would have required manufacturers of plastic carryout bags to consult with various entities, including the CIWMB, when developing specified educational materials to encourage the reduced use or recycling of those bags, and authorized the CIWMB to modify those materials. SB 531 was held in Assembly Natural Resources Committee without further action.

c) AB 68 (Brownley) of 2009 and AB 87 (Davis) of 2009 both would have required a 25 cent fee on the distribution of single-use carryout bags. Both bills were held in the Assembly Appropriations Committee.

d) AB 2138 (Chesbro) of 2010 would have established recycling and composting requirements for take-out food packaging, including bags. AB 2138 was held on the Assembly Appropriations Committee suspense file.
e) AB 1998 (Brownley) of 2010 would have repealed the at-store recycling program and instead prohibited stores from providing a single-use plastic carryout bag to a customer and required stores to provide reusable bags for purchase or recycled paper bags for a fee. AB 1998 was held on the Senate Floor.

f) SB 915 (Calderon) of 2011 would have established plastic bag reduction and recycled content goals. A hearing in the Senate Environmental Quality Committee was canceled at the request of the author.

g) AB 1834 (Brownley) of 2012 would have defined reusable bags. This bill was held on the Senate Floor.

h) SB 1106 (Strickland) of 2012 would have prohibited the manufacture, distribution, and sale of reusable bags without a warning label that both specifies the need for reusable bags to be cleaned and disinfected between uses and outlines the health risks associated with not cleaning or disinfecting reusable bags between uses. SB 1106 was held in the Senate Environmental Quality Committee.

i) AB 298 (Brownley) of 2011 would have prohibited a reusable bag manufacturer from selling or distributing a reusable bag in the state unless it meets specified requirements. AB 298 was held in the Senate Appropriations Committee.

j) SB 1219 (Wolk), Chapter 384, Statutes of 2012, extended the sunset of the At-Store Recycling Program requirements from January 1, 2013 to January 1, 2020 and repealed the provisions preempting local regulatory action related to the at-store recycling program requirements.

k) AB 158 (Levine) in the current Session is substantially similar to SB 270. Generally, this bill prohibits grocery stores from providing single-use plastic bags to customers and requires stores to make reusable bags available for purchase by customers. This bill was moved to the Assembly inactive file by the author.

l) SB 405 (Padilla) in the current Session is substantially similar to SB 270. Generally, this bill prohibits grocery stores from providing single-use plastic bags to consumers and requires stores to make reusable bags available for purchase by customers. This bill was moved to the Senate inactive file by the author.

m) SB 700 (Wolk) in the current Session would have required retail establishments, as defined, to collect a fee of 5 cents for every single-use carryout bag provided to a customer. The bill requires that the fees be available for grants to cities and counties for local parks and local programs that reduce and cleanup litter. This bill was held in the Senate Appropriations Committee.

6) **Suggested amendments.** The committee may wish to make a number of technical, clarifying, and other amendments to ensure that the bill is enforceable, protective of public health, consistent with other state programs, and make related technical and clarifying changes.
a) The bill allows non-regulated stores to "voluntarily" participate in the program. The committee may wish to amend the bill to clarify that this provision is enforceable by CalRecycle.

b) This bill specifies that reusable bags be free from heavy metals "in toxic amounts." The committee may wish to amend the bill to specify that reusable bags do not contain toxic materials that may pose a threat to public health, which may be demonstrated by obtaining a letter of non-objection from the federal Food and Drug Administration. This method of demonstration is commonly used for other types of plastic packaging.

c) The certification provisions in this bill are complex and in some places duplicative. The committee may wish to amend the bill to consolidate, streamline, and make technical changes to the certification requirements.

d) Currently the bill pre-empts all local ordinances adopted after September 1, 2014, which may affect local governments that are currently in the process of adopting an ordinance. The committee may wish to amend the bill to permit ordinances that have already "passed a first reading" prior to that date and that are adopted before January 1, 2015.

e) This bill appropriates $2 million from the Recycled Market Development Revolving Loan Program for "loans and grants." In order to ensure that the bill is consistent with the purposes of the program, the committee may wish to amend the bill to preserve the existing loan program.

REGISTERED SUPPORT / OPPOSITION:

Support

All One Ocean
Black Surfers Collective
California Association of Environmental Health Administrators
California Coastal Coalition
California Coastkeeper
California League of Conservation Voters
California Retailers Association
Californians Against Waste
ChicoEco, Inc.
City of Clayton
City of Concord
City of Los Angeles
City of Palm Desert
City of Sacramento
City of San Jose
City of San Rafael
Clean Oceans Competition
Clean Water Action
Command Packaging
Contra Costa Clean Water Program
Costa Mesa Sanitary District
County of San Mateo
County of Santa Barbara
County of Santa Clara
Don't Waste LA
Environment California
Five Gyres Institute
Global Alliance for Incinerator Alternatives
Global Green USA
Green Cities California
Green Vets Los Angeles
Green Waste Recovery
Heal The Bay
Hidden Resources
Latino Coalition for a California Bag Ban
Los Angeles Alliance for a New Economy
Napa Recycling and Waste Services
Napa Valley CanDo
Natural Resources Defense Council
Ocean Project
Pacoima Beautiful
Planning and Conservation League
Plastic Free Seas
Plastic Pollution Coalition
Plastic Soup Foundation
Plasticbaglaws.org
Republic Services
Reusable Bag Association
Sachamama
Santa Barbara Channelkeeper
Seventh Generation Advisors
Sierra Club California
Silicon Valley Leadership Group
Suja Lowenthal, Councilmember, City of Long Beach
Surfrider Foundation
Sustainable Coastlines Hawaii
Target
Wildcoast
World Society for the Protection of Animals
Zero Waste San Diego
11,345 individuals (petition)

Opposition

Advance Polybag, Inc.
American Forest and Paper Association
American Progressive Bag Association
California Recycling Market Development Zones Association
California Manufacturers and Technology Association
Crown Poly
Elkay Plastics Co., Inc.
Hilex Poly
National Black Chamber of Commerce
National Federation of Independent Businesses
SPI: The Plastics Industry Trade Association
Third Baptist Church of San Francisco
US Black Chamber, Inc.
542 individuals

Analysis Prepared by: Elizabeth MacMillan / NAT. RES. / (916) 319-2092