

October 2, 2015**RECEIVED**

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VIA PERSONAL DELIVERY

The Honorable Kamala D. Harris
Attorney General
1300 I Street, 17th Floor, P.O. Box 944255
Sacramento, CA 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ashley Johansson, Initiative Coordinator

Re: Request for Title and Summary for Proposed Initiative Statute

Dear Ms. Harris:

Pursuant to Article II, Section 10(d) of the California Constitution, I hereby submit the attached proposed Initiative Statute, entitled the "Environmental Fee Protection Act," to your office and request that you prepare a title and summary of the measure as provided by law. Included with this submission is the required proponent affidavit signed by the proponent of this measure pursuant to Section 9608 of the California Elections Code. My address as a registered voter is attached to this letter, along with a check for \$200.00.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, Attention: Kurt Oneto (telephone: 916/446-6752).

Thank you for your assistance.

Sincerely,



Doyle L. Johnson, Proponent

Enclosure: Proposed Initiative Statute

SECTION 1. Title.

This Act shall be known and may be cited as the Environmental Fee Protection Act.

SEC. 2. Findings and Declarations.

The People of the State of California find and declare as follows:

(a) In 2014, the California state Legislature enacted a ban on plastic carryout bags after lobbying by special interests including the California Grocers Association.

(b) The law further mandated that stores sell every paper or reusable carryout bag they provide to consumers for a minimum of 10 cents. Stores can charge even more if they so choose, and the grocers and retailers are specifically required by the law to keep these mandated sales charges as extra revenue.

(c) None of the sales charges on carryout bags required by state law will go to environmental purposes. The Legislature specifically wrote the law in such a way as to make these sales charges additional revenue to grocers and retailers.

(d) This special interest deal will provide grocers and retailers over \$400 million in added revenue every year – all at the expense of California consumers and with little or no benefit to the environment.

(e) The people of California have every right to expect that any sales charges on carryout bags they are required by state law to pay are dedicated to protecting the environment; not enriching corporations.

SEC. 3. Statement of Purpose.

The purpose of the Environmental Fee Protection Act is to fulfill Californians' expectations by requiring that any charges on carryout bags paid by consumers in connection with, or to advance, any plastic bag ban are dedicated to appropriate and worthy environmental objectives like drought mitigation, recycling, clean drinking water supplies, parks, beach cleanup, litter removal, and wildlife habitat restoration.

SEC. 4. Chapter 5.2 (commencing with Section 42270) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.2. CARRYOUT BAG CHARGES: ENVIRONMENTAL PROTECTION AND
ENHANCEMENT

Section 42270. This chapter shall be known, and may be cited as, the Environmental Fee Protection Act.

Section 42271. (a) Notwithstanding any other provision of law, all moneys generated or collected by a store pursuant to a state law that bans free distribution of any type of carryout bag, and mandates the sale of any other type of carryout bag, shall be deposited into the Environmental Protection and Enhancement Fund, which is established in the State Treasury and administered by the Wildlife Conservation Board pursuant to Section 42272.

(b) For purposes of this chapter:

(1) "Store" means a retail establishment that meets any of the following requirements:

(A) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000) or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.

(B) Has at least 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.

(C) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(D) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises, and that holds a Type 20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

(2) "State law" means any statute, law, regulation, or other legal authority adopted, enacted, or implemented before or after the effective date of this section by the State of California or any agency or department thereof.

(3) "Carryout bag" means single use carry-out bags, paper bags, recycled paper bags, plastic bags, recyclable plastic bags, reusable plastic bags, compostable bags, reusable grocery bags, or any other kind of bags used to carry purchased items away from a store.

(c)(1) The Wildlife Conservation Board may adopt regulations, and/or coordinate or contract with other state or local agencies, in furtherance of the administration and implementation of subdivision (a) of this section, Section 42272, and Section 42273.

(2) Notwithstanding any other provision of law, a loan in the amount of five hundred thousand dollars (\$500,000) is hereby made from the Safe Drinking Water, Water Quality and Supply, Flood Control, and Coastal Protection Fund of 2006 (Section 75009 of the Public Resources Code) to the Wildlife Conservation Board for the purpose of adopting regulations for the administration and implementation of subdivision (a) of this section, Section 42272, and Section 42273. If the moneys in the Safe Drinking Water, Water Quality and Supply, Flood Control, and Coastal Protection Fund of 2006 are insufficient to make the loan required by this paragraph, then the loan shall be made from the Water Quality, Supply, and Infrastructure Improvement Fund of 2014 (Section 79715 of the Public Resources Code). All moneys deposited into the Environmental Protection and Enhancement Fund shall first be used to repay the loan until the full loan amount is repaid. The Controller and all other responsible state officials shall take all actions necessary to effectuate the loan required by this paragraph.

Section 42272. (a) The Environmental Protection and Enhancement Fund is hereby established in the State Treasury.

(b) Notwithstanding any other provision of law, the Environmental Protection and Enhancement Fund is a trust fund established solely to carry out the purposes of this chapter. Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Fund, together with interest earned by the Fund, are hereby continuously appropriated, without regard to fiscal years, to the Wildlife Conservation Board solely for the purposes set forth in subdivision (c).

(c) The Wildlife Conservation Board shall use the moneys in the Environmental Protection and Enhancement Fund to fund environmental protection and enhancement grants. Projects and programs eligible for grants are as follows:

(1) Drought mitigation projects including, but not limited to, drought-stressed forest remediation and projects that expand or restore wetlands, fish habitat, or waterfowl habitat.

(2) Recycling.

(3) Clean drinking water supplies.

(4) State, regional, and local parks.

(5) Beach cleanup.

(6) Litter removal.

(7) Wildlife habitat restoration.

(d) The Wildlife Conservation Board shall use no more than 2 percent of the moneys in the Environmental Protection and Enhancement Fund for administrative expenses. Grant recipients shall use no more than 5 percent of any moneys received for administrative expenses.

(e) Prior to disbursing any grants pursuant to this chapter, the Wildlife Conservation Board shall develop project solicitation and evaluation guidelines. The guidelines may include a limitation on the dollar amounts of grants to be awarded. Prior to finalizing the guidelines, the Wildlife Conservation Board shall post the draft guidelines on its Internet website and conduct three public hearings to consider public comments. One public hearing shall be held in Northern California, one hearing shall be held in the Central Valley, and one hearing shall be held in Southern California.

(f)(1) The non-partisan California State Auditor shall conduct a biennial independent financial audit of the programs receiving funds pursuant to this chapter. The Auditor shall report its findings to the Governor and both houses of the Legislature, and shall make the findings available to the public on its Internet website.

(2)(A) The Auditor shall be reimbursed from moneys in the Environmental Protection and Enhancement Fund for actual costs incurred in conducting the biennial audits required by this subdivision, in an amount not to exceed four hundred thousand dollars (\$400,000) per audit.

(B) The four hundred thousand dollar (\$400,000) per audit maximum limit shall be adjusted biennially to reflect any increase or decrease in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Treasurer's Office shall calculate and publish the adjustments required by this paragraph.

Section 42273. (a) Notwithstanding any other law, local governments may require moneys generated or collected pursuant to any local law that bans free distribution of any type of carryout bag, and mandates the sale of any other type of carryout bag, to be deposited into the Environmental Protection and Enhancement Fund and used for the purposes set forth in Section 42272.

(b) For purposes of this section, "local law" means any ordinance, resolution, law, regulation, or other legal authority adopted, enacted, or implemented by any city, county, city and county, charter city, charter county, special district, school district, community college, or other local or regional governmental entity.

SEC 5. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

SEC. 6. Conflicting Measures.

(a) In the event that this measure and another measure or measures relating to the use of moneys generated or collected by stores pursuant to laws that bans free distribution, and mandates the sale, of any or all types of carryout bags shall appear on the same statewide election ballot, the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded in whole or in part by any other conflicting initiative approved by the voters at the same election, and such conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 7. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this Act or application thereof would be subsequently declared invalid.

SEC. 8. Legal Defense.

If this Act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of federal law, and both the Governor and Attorney General refuse to defend this Act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the State of California.

