

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

CARRYOUT BAGS. CHARGES. INITIATIVE STATUTE (#1734).

Joint Informational Hearing of the Senate Environmental Quality and Assembly Natural Resources Committees

Joint Committee Background & Analysis

May 25, 2016

SUMMARY: The carryout bags charges initiative entitled, the “Environmental Charge Protection Act” (Act) redirects money collected by grocery and certain other retail stores through sale of carryout bags whenever a state law bans free distribution of a particular kind of carryout bag and mandates the sale of any other kind of carryout bag. This initiative requires stores, as defined, to deposit proceeds from the sale of carryout bags into a new fund, the Environmental Protection and Enhancement Fund (EPEF). This initiative designates the Wildlife Conservation Board (WCB) to administer the EPEF and provide grants to specified categories of environmental projects. This initiative requires WCB to develop regulations to administer and implement the provisions of the Act.

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EXISTING LAW

Among the provisions of SB 270 (Padilla, de León, and Lara), Chapter 850, Statutes of 2014:

- 1) Defines terms, including:
 - a) “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% postconsumer recycled materials. For a bag with the capacity to hold eight pounds or less, the bag must contain at least 20% 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.
 - b) “Reusable grocery bag” as, on and after July 1, 2016, a bag that meets specified requirements.
 - c) “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. Exempts from this definition specified bags, including a bag provided by a pharmacy for a prescription purchase, a non-handled 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.
 - d) “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 any other retail establishment that voluntarily agrees to comply with the requirements of this bill.
- 2) Beginning July 1, 2015, 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 toxic material that may pose a threat to public health; and, must be consistent with federal regulations related to recyclable claims if the bag producer claims the bag is recyclable.
- 3) Prohibits stores from making single-use carryout bags available at the point of sale.

- 4) Authorizes a store to make available a reusable grocery bag or recycled paper bag at the point of sale. Requires that these bags may not be sold to a consumer for less than \$0.10 and that all moneys collected by stores pursuant to SB 270 be retained at the store and be used for costs associated with complying with this bill; actual costs of providing recycled paper bags and reusable grocery bags; and costs associated with a store's educational materials or educational campaign encouraging the use of reusable bags.
- 5) Authorizes stores that are not included in SB 270 to voluntarily participate in this bill's requirements by submitting an irrevocable written notice to the Department of Resources Recycling and Recovery (CalRecycle) containing specified information.
- 6) Preempts local ordinances adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags.
- 7) Appropriates \$2 million from the Recycled Market Development Revolving Loan Subaccount for loans 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.

THIS INITIATIVE

- 1) Provides findings and declarations, and a statement of purpose.
- 2) Establishes the Act.
- 3) Creates EPEF and requires WCB to administer the fund.
- 4) Requires all moneys generated or collected by a store, pursuant to a state law that bans free distribution of a carryout bag and mandates the sale of any other type of carryout bag, to be deposited in EPEF.
- 5) Defines "Carryout bag" as a single use carryout bag, paper bag, recycled paper bag, plastic bag, recyclable plastic bag, reusable plastic bag, compostable bag, reusable grocery bag, or any other kind of bag used to carry purchased items away from a store.
- 6) Defines "store" as a retail establishment that meets any of the following requirements:

- a) A full-line self-service retail store with gross annual sales of more than \$2 million that sells a line of dry groceries, canned goods, or nonfood items and perishable items.
 - b) Has at least 10,000 square feet of retail space that generates sales or use tax and has a pharmacy.
 - c) Is a convenience food store, foodmart, or other entity that sells a limited line of goods, such as milk, bread, soda, snack foods, and holds a specified type of alcohol license.
 - 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 holds a specified type of alcohol license.
- 7) Requires a \$500,000 loan be made from the Safe Drinking Water, Water Quality and Supply, Flood Control, and Coastal Protection Fund of 2006 (Proposition 84) to WCB for the purpose of adopting regulations for administration and implementation of this initiative.
- a) Stipulates that if the moneys in the above fund are insufficient to make the \$500,000 loan, then the loan must be made from the Water Quality, Supply, and Infrastructure Fund of 2014 (Proposition 1).
 - b) Requires all moneys deposited into EPEF be first used to repay the loan until the full loan amount is repaid.
- 8) Provides for continuous appropriation from EPEF to WCB for the purpose of giving grants for environmental protection and enhancement. Specifies that eligible projects and programs for receiving grants include:
- a) Drought mitigation projects such as drought-stressed forest remediation and projects that expand or restore wetlands, fish habitat, or waterfowl habitat;
 - b) Recycling;
 - c) Clean drinking water supplies;
 - d) State, regional, and local parks;

- e) Beach cleanup;
 - f) Litter removal; and,
 - g) Wildlife habitat restoration.
- 9) Prohibits WCB from using more than 2% of moneys in EPEF and grant recipients from using more than 5% of any moneys received for administrative expenses.
- 10) Requires WCB to develop project solicitation and evaluation guidelines prior to disbursing any grants.
- 11) Requires the State Auditor to conduct an independent financial audit of the programs receiving EPEF funds every two years, report its findings to the Legislature and Governor, and post the findings on its website.
- 12) Requires reimbursement to the State Auditor from moneys in EPEF for audit costs up to \$400,000 per audit, which may be adjusted biennially to reflect inflation.
- 13) Authorizes local governments to require moneys generated or collected pursuant to any local law, which bans free distribution of any type of carryout bag and mandates the sale of any other type of carryout bag, to be deposited into EPEF.
- 14) Requires the provisions of the Act to be liberally construed.
- 15) Provides that if there is another measure on the same ballot that conflicts with this initiative, and this initiative has more affirmative votes, then declares that this initiative, in its entirety, prevails and the other measure is null and void.
- 16) Provides that the provisions of this initiative are severable.
- 17) If this initiative is approved by the voters and subject to a legal challenge, and the Governor and Attorney General (AG) refuse to defend it, then requires the following:
- a) The AG to appoint independent counsel to defend the initiative.
 - b) Continuous appropriation from the General Fund to the Controller in order to pay for the costs of retaining independent counsel.

BACKGROUND

1) *Why did California ban the bag?*

Every year, Californians spend \$25 million to dispose of approximately 14 billion plastic bags. Although plastic represents a relatively small fraction of the overall waste stream in California by weight (2%), plastic waste is the predominate form of marine debris. Plastics are estimated to comprise 60% to 80% of all marine debris and 90% 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. Unlike most forms of plastic, lightweight single-use bags pose a litter threat even when properly disposed of by consumers; they are prone to blowing off the working surface of landfills and off of trucks during transport.

Marine debris is a significant problem along shorelines and in coastal waters, estuaries, and oceans throughout the world. Marine debris can be life threatening to marine organisms and can adversely affect coastal communities and the fishing industry. In general, there are two types of marine debris that pollute our ocean and coastline in California. The first is from ocean sources, and includes waste discharged by ships, recreational boaters and fishermen, and offshore oil and gas exploration and production facilities. The second, and more environmentally destructive, type of marine debris is from land. This type of debris includes stormwater runoff, solid waste, floating structures, and poorly maintained garbage bins and is transmitted to the marine environment by waterways. Land-based litter constitutes nearly 80% of the marine debris found on our beaches and in our oceans, and 90% of it is plastic.

A decade ago, this issue gained prominence when the Algalita Marine Research Foundation and the Southern California Coastal Water Research Project found that the average mass of plastics in the seawater off the coast of Long Beach was two and a half times greater than the average mass of plankton. After storms with excessive runoff, the mass of plastics is even greater. A similar study of seawater 1,000 miles west of San Francisco found the mass of plastics was six times the mass of plankton in drifts where marine animals congregate for feeding on plankton. In 2014, a global study of plastic pollution in the world's oceans estimated that 5.25 trillion particles weighing 268,940 tons are adrift in the sea. 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. Earlier this year, the Ellen MacArthur Foundation released a report at the World Economic Forum stating that plastic production is expected to double in the next 20 years, and quadruple by 2050. In spite of this growth in production, we only recycle about 5% worldwide and approximately one-third ends up in the ocean. The report gained headlines due to its prediction that by 2050, there will be more plastic than fish in the world's oceans.

Most plastic marine debris exists as small plastic particles. Even large pieces of plastic break down into small particles due to photo-degradation. These plastic pieces are confused with small fish, plankton, or krill and ingested by aquatic organisms. Over 600 marine animal species have been negatively affected by ingesting plastic worldwide. Last year, scientists at the ARC Centre of Excellence for Coral Reef Studies at James Cook University found that corals are also ingesting small plastic particles, which remain in their small stomach cavities and impede their ability to consume and digest normal food.

In addition to the physical impacts of plastic pollution, 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 where they enter and accumulate in the food chain.

2) *Actions in California.*

- a) In response to the Agalita Marine Research Foundation's findings in 2006, the Legislature began efforts to address the proliferation of plastic in the ocean. A significant number of bills related to single-use bags have been introduced. SB 270 was the culmination of seven years of work by the Legislature, the administration, and stakeholders. *For a complete list of past legislation, please refer to Appendix A.*
- b) In 2007, the Ocean Protection Council (OPC) adopted a resolution on "reducing and preventing marine debris." A year later, OPC released the *Implementation Strategy for the [OPC] Resolution to Reduce and Prevent Ocean Litter*, which established four broad objectives to reduce marine debris: 1) Reduce single-use packaging and promote sustainable alternatives; 2) Prevent and control litter and plastic debris; 3) Clean up and remove ocean litter; and, 4) Coordinate with other jurisdictions in the Pacific region.

- c) In 2014, CalRecycle began a "manufacturer's challenge" to increase collection and recovery of packaging generated in California. The challenge is for packaging manufacturers, on an industry level, to achieve a goal of 50% reduction in packaging disposed in California by 2020. The challenge is focused on "priority packaging products," which include: uncoated corrugated cardboard; aseptic containers and cartons; other miscellaneous paper; plastic containers; degradable plastics; pouches; and, plastic films. CalRecycle held workshops with industry in 2015 and 2016, which included a discussion about how to develop a baseline for packaging generated in California by which to measure a 50% disposal reduction goal.

- d) Many local governments have adopted single-use carryout bag bans and polystyrene food packaging bans to curb plastic pollution. Californians Against Waste, which tracks local actions on bags, has identified over 120 local ordinances. *For a list and brief description of these ordinances, please refer to Appendix B.*

3) *Actions in other states and countries.*

In 2009, the District of Columbia banned plastic bags and established a \$0.05 charge for other disposable bags. The same year, North Carolina banned plastic bags in the Outer Banks region; however, the state suspended the ban in 2011 after a tornado caused damage to a major distribution area. The suspension remains in place. While Hawaii has not enacted a statewide ban, all five counties in the state have local bans in place, covering the entire state.

A few states have enacted recycling requirements for single-use carryout bags distributed by stores, including Delaware, Maine, and New York.

Like local communities in California, a large number of local governments have enacted bag bans throughout the United States. Colorado, Connecticut, Iowa, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Texas, Rhode Island, and Washington have local ordinances in place. These local actions result in significant environmental benefits, but the "patchwork" of local ordinances also creates implementation challenges for retailers and confusion for consumers.

At least 18 countries have taken action to prevent plastic bag pollution. Most have adopted some form of ban on plastic carryout bags, including Australia, Italy, the Philippines, and South Africa. Others enacted a charge on plastic bags, including Ireland, Northern Ireland, South Africa, and Wales.

COMMENTS

1) *Purpose of the carryout bags charges initiative (#1734).*

The official proponent of this measure is Mr. Doyle L. Johnson. His request to the AG for title and summary of the proposed initiative statute mentions that “all inquiries and correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP...Attention: Kurt Oneto...” Mr. Oneto states, “Mr. Johnson is a resident of the State of California and a registered voter.” When asked what Mr. Johnson’s interest is in this issue, Mr. Oneto responds, “Like the hundreds of thousands of voters who have signed the petitions, Mr. Johnson opposes SB 270 (2014) and supports using any carryout bag charges that are collected for environmental purposes rather than as grocery and retail store chain profits.”

Mr. Oneto states that Mr. Johnson has no affiliation with American Progressive Bag Alliance (APBA) or the Society of the Plastics Industry (SPI). APBA, which is part of SPI, states in a news release entitled, “Proposed Wildlife Conservation Board Trust Fund Ensures Retail Bag Charges Help the Environment,” (October 1, 2015), that APBA and its supporters filed this ballot initiative. Mr. Lee Califf, Executive Director of APBA, states, “Our industry is proud to give California voters a chance to overturn a deeply flawed, job-killing law or, at the very least, ensure bag charges are dedicated to helping the environment instead of increasing grocer profit margins.”

Mr. Califf further states, “The APBA opposes bag bans, taxes and charges because they threaten 30,000 American jobs supported by the plastic bag manufacturing and recycling industry, and all evidence shows they create negligible environmental benefit...And while we are confident California voters will reject the statewide bag ban scam at the ballot in 2016, we know that 84%of people believe that bag charges in general should go to a public purpose, instead of increasing profit margins for grocers. So we want to make sure voters have the power to actually put bag charges to work for the environment and their communities, should SB 270 become law.”

2) *What is considered a “carryout bag”?*

SB 270 prohibits a store from selling or distributing a recycled paper bag, compostable bag, or reusable grocery bag unless the store makes that bag available for purchase for not less than \$0.10.

This initiative provides that if a state law bans free distribution of any type of carryout bag and requires all moneys generated or collected by a store by the sale of any type of carryout bag, then the revenue generated from the bag charge must be deposited into a new state fund, EPEF. The initiative defines a “carryout bag” as a single-use carryout bag, paper bag, recycled paper bag, plastic bag, recyclable plastic bag, reusable plastic bag, compostable bag, reusable grocery bag, or any other kind of bag used to carry purchased items away from a store.

In SB 270, the charge is attached to three specified types of bags. However, in the initiative, the bag charge is attached to the more broadly defined term, “carryout bag.” In addition to capturing the revenue from the sales of the three types of bags subject to SB 270, the initiative includes bags that do not currently have a state-mandated charge but could in the future, such as bags without handles or ones used to hold ice cream, prescriptions, or meat.

3) ***Wildlife Conservation Board (WCB) as the administering agency for the Act.***

a) ***Purview and expertise.*** WCB is an independent board with authority and funding to carry out an acquisition and development program for wildlife conservation and public recreation (Fish and Game Code §1300 et seq.). WCB consists of the President of the Fish and Game Commission, the Director of the California Department of Fish and Wildlife, and the Director of Finance. The primary responsibilities of WCB are to select, authorize, and allocate funds for the purchase of land and waters suitable for recreation purposes and the preservation, protection, and restoration of wildlife habitat.

This initiative requires WCB to administer EPEF and provide grants for projects and programs for purposes such as recycling, clean drinking water supplies, and beach cleanup and authorizes WCB to coordinate or contract with other state or local agencies in furtherance of the Act. Most of the types of projects and programs eligible for EPEF grants are not within the purview of WCB. For example, CalRecycle oversees recycling programs in the state and the State Water Resources Control Board is in charge of clean drinking water. These two agencies are under a separate umbrella agency, California Environmental Protection Agency, which has different purposes and responsibilities than the Natural Resources Agency, in which WCB is housed. Although the initiative authorizes WCB to coordinate or contract with other state and local agencies, WCB is ultimately responsible for the Act. With such a broad spectrum of issues to cover, is WCB the most appropriate agency to oversee this Act?

b) *What is the timeline to get the Act up & running?*

The initiative requires WCB to adopt regulations for the administration and implementation of the Act. However, the initiative is silent on when WCB must begin or complete certain mandates such as when regulations are expected to be adopted. Without providing any sort of expectation regarding when actions need to be done, it is possible that administration and implementation of the Act may not progress in a timely manner.

c) *Collecting the bag charge revenue.*

As part of administering EPEF, this initiative would necessitate the state to somehow collect the carryout bag charge moneys from stores. The initiative is silent on this part of the process, although Mr. Oneto states that proposed §42271(c)(1) of the initiative “expressly authorizes [WCB] to ‘coordinate or contract with other state or local agencies in furtherance of the administration and implementation’ of the initiative.”

WCB has no experience in collecting a charge from a multitude of stores statewide, which may oblige another agency, such as the Board of Equalization (BOE), to collect the charge. If this is the case, the cost of collecting the charge revenue may be significant enough to significantly impact the ability to provide grants for environmental projects/programs via EPEF.

As a point of reference, CalRecycle contracts with BOE to collect the electronic waste recycling charge from the charge payer (the consumer via the retailer) and deposit it into the Electronic Waste and Recovery Account within the Integrated Waste Management Fund. Pursuant to Public Resources Code §42476(b)(1), BOE receives an annual appropriation via the Budget Act to cover the costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the electronic waste recycling charge. Primary factors in considering collection costs are the number of entities from which to collect and the amount of revenue collected. This year, BOE’s collection costs charged to the fund are approximately \$5.4 million.

If the collection costs for this initiative are similar to those of the electronic waste recycling charge, which seems likely as the electronic waste recycling charge is also collected by individual retailers throughout the state, and possibly higher considering the volume of stores, then the total bag charge revenue would have to be at least \$250 million annually to just cover the cost of collecting the charge

given the proposed 2% maximum mandated for administrative costs of the Act. However, the Legislative Analyst's Office (LAO) estimates that this measure could bring in several tens of millions of dollars annually, which would not be enough to keep administrative costs below the proposed 2%. It is possible that the administrative costs, such as collecting the fee, make implementation of the Act impractical.

In addition, the initiative is silent on ensuring that the bag charges are collected accurately. Although the initiative requires the State Auditor to conduct financial audits of the programs receiving funds, the initiative does not mandate any audit of the stores required to submit carryout bag charge deposits to the state. Mr. Oneto states, "[T]he Board can also include an audit provision within the regulations." However, will WCB do that? With no directive in the initiative, there is no assurance to the voters that an audit on stores will ever be conducted, especially given the 2% limit on administrative costs.

4) *Using already allocated general obligation (GO) bond moneys for the Act.*

This initiative requires taking \$500,000 from Proposition 84 funds (or Proposition 1 funds if no moneys are available in Proposition 84) as a loan to WCB for the purpose of adopting regulations for the administration and implementation of the Act. GO bonds are normally used to finance the cost of building capital facilities such as roads, fire stations, flood protection, and schools. They are repaid with interest, using revenues from taxes or sometimes from fees and charges. Proposition 84 is meant to fund projects related to providing safe drinking water, and improving water quality and supply, flood control, and coastal protection.

A question arises as to whether the initiative provides for an appropriate use of Proposition 84 (or Proposition 1) moneys. At the very least, shouldn't the purpose of the loan fit within the provisions of the bond? In addition, the bond funds are already allocated for specified purposes unrelated to the administration the Act. When voters passed Proposition 84 (and Proposition 1), there was an expectation and commitment that those funds were to be used for specified objectives and capital improvement projects. Although some of the types of projects proposed to be funded in the Act overlap with the bond, others do not such as recycling – but as mentioned earlier, the loan is not meant to fund projects; instead it is to pay for administrative costs.

Also, does it make practical sense to use GO bond moneys in this manner? It seems imprudent to pay administrative costs with a loan, pay interest on that \$500,000

loan, and then pay debt service on the GO bond moneys used to fund the loan.

5) *Paying off the loan first.*

The initiative stipulates that “[a]ll moneys deposited into [EPEF] *shall first be used to repay* the loan until the full loan amount is repaid.” (§42271(c)(2)). The loan repayment requirement delays implementation of the Act because the money in EPEF can only be used to pay off the loan in full prior to any other use of the money such as grant distributions for environmental projects.

6) *Shutting out the Legislature.*

This initiative significantly limits any possible involvement of the Legislature with the Act. For example, this initiative provides for the continuous appropriation of all moneys deposited in EPEF. By mandating a continuous appropriation, as opposed to authorizing appropriation by the Legislature, the Legislature does not have the ability to make changes or provide oversight to the EPEF.

Also, according to the California Constitution Article II, §10(c), when a statute enacted by the initiative process is involved, the Legislature may amend it, without approval by the voters, only if the voters specifically grant the Legislature that authority, and then only upon whatever conditions the voters attach to the Legislature’s amendatory powers. This initiative does not affirmatively grant authority to the Legislature to amend or repeal the Act.

7) *Legal Defense.*

Should this initiative become law, the Act provides that if the Governor and AG refuse to defend this Act, then the AG must appoint an independent counsel to faithfully and vigorously defend it on behalf of the state. (§8 of the initiative.)

a) *Delegation of power.*

This provision seems to undermine the principles of separation of power insofar as it removes discretion of the executive branch to execute the law. It creates a loss of critical authority in deciding what policies to follow and how to spend limited resources.

b) *Who is in control and at what cost?*

This initiative includes a continuous appropriation from the General Fund to the Controller in an amount necessary to cover the costs of retaining independent counsel. Because there is no cap on expenses for independent counsel, this could be costly to the state's General Fund. Also, why pay the independent counsel, without limit, using General Fund revenue considering the initiative specifies that the State Auditor must be paid through EPEF and has a cap of \$400,000 per audit? These provisions seem inconsistent.

In addition, why is the continuous appropriation sent to the Controller and not the AG? Is the independent counsel expected to report to the agency that pays for its services, which is the Controller, rather than the agency that appoints and has the necessary expertise in litigating matters on behalf of the state, which is the AG?

8) *Any enforcement?*

This initiative is silent regarding how the Act is to be enforced. There are no provisions regarding civil liability, penalties, or repercussions for violating the Act. This initiative does not include any standard of culpability such as purposely, knowingly, recklessly, or negligently violating the Act. The initiative also does not include what entities may enforce the Act, such as a local government, prosecutor, or the state. Again, although the initiative provides WCB the authority to regulate, the initiative does not provide any general direction to WCB about enforcement or assurance to the voters that any enforcement of the Act will occur.

9) *Local government.*

Proposed §42273(a) in the initiative states, "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 [EPEF] and used for the purposes set forth in Section 42272."

a) *Preemption of local authority?*

The California Supreme Court noted in *Candid Enterprises, Inc. v. Grossmont Union High School District et al.*, 39 Cal.3d 878 (1985) that state law preempts local authority when there is a conflict between two, either expressly or by legislative implication. An implicit conflict may exist if "the subject matter has

been partially covered by general law couched in terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action.” By specifying “notwithstanding any other law” and by providing in the affirmative what a local government *may* do, does the initiative silently limit what a local authority *may not* do regarding how it mandates/authorizes the use of carryout bag revenue? Does the initiative set up a regulatory regime for local control preemption?

If so, it would not be the first time that efforts have been made at a state level to control local ordinances related to plastic bags. For example:

- i) **Missouri.** Last year in Missouri, among the provisions of House Bill 722, the bill prohibited localities from creating a bag tax, fee, or ban on plastic bags used in grocery stores. The Missouri Legislature overrode the governor’s veto on that bill in September 2015.
- ii) **Georgia.** In March 2015 in Georgia, SB 139 failed in the state’s House of Representatives, which would have prohibited cities and towns from restricting plastic bags and other “auxiliary containers.”
- iii) **Michigan.** This year in Michigan, SB 853 would prevent local communities from instituting bans or putting fees on containers like bags, cups, bottles, or packaging. SB 853 passed the Senate Floor and is currently in the state’s House of Representatives.

b) ***Voluntarily send money to the state?***

The initiative allows local governments to require the carryout bag charge revenue generated in its jurisdiction to go to the state. Considering local governments usually prefer to maintain control and keep revenues in their communities, why would a local government voluntarily send moneys to a state fund from which the local authority or the community it serves may receive no benefit?

10) *Referendum to overturn state ban on single-use carryout bags on the same ballot.*

California Constitution Article II, §9 establishes the referendum process. Electors have the power to approve or reject a state law, or parts thereof, previously approved by the Legislature and the Governor, with specified exceptions. Once on the ballot, the law is repealed if voters cast more NO votes than YES votes on the referendum in question. The challenged law must be approved by a majority of voters to go into effect.

On February 24, 2015, Secretary of State Alex Padilla certified a referendum to overturn SB 270 (Padilla, de León, and Lara) for the November 8, 2016, General Election ballot. As noted in more detail under “EXISTING LAW,” SB 270 prohibits grocery and certain other retail stores from distributing lightweight, single-use carryout bags; establishes requirements for reusable grocery bags; and prohibits stores from distributing reusable grocery bags or recycled paper bags for less than \$0.10 per bag.

There is one component of SB 270 that is not subject to the referendum, which appropriates \$2 million for the purposes of providing loans 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.

11) *Conflicting measures.*

a) *Prevail in its entirety.*

Proposed §6(a) in the initiative states, “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 [sic] free distribution, and mandates [sic] 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.”

Although Mr. Johnson and APBA both express their preference that carryout bag charges go towards environmental purposes and not to stores, proposed §6(a) seems to be inconsistent with such intent. *If §6(a) is valid, causing the initiative to prevail in its entirety, then SB 270 is repealed and the state ban on single-use*

carryout bags and mandated bag fee will no longer exist, even if the voters pass the referendum. Such an outcome creates a significant loss in funding for the initiative's proposed Act and EPEF, and potentially makes them infeasible. Considering that the proponent is the same for both the initiative and the referendum, is §6(a) another strategy to repeal SB 270?

However, it should be noted that the language in §6(a) is not conclusive. If the voters approve both the initiative and the referendum (meaning SB 270 is upheld), it is possible that a court will have to sort out how to combine the two measures regardless of the language above. Although a court will give weight to §6(a) and look at what the voters understood of the measure, the court will ultimately review the initiative and referendum on its own and come to its own decision on the matter.

For more discussion on possible outcomes of simultaneous approval of both measures, please see Comment #12(a).

Revival.

Proposed §6(b) in the initiative states, "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." A question arises as to the validity of this provision. In past cases, the Court has avoided answering the revival question when it has arisen and the California Constitution is silent on the matter.

In the case of *Walter B. Gerken et al. v. Fair Political Practices Commission et al.*, 6 Cal.4th 707 (1993), although the California Supreme Court did not rule on the validity of revival of provisions of competing measures that voters simultaneously approved, the Court discussed that declaration of retroactive revival of a competing measure should not necessarily always result. The revival provision in the initiative may have dubious validity.

12) *Possible outcomes of initiative and referendum.*

The consequences of the election vary depending on the combination of the approval/failure of the individual measures. Below is a chart outlining the possible outcomes based on how the majority of voters vote for each measure. Noted below the chart is a brief discussion on those outcomes.

Combinations of the Initiative and Referendum Election Results

<i>"YES" & "NO" refer to how the majority of voters vote for each measure.</i>	Initiative YES & Referendum YES*: Initiative w/ more affirmative votes	Initiative YES & Referendum YES: Referendum w/ more affirmative votes	Initiative YES & Referendum NO*	Initiative NO & Referendum YES	Initiative NO & Referendum NO
SB 270 ban on single-use bags and mandate on bag charge	? <i>(See Comments #11(a) & #12(a))</i>	Upheld	Repealed	Upheld	Repealed
SB 270 bag charge revenue stays with stores	X	✓	X	✓	X
SB 270 bag charge revenue goes to the State	?	X	✓	X	X
Creation of EPEF	✓	?	✓	X	X
GO bond loan to WCB	✓	?	✓	X	X
WCB administration & implementation of the Act	✓	?	✓	X	X
State audit every 2 years	✓	?	✓	X	X
Independent Counsel	✓	?	✓	X	X
\$2 million funding to bag manufacturers	✓	✓	✓	✓	✓

* A "YES" vote on the referendum is a vote to uphold SB 270 and keep the bag ban and charge.

** A "NO" vote on the referendum is a vote to overturn SB 270 and get rid of the bag ban and charge.

a) ***Conflicting measures: Simultaneous approval by voters: Winner takes all...Maybe?***

It is possible that the voters in the November 2016 election approve both the initiative and the referendum (uphold SB 270). If both measures are approved by voters, what happens? California Constitution Article II, §10(b) provides that “[i]f provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.” In interpreting this section, a court will likely look at whether the measures are competing against one another or complementary/supplementary to each other.

i) ***Measures viewed as competing.*** In the case of *Taxpayers To Limit Campaign Spending v. Fair Political Practices Commission*, 51 Cal.3d 744 (1990), which involved two initiative statutes that voters approved in the same election, the California Supreme Court held:

[U]nless a contrary intent is apparent in the ballot measures, when two or more measures are competing initiatives, either because they are expressly offered as ‘all-or-nothing’ alternatives or because each creates a comprehensive regulatory scheme related to the same subject, section 10(b) mandates that only the provisions of the measure receiving the highest number of affirmative votes be enforced. Neither an administrative nor a regulatory agency, nor the court, may enforce individual provisions of the measure receiving the lower number of affirmative votes. Were the court to do so the result might be a regulatory scheme created without any basis for ascertaining whether the electorate understood or intended the result. In short, section 10(b) does not permit the court to engraft onto one regulatory scheme provisions intended to be part of a different scheme.

(1) ***Initiative prevails as a competing measure.*** If these measures are viewed as competing against one another; and, both are approved by the voters and the initiative has more affirmative votes than the referendum, then the initiative prevails in its entirety and SB 270 is repealed. The provisions of the initiative would still affect those local governments that choose to redirect carryout bag deposits to the state, but such revenues would likely be minimal. The provisions of this measure would remain in statute and would apply to any future state carryout bag law that meets the initiative’s requirements.

(2) ***Referendum prevails as a competing measure.*** If these measures are viewed as competing; and, both are approved by the voters and the referendum has more affirmative votes, then the referendum prevails in its entirety and the provisions of the initiative fail. In other words, the single-use carryout bag ban remains in place and the bag charge revenue is retained by the stores, and the Act and EPEF are not established.

The focal point of both measures directs where revenue from a bag charge should go – either stay with the stores or go to the state. If there is no statewide bag ban/charge mandate (i.e., SB 270 is overturned), then the only bag charges in place are those at the local level. As noted above, although the initiative authorizes local governments to require those moneys to be deposited with the state, what is the likelihood of that happening?

Courts tend to favor viewing measures on the same subject as competing rather than complementary/supplementary. As noted above in Comment #11(a), if the measures are considered competing and the initiative prevails in its entirety – is this another strategy to overturn SB 270 by the supporters of the initiative who also oppose the referendum?

ii) ***Measures viewed as complementary/supplementary.*** In *Wayne Ichija Yoshisato v. Superior Court of Orange County*, 2 Cal.4th 978 (1992), the California Supreme Court held:

In the case of measures that are presented to the voters as complementary or supplementary (i.e., noncompeting) measures[, it] follows that with regard to such measures the most natural interpretation of section 10(b) is the one that...[t]he measures should be compared ‘provision by provision,’ and the provisions of the measure receiving the lower number of affirmative votes are operative so long as they do not conflict with the provisions of the measure receiving the higher number of affirmative votes, and so long as those nonconflicting provisions are severable from any that do conflict.

(1) ***Initiative prevails as a complementary/supplementary measure.***

If the measures are viewed as complementary/supplementary with one another; and, both are approved by the voters and the initiative has more affirmative votes than the referendum, then the ban on single-use carryout bags and mandate on a bag charge may remain the law. However, the bag

charge revenue no longer remains with the stores, but instead goes to the state to fund the proposed Act and EPEF. Because a court may find that the Act and EPEF without SB 270 as the main funding source as absurd, a court may consider that it is the intent of the voters that these two measures go hand-in-hand if both are approved regardless of the “prevailing in its entirety” provision in the initiative.

(2) Referendum prevails as a complementary/supplementary measure.

If the measures are viewed as complementary/supplementary with one another; and, both are approved by the voters and the referendum has more affirmative votes than the initiative, then possible results may include:

- (a) The statewide ban on single-use carryout bags and mandated fee are upheld;
- (b) Stores retain the bag fee revenue.
- (c) The Act and EPEF are established even though the carryout bag charge revenue in SB 270 remains with stores.
- (d) EPEF will not have a source of revenue unless:
 - (i) A local government requires moneys collected or generated by a carryout bag fee be deposited to the state; and/or,
 - (ii) Bags not covered by SB 270, but fall within the initiative’s definition of “carryout bag” are subject to a future state mandated charge.
- (e) The \$500,000 GO bond loan is given to WCB to administer and implement the Act; and WCB must repay the loan in full.
- (f) All moneys deposited into EPEF must first be used to repay the loan.
- (g) The State Auditor must conduct audits every two years on programs receiving funds.
- (h) The state must defend the Act against lawsuits and if an independent counsel is appointed, the costs are paid out of the General Fund with no

cap on expenses.

- (i) The \$2 million loan funding to bag manufacturers remains.

It seems that the above outcome may create a new state program without an adequate funding mechanism. A question arises as to whether such a result seems absurd. If so, a court may not view these measures as complementary/supplementary, but instead as competing.

- b) ***The majority of voters vote “YES” on the initiative and vote “NO” for the referendum.***

If a majority of voters vote “YES” on the initiative and vote “NO” for the referendum, then the statewide bag ban and mandated charge are overturned except for the provision providing \$2 million in loan funding for bag manufacturers; and, the Act and EPEF are established.

According to LAO, the provisions of the initiative would currently only affect those local governments that choose to redirect carryout bag deposits to the state. LAO estimates that these revenues would probably be minor, at least in the short term. However, the provisions of this measure would remain in statute and would apply to any future state carryout bag law that meets this measure’s requirements.

In addition, SB 270 has specific criteria and definitions for “reusable grocery bag” and “recycled paper bag.” The initiative names those types of bags in the definition of “carryout bag,” but does not specifically define or set criteria for them.

California Constitution Article II, §10(c) states, “The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.” If the criteria and definitions of “reusable grocery bag” and “recycled paper bag” disappear with the repeal of SB 270, it is only possible for the Legislature to define those terms for clarification purposes with the approval of the voters.

- c) *The majority of voters vote “NO” for the initiative and vote “YES” for the referendum.*

If a majority of voters vote “NO” for the initiative and vote “YES” for the referendum, then the statewide single-use carryout bag ban and mandated bag charge are upheld; the bag charge revenue is retained by the stores; and, none of the provisions of the initiative are enacted.

- d) *The majority of voters vote “NO” for the initiative and vote “NO” for the referendum.*

If a majority of voters vote “NO” for the initiative and vote “NO” for the referendum, then the statewide bag ban and charge are overturned except for the provision providing \$2 million in loan funding for bag manufacturers; and, there will be no Act or EPEF.

13) *Who Is Behind the Initiative and Referendum?*

As noted above, Mr. Johnson is the official proponent of the initiative; he is also the proponent of the referendum. Mr. Kurt Oneto of Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, represents the official proponent, Mr. Johnson, on both measures.

Also, as noted above, APBA states that the organization and its supporters filed this initiative; and the organization initiated the referendum and collected signatures to overturn the state ban on single-use carryout bags. APBA was founded in 2005 to represent plastic bag manufacturers and related companies to lobby against plastic bag bans and charges. The organization is part of the Society of the Plastics Industry (SPI), a plastics industry trade association. SPI’s one thousand company membership includes a variety of businesses such as Dow Chemical Company, which is considered one of the largest chemical companies in the world, and packaging conglomerates like Novolex Holdings, Inc., of which Hilex Poly is a subsidiary. APBA has stated that plastic bags, like those handed out by restaurants and stores, are a \$100 million- to \$150 million-a-year business in California. (Jeff Guo, “A plastic bag lobby exists, and it’s surprisingly tough,” *The Washington Post*, March 3, 2015). Mr. Steven S. Lucas, also of Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP, is the treasurer and only contact provided for APBA’s ballot measure committee on both measures.

a) *Campaign finances.*

The Committees did not identify any campaign finance filing information from Mr. Johnson, which may indicate that he did not meet the minimum threshold of spending to trigger mandated campaign finance reporting. However, APBA's Statement of Organization filed with the Secretary of State, provides that it is a ballot measure committee primarily formed to both support the initiative and oppose the referendum. Reported contributions to APBA as of March 31, 2016, total over \$5.34 million. The top four contributors are:

- Hilex Poly Co., Hartsville, South Carolina (contributions as of March 31, 2016, total \$2,443,230);
- Formosa Plastics Corporation, Livingston, New Jersey (\$1,120,442);
- Advance Polybag, Inc., Sugar Land, Texas (\$887,000);
- Superbag Corp., Houston, Texas (\$745,719).

(Source: California Fair Political Practices Commission website.)

APBA spent over \$3 million on consultants and a petition management company between October and December 2014, when it was collecting signatures for the referendum. For the initiative and the referendum, APBA has spent approximately \$4.43 million as of March 31, 2016.

Based on averaging successful major ballot committees over the past three election cycles, one analyst group estimates that the "yes" on the initiative campaign could cost about \$17.2 million and "no" on the referendum campaign could cost about \$38.1 million, for a total of approximately \$55.3 million.

b) *Why back two measures on the same issue on the same ballot?*

Filing an initiative whose topic matches one that is already on the ballot may be considered a strategy used to create confusion. According to John Matsusaka, executive director of the Initiative and Referendum Institute at the University of Southern California, "Voters faced with too many choices get confused, and confused voters tend to vote no on everything. In this case, that's exactly what the proponents of the referendum want." (Jessica Calefati, "Next California plastic bag initiative is tricky strategy by out-of-state interests," *San Jose Mercury*, November 2, 2015). For example, as demonstrated in Comment #12, in order to better understand the possible consequences of the different combinations of voting outcomes for the initiative and the referendum, the multiple possibilities have to be laid out.

14) *Who is against the initiative and referendum?*

Based on available information from the Secretary of State website, as of May 1, 2016, no ballot measure committees have been formed to oppose the initiative. On the other hand, four ballot measure committees have been formed to support upholding SB 270 (“Yes” vote on the referendum):

- Save the Bag Ban, Sponsored by Environment California (contributions as of March 30, 2016, total \$586,472);
- California vs. Big Plastic, Protect the Plastic Bag Ban, Sponsored by Environmental, Ocean Protection, Grocery Store, Reusable Bag Manufacturer, Business and Other Nonprofit Organizations (\$315,500);
- Committee to Protect the Plastic Bag Ban, Sponsored by the California Grocers Association (\$232,050); and,
- Californians Against Waste – Protect the Plastic Ban (\$27,081).

(Source: California Secretary of State website.)

The total amount of reported contributions to support the measure (uphold SB 270) as of March 30, 2016, is \$1,161,102.

15) *Technical errors.*

- a) The initiative cites “Section 79715 of the Public Resources Code” in reference to the Water Quality, Supply, and Infrastructure Improvement Fund of 2014. However, §79715 does not exist in the Public Resources Code. The fund is established in Water Code §79715.
- b) This initiative establishes EPEF twice. First in §42271(a), and again in §42272(b). Creating the fund once would have sufficed.

16) *Conclusion.*

This initiative raises several questions and concerns. In addition, the measures cause confusion for consumers, stores, and local governments. The possible consequences of the measures depend on the combination of whether each one wins or fails, and possibly by what margin. Given the numerous issues raised above, it is likely that the courts will have to resolve them resulting in further delays of any statewide action on carryout bags.

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APPENDIX A – Legislative History

The following is a list of past legislative efforts to address single-use bags.

- 1) 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 former California Integrated Waste Management Board (CIWMB), now CalRecycle, that 70% of the plastic bags it dispensed had been diverted from the waste stream. AB 2058 was held in Senate Appropriations Committee.
- 2) 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.
- 3) AB 68 (Brownley) of 2009 and AB 87 (Davis) of 2009 both would have required a \$0.25 charge on the distribution of single-use carryout bags. Both bills were held in the Assembly Appropriations Committee.
- 4) 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.
- 5) 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 charge. AB 1998 was held on the Senate Floor.
- 6) 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.
- 7) 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.
- 8) AB 1834 (Brownley) of 2012 would have defined reusable bags. This bill was held on the Senate Floor.

- 9) 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.
- 10) 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.
- 11) AB 158 (Levine) of 2013 would have prohibited grocery stores from providing single-use carryout bags to customers and required stores to make reusable bags available for purchase by customers. This bill was moved to the Assembly inactive file by the author.
- 12) SB 405 (Padilla) of 2013 would have prohibited grocery stores from providing single-use carryout bags to consumers and required stores to make reusable bags available for purchase by customers. This bill was moved to the Senate inactive file by the author.
- 13) SB 700 (Wolk) of 2013 would have required retail establishments, as defined, to collect a charge of \$0.05 for every single-use carryout bag provided to a customer. The bill required that the charges be available for grants to cities and counties for local parks and local programs that reduce and clean up litter. This bill was held in the Senate Appropriations Committee.
- 14) AB 1337 (Allen) of 2013 would have pre-empted any local government from enacting or enforcing any rule prohibiting the distribution of plastic single-use carryout bags or imposing a charge on the distribution of non-plastic single-use carryout bags (i.e., paper). This bill was held in Assembly Natural Resources Committee.
- 15) SB 270 (Padilla), Chapter 850, Statutes of 2014, prohibits stores, as defined, from distributing lightweight, single-use carryout bags after specified dates. Establishes requirements for reusable bags and prohibits stores from distributing reusable bags for less than \$0.10 per bag. The statutes established by this bill are currently inoperative, pending the outcome of the plastic bag referendum.

16) AB 190 (Harper) of 2015 would have repealed SB 270. This bill was held in the Assembly Natural Resources Committee.

17) AB 191 (Harper) of 2015 would have repealed the \$0.10 charge for reusable bags and recycled paper bags required by SB 270. This bill would have only become operative if the referendum is approved by voters. This bill was held in the Assembly Natural Resources Committee.

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APPENDIX B – Local Laws

The following is a list of local laws related to single-use carryout bag bans and carryout bag charges provided by Californians Against Waste.

- 1) *Alameda County and City, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City* - The Alameda County Waste Management Authority (StopWaste.org) adopted its ordinance banning plastic bags and placing a \$0.10 charge on paper and reusable bags in January of 2012. It went into effect on January 1, 2013 in unincorporated Alameda County, as well as its 14 incorporated cities.
- 2) *American Canyon* - The city council adopted a single-use carryout bag ban with a \$0.10 charge for paper and reusable bags in August 2015. It goes into effect January 1, 2016 in all retail establishments except for public eating establishments.
- 3) *Arcata* - The city council adopted a plastic bag ban with a \$0.10 charge per paper bag. The ban goes into effect in all retail stores February 1, 2014, with the charge going into effect August 1, 2014.
- 4) *Belmont* - Belmont adopted a bag ordinance in January of 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective on April 22, 2013.
- 5) *Belvedere* - The city adopted a plastic bag ban on June 9, 2014, which applies to grocery, drug, and convenience stores. Paper and reusable bags are allowed with a minimum \$0.10 charge each. This ordinance became effective in large supermarkets and drugstores in January 2015 and in all other stores in July 2015.
- 6) *Brisbane* - The city adopted the San Mateo County's bag ordinance on March 18, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2103.
- 7) *Burlingame* - Burlingame adopted the San Mateo County's bag ordinance on March 18, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2013.

- 8) *Calabasas* - The Calabasas City Council unanimously adopted a plastic bag ban with a minimum \$0.10 price requirement on paper bags in February 2011.
- 9) *Calistoga* - The city adopted an ordinance in August of 2014 to restrict single-use plastic carryout bags and place a small charge on paper bags in all retail stores and restaurants. This ordinance became effective January 1, 2015.
- 10) *Campbell* - The city adopted the San Mateo County's bag ordinance on July 16, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective January 27, 2014.
- 11) *Capitola* - In January 2013, the city adopted a plastic bag ban with a \$0.25 charge on paper bags in all retail stores, which became effective April 2013. The ordinance was modified slightly in 2014.
- 12) *Carmel-by-the-Sea* - Carmel adopted a plastic bag ban in all retail stores on July 3, 2012. It became operative February 3, 2013.
- 13) *Carpinteria* - Carpinteria adopted the first double bag ban in the state on March 12, 2012. Starting July 2012, large retailers, as specified, were prohibited from distributing single-use paper and plastic bags. Starting April 2013, the ordinance banned plastic bags in all other retail stores.
- 14) *Cathedral City* - On July 22, 2015, Cathedral City adopted a single-use carryout bag ban and a \$0.10 charge on paper bags in all stores except restaurants, food providers, and nonprofit charitable reusers. This ordinance became effective February 22, 2016.
- 15) *Chico* - On May 20, 2014, the city council adopted a plastic grocery bag ban with a \$0.10 charge per paper bag. This ordinance became effective in grocery and drug stores January 1, 2015 and in convenience and smaller markets one year later.
- 16) *Colma* - The Colma Town Council adopted a bag ordinance on January 9, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2013.
- 17) *Corte Madera* - On June 16, 2015, the city council adopted a single-use carryout bag ban with a \$0.10 charge on paper and reusable bags in all grocery, drug and

convenient stores. This ordinance became effective September 2015.

- 18) *Culver City* - On May 28, 2013, Culver City adopted a plastic bag ban and \$0.10 charge on paper bags in grocery, drug, and convenience stores. This ordinance became effective December 28, 2013.
- 19) *Cupertino* - Cupertino adopted a bag ordinance on March 5, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective October 1, 2013.
- 20) *Daly City* - The city adopted the San Mateo County model ordinance of a single-use carryout bag ban with a charge on paper or reusables in January 2013. This ordinance became operative April 22, 2013.
- 21) *Dana Point* - The city adopted a ban on single-use carryout bags from all retail stores within city limits on March 6, 2012. This ordinance became effective in larger stores April 1, 2013 and all other stores October 1, 2013.
- 22) *Danville* - The town adopted a plastic bag ban in all stores and restaurants on December 16, 2014, which went into effect on July 1, 2016.
- 23) *Davis* - The city adopted a plastic bag ban on November 12, 2013. Paper and reusable bags are available for a small charge. This ordinance became effective in all stores and restaurants on July 1, 2014.
- 24) *Desert Hot Springs* - The city council adopted a plastic bag ban with \$0.10 paper bag charge on March 18, 2014. This ordinance became effective in supermarket and drug stores by mid- September 2014 and in all other stores six months later.
- 25) *East Palo Alto* - On April 2, 2013, the City of East Palo Alto adopted the San Mateo County's Reusable Bag Ordinance of a single-use carryout bag ban with a charge on paper or reusable bags in all retail stores. This ordinance became effective October 2, 2013.
- 26) *El Cerrito* - On September 17, 2013, the city council adopted a plastic bag ban with a charge on paper and reusable bags in all retail stores. This ordinance became operative January 1, 2014.
- 27) *Encinitas* - The city council adopted a plastic bag ban with a \$0.10 charge on paper bags in all retail stores on September 10, 2014, which became effective in grocery stores on April 10, 2015 and all other stores and farmers markets by October 10, 2015.

- 28) *Fairfax* - The Fairfax City Council adopted its ban on plastic bags August 2007. After a legal challenge by the plastics industry, Fairfax voters approved a plastic bag ban by initiative in November 2008.
- 29) *Fort Bragg* - Fort Bragg banned plastic bags and required a \$0.10 paper bag charge in all retail stores. The ordinance was adopted May 14, 2012 and went into effect in large stores December 10, 2012 and expanded to all other stores December 2013.
- 30) *Foster City* - Foster City adopted a bag ordinance on January 7, 2013. All retail stores will be prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2013.
- 31) *Glendale* - The City of Glendale adopted a bag ordinance in January of 2013. Similar to the Los Angeles County's ordinance, it bans plastic bags and places a \$0.10 charge on paper bags. This ordinance became effective in larger stores and farmer's markets starting July 1, 2013 and expanded to other covered stores January 1, 2014.
- 32) *Gonzales* - The city's bag ordinance banning plastic bags and placing a minimum \$0.25 charge on paper or reusable bags was adopted July 7, 2014 and became effective January 1, 2015 in all retail stores and restaurants.
- 33) *Grass Valley* - A plastic bag ban was adopted in August 2014 and became effective in all retail stores starting January 1, 2015.
- 34) *Greenfield* - An ordinance banning single-use carryout bags and placing a minimum \$0.25 charge on other bags was adopted August 12, 2014. This ordinance became effective in all retail stores and restaurants February 12, 2015.
- 35) *Half Moon Bay* - Half Moon Bay adopted a bag ordinance on March 5, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2013.
- 36) *Hercules* - The city council adopted a plastic bag ban with a charge on paper and reusable bags in September 2014. This ordinance became effective in all retail stores starting in 2015.
- 37) *Hermosa Beach* - The city council adopted a plastic bag ban in all retail stores, with a \$0.10 charge per paper bag, at large retail stores, supermarkets, and pharmacies.

This ordinance became effective in large stores in April 2016 and in all stores in October 2016.

- 38) *Huntington Beach* - Huntington Beach adopted a plastic bag ban with a \$0.10 charge per paper bag on April 1, 2013. It applied to all grocery, drug, and convenience stores starting November 1, 2013. In May 2015, the city council voted to repeal the ban, effective June 2015.
- 39) *Indio* - The city council adopted a plastic bag ban with \$0.10 paper bag charge on May 15, 2014. This ordinance became effective in grocery stores starting November 14, 2014 and in all retail stores by May 14, 2015.
- 40) *King City* - The city council adopted a plastic bag ban with a \$0.10 paper and reusable bag charge in all retail stores on September 9, 2014. This ordinance became effective January 1, 2015.
- 41) *Lafayette* - The city council adopted a plastic bag ban in all retail stores and restaurants on December 8, 2014. Grocery, drug, and convenience stores can distribute paper bags with a minimum \$0.10 charge. This ordinance became effective July 1, 2015.
- 42) *Laguna Beach* - In February 2012, the city council unanimously adopted a plastic bag ban in all retail stores. Grocery stores, pharmacies, and convenience/liquor stores must include a \$0.10 minimum charge on paper bags. This ordinance became effective January 1, 2013.
- 43) *Larkspur* - On May 7, 2014, the city council adopted a plastic bag ban in grocery, drug, and convenience stores. Paper and reusable bags are available for purchase with a small charge. This ordinance became effective November 2014.
- 44) *Long Beach* - On May 17, 2011, the City of Long Beach passed a bag ordinance banning single-use carryout bags with a \$0.10 minimum charge on paper bags. The ordinance was operative in larger stores starting August 2011 and expanded to others stores in 2012.
- 45) *Los Altos* - The city adopted the San Mateo County model ordinance of a single-use carryout bag ban with a charge on paper and reusable bags in March 2013, which became operative July 4, 2013.
- 46) *Los Angeles City* - In June 2013, the city council adopted a bag ordinance banning single-use carryout bags and placing a \$0.10 charge on paper bags. This ordinance

became effective for large supermarkets in January 2014, and expanded to drug stores, convenience stores, and other supermarkets in July 2014.

- 47) *Los Angeles County* - Los Angeles County adopted an ordinance banning single-use carryout bags and placing a \$0.10 minimum price requirement on paper bags in November 2010. The ordinance became effective for large supermarkets and retailers in July 2011, and expanded to other applicable stores in January of 2012 throughout unincorporated County areas.
- 48) *Los Gatos* - In September 2013, the city council adopted a ban ordinance based on the San Mateo County ordinance with a ban on single-use carryout bags and initial \$0.10 charge on paper or reusable bags in all retail stores. This ordinance became effective February 3, 2014.
- 49) *Malibu* - The Malibu City Council voted in May 2008 to ban plastic bags.
- 50) *Mammoth Lakes* - The ordinance bans single-use bags in all retail stores except restaurants and take-out food establishments and includes a \$0.10 charge on paper and reusable bags. It became effective March 1, 2016.
- 51) *Manhattan Beach* - The Manhattan Beach City Council voted in July 2008 to ban plastic bags. The CA Supreme Court overturned a legal challenge to the ordinance in July 2011. The council modified the ordinance in 2012 and again in 2014.
- 52) *Marin County* - Marin County Board of Supervisors voted unanimously in favor of an ordinance restricting the free distribution of single-use bags in January 2011, effective January 2012. This ordinance applies to unincorporated county areas only.
- 53) *Marina* - The city adopted an ordinance on August 19, 2014, banning single-use carryout bags and placing a small charge on paper and reusable bags. This ordinance became effective in all retail stores.
- 54) *Martinez* - The Martinez City Council unanimously adopted a plastic bag ban with \$0.10 minimum charge on paper or reusable bags on June 18, 2014. This ordinance became effective January 1, 2015 in all retail stores and restaurants.
- 55) *Mendocino County* - The board of supervisors adopted a plastic bag ban with a \$0.10 paper bag charge on June 12, 2012, which became effective in large stores in January 2013 and in all other retailers in January 2014. The ordinance was amended on February 25, 2014 to include restaurants.
- 56) *Menlo Park* - Menlo Park adopted the San Mateo County bag ordinance on January 22, 2013. All retail stores will be prohibited from using single-use plastic carryout

bags and may sell paper or reusable bags for a small charge. This ordinance became effective April 22, 2013.

- 57) *Mill Valley* - The city adopted a bag ordinance on October 21, 2013. Plastic bag ban with \$0.05 cent charge on paper/reusable bags in grocery, convenience, and drug stores.
- 58) *Millbrae* - On February 14, 2012, the Millbrae City Council adopted a plastic bag ban with a \$0.10 requirement on paper bags. The ordinance went into effect on September 1, 2012 in all retail establishments, except for restaurants, non-profits, and dry-cleaners.
- 59) *Milpitas* - On September 15, 2015, the city adopted a plastic bag ban with a \$0.10 charge on paper and reusable bags. The ordinance is effective January 1, 2016 in all retail establishments except for public eating establishments.
- 60) *Monrovia* - The Monrovia City Council adopted a bag ordinance on July 1, 2014. Grocery, drug, and convenience stores cannot distribute single-use plastic carryout bags, and paper bags have a minimum \$0.10 charge requirement. This ordinance became effective January 1, 2015.
- 61) *Monterey* - The city council unanimously passed an ordinance on December 6, 2011. The ordinance bans plastic bags and places an initial \$0.10 minimum price requirement on paper bags for the first year and \$0.25 thereafter.
- 62) *Monterey County* - On August 26, 2014, the board of supervisors adopted a plastic bag ban with a \$0.10 charge on paper and reusable bags in all retail stores.
- 63) *Morgan Hill* - On October 2, 2013, the Morgan Hill City Council adopted a plastic bag ban with a \$0.10 charge per paper bag. This ordinance became effective April 22, 2014.
- 64) *Mountain View* - In December 2012, the City of Mountain View adopted the San Mateo County Ordinance with a ban on single-use carryout bags and charge on paper/reusable bags in all retail stores. This ordinance became effective April 22, 2013.
- 65) *Napa* - The city adopted a bag ordinance on August 5, 2014 that bans plastic bags and permits paper bags with a \$0.10 minimum charge. This ordinance became effective January 1, 2015 in all retail stores.

- 66) *Napa County* - On January 12, 2016, the board of supervisors adopted a plastic bag ban with a \$0.10 charge on paper and reusable bags in all retail stores, which became effective July 1, 2016.
- 67) *Nevada City* - The city council adopted a plastic bag ordinance on June 25, 2014, which became effective January 1, 2015 in all retail stores. Single-use carryout bags are prohibited. Paper and reusable bags may be purchased for \$0.10 each.
- 68) *Novato* - The city council adopted a plastic bag ban and \$0.10 minimum charge per paper or reusable bag in March 2014. This ordinance is effective in grocery, convenience, and drug stores.
- 69) *Ojai* - Ojai adopted a plastic bag ban on April 10, 2012. Grocery stores may distribute paper bags with \$0.10 price requirement. This ordinance became effective July 1, 2012 in all retail stores.
- 70) *Pacific Grove* - The city adopted a bag ordinance on August 20, 2014. All retail stores are prohibited from distributing single-use paper bags, but may distribute paper bags with a \$0.10 price requirement. This ordinance became effective March 1, 2015.
- 71) *Pacifica* - In December 2012, the City of Pacifica adopted the San Mateo County Ordinance with a ban on plastic bags and charge on paper/reusable bags in all retail stores. This ordinance became effective April 22, 2013.
- 72) *Palm Desert* - A plastic bag ban in all stores with a \$0.10 charge on reusable paper bags was adopted May 8, 2014. It will go into effect in large stores starting in April 2015 and cover smaller stores by October 2015.
- 73) *Palm Springs* - The city council adopted a plastic bag ban with \$0.10 paper bag charge on April 2, 2014. This ordinance became effective in supermarket and drug stores November 2014 and in all other stores May 2015.
- 74) *Palo Alto* - In 2013, the Palo Alto City Council adopted an expansion of a 2009 ordinance to include all stores and restaurants under its plastic bag ban. Paper and reusable bags are available with a minimum charge. Previously, the ordinance only applied to plastic bags at large supermarkets.
- 75) *Pasadena* - In November of 2011, the Pasadena City Council unanimously adopted a plastic bag ban with a \$0.10 minimum price requirement on paper bags, which became effective July 1, 2012 for large stores and supermarkets and December 2012 for convenience stores.

- 76) *Pico Rivera* - On October 28, 2014, the city council adopted a plastic bag ban with a \$0.10 charge on paper bags. This ordinance became effective in large grocery and drug stores on July 1, 2016 and in other convenience and grocery stores the following year.
- 77) *Pittsburg* - On October 21, 2013, the city council adopted a bag ordinance, which became effective in all retail stores by January 15, 2014. Plastic carryout bags are prohibited and paper and reusable bags are allowed with a small charge.
- 78) *Pleasant Hill* - On August 4, 2014, the city council adopted a bag ordinance, which is effective in all retail stores and restaurants. Plastic carryout bags are prohibited, and paper and reusable bags are allowed with a small charge.
- 79) *Portola Valley* - The town adopted the San Mateo County model ordinance of a single-use carryout bag ban and charge on paper or reusable bags in January 2013. This ordinance became effective April 22, 2013.
- 80) *Redwood City* - The city adopted the San Mateo County model ordinance of a single-use carryout bag ban and charge on paper or reusable bags in March 2013. This ordinance became effective October 1, 2013.
- 81) *Richmond* - The city adopted the first bag ordinance in Contra Costa County on July 16, 2013. All retail stores are prohibited from using single-use plastic carryout bags and may sell paper or reusable bags for a small charge. This ordinance became effective January 1, 2014.
- 82) *Ross* - The city council adopted a plastic bag ban on September 11, 2014 that applies to grocery, drug, and convenience stores. Paper and reusable bags are allowed with a minimum \$0.10 charge each. This ordinance became effective in large supermarkets and drugstores in April 2015 and in all other stores in October 2015.
- 83) *Sacramento* - The City of Sacramento adopted an ordinance banning single-use carryout bags and charging a minimum \$0.10 per paper or reusable bag on March 31, 2015. This ordinance became effective January 1, 2016 in grocery, drug, and convenience stores.
- 84) *Sacramento County* - On April 26, 2016, the county adopted an ordinance banning single-use carryout bags in grocery, drug and convenience stores. Paper and reusable bags are allowed with a minimum \$0.10 charge each. This ordinance became effective July 1, 2016.

- 85) *Salinas* - The city adopted a plastic bag ban on August 26, 2014 in all retail stores. Paper and reusable bags may be sold for a \$0.10 minimum charge for customers who wish to purchase them.
- 86) *San Anselmo* - The town adopted a single-use carryout bag ban with \$0.10 charge on paper and reusable bags. This ordinance became effective January 1, 2015 in grocery, drug, and convenience stores.
- 87) *San Bruno* - The city adopted the San Mateo County model ordinance of a single-use carryout bag ban and charge on paper or reusable bags in January 2013, which became operative April 22, 2013.
- 88) *San Carlos* - San Carlos adopted the San Mateo County model ordinance of a single-use carryout bag ban and charge on paper or reusable bags in March 2013, which became operative July 1, 2013.
- 89) *San Francisco* - San Francisco became the first city in the nation to adopt a ban on plastic shopping bags in April 2007. In February of 2012, the board of supervisors voted to expand the ordinance to all retail stores and add a \$0.10 charge on bags at checkout.
- 90) *San Jose* - San Jose City Council voted and adopted a ban on single use plastic carryout bags in January 2011. The ban extends to all retailers in the city, exempting restaurants and non-profit reuse organizations. This ordinance became effective January 1, 2012.
- 91) *San Luis Obispo County and City, Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Paso Robles, Pismo Beach* - The San Luis Obispo County Integrated Waste Management Authority adopted a plastic bag ban with a \$0.10 minimum price requirement on paper bags in January of 2012. It went into effect on October 1, 2012 in all seven incorporated cities as well as unincorporated areas of the county.
- 92) *San Mateo City* - The city adopted a bag ordinance on May 6, 2013. The ordinance bans single-use carryout bags and establishes a \$0.10 charge on paper and reusable bags, increasing to \$0.25 on January 1, 2015. This ordinance became effective June 6, 2013.
- 93) *San Mateo County* - The county adopted a bag ordinance on November 6, 2012 that bans plastic bags and establishes a \$0.10 charge on paper and reusable bags, increasing to \$0.25 on January 2, 2015. This ordinance became effective April 22, 2013 in unincorporated county areas.

- 94) *San Pablo* – On October 8, 2013, the city adopted a plastic bag ban with a \$0.05 charge per paper or reusable bag and increasing to \$0.10 cents after two years. This ordinance became effective January 1, 2014 in all retail stores.
- 95) *San Rafael* – The city council adopted a plastic bag ban with \$0.10 charge per paper or reusable bag on March 3, 2014. This ordinance became effective in grocery, drug, and convenience stores on September 15, 2014.
- 96) *Santa Barbara City* - A plastic bag ban and \$0.10 paper bag charge was adopted on October 15, 2013. This ordinance became effective in supermarkets and drugstores on April 15, 2014 and in convenience stores by October 15, 2014.
- 97) *Santa Barbara County* - The board of supervisors passed a plastic bag ban on August 25, 2015 with a \$0.10 charge on paper bags and reusable bags either for sale or at no charge. This ordinance became effective in supermarkets and drugstores in March 2016 and in convenience and liquor stores by September 2016.
- 98) *Santa Clara City* - A plastic bag ban and \$0.10 minimum charge per paper or reusable bag was adopted on September 23, 2014. This ordinance became effective in all retail stores starting December 1, 2014.
- 99) *Santa Clara County* - On April 26, 2011, the board of supervisors voted in favor of a single-use bag ordinance that bans single-use carryout bags and places a \$0.15 minimum price requirement on single-use paper bags throughout unincorporated county areas. It became effective January 1, 2012.
- 100) *Santa Cruz City* - The city council adopted a plastic bag ban and \$0.10 paper bag charge that became effective in all retail stores starting April 2013.
- 101) *Santa Cruz County* - On September 13, 2011, the board of supervisors voted unanimously in favor of a single-use bag ordinance banning single-use carryout bags and placing a \$0.10 minimum price requirement on single-use paper bags throughout unincorporated county areas. This ordinance became effective March 20, 2012. An expansion of the plastic bag ban to restaurants was adopted in October 2012 and went into effect April 22, 2013.
- 102) *Santa Monica* - The Santa Monica City Council unanimously voted for a ban on single-use carryout bags and a cost pass-through requirement per recyclable paper bag in January 2011.
- 103) *Santa Rosa* - The city council adopted a bag ordinance in February 2014, similar to the Sonoma County Waste Management Authority bag ordinance of a single-use

carryout bag ban in all retail stores with a minimum \$0.10 paper bag charge. This ordinance became effective September 1, 2014.

- 104) *Sausalito* - The city council adopted a plastic bag ban and \$0.10 minimum charge per paper or reusable bag in March 2014, which is effective in grocery, convenience, and drug stores.
- 105) *Seaside* - The city council adopted a plastic bag ban and \$0.10 minimum charge per paper/reusable bag on August 21, 2014. This ordinance became effective in all retail stores September 20, 2015.
- 106) *Solana Beach* - On May 9, 2012, Solana Beach became the first city in San Diego County to adopt a plastic bag ban. Paper bags can be purchased for \$0.10 each under the ordinance.
- 107) *Soledad* - The city council adopted a single-use carryout bag ban and \$0.10 charge per paper or reusable bag in all retail stores on October 1, 2014. This ordinance became effective May 1, 2015.
- 108) *Sonoma County Waste Management Agency (Sonoma City and County, Cloverdale, Cotati, Healdsburg, Petaluma, Rohnert Park, Sebastopol, Windsor)* - The Sonoma County Waste Management Agency adopted a plastic grocery bag ban on February 19, 2014, which became effective in all retail stores starting September 1, 2014. Paper grocery bags may be purchased for \$0.10 each.
- 109) *South Lake Tahoe* - On October 15, 2013, the city council adopted a plastic bag ban in all retail stores and restaurants, which became effective on January 15, 2014. In January 2016, the city council voted to exclude small retailers from the ban.
- 110) *South Pasadena* - The city adopted an ordinance phasing out single-use plastic grocery bags in grocery, drug, and convenience stores as well as farmers markets in May 2014. Operative in larger stores and farmers markets starting October 2014 and in other covered stores December 2014. The ordinance establishes a minimum \$0.10 charge per paper bag.
- 111) *South San Francisco* - In December 2012, the City of South San Francisco adopted the San Mateo County Ordinance banning single-use carryout bags and placing a charge on paper and reusable bags in all retail stores. This ordinance became effective April 22, 2013.

- 112) *St. Helena* - The city council adopted a plastic bag ban and \$0.10 charge per paper bag in all retail stores on August 26, 2014. This ordinance became effective in large grocery stores January 2, 2015 and all other stores July 1, 2015.
- 113) *Sunnyvale* - Sunnyvale passed a bag ordinance in December 2011 banning single-use carryout bags and placing a \$0.10 minimum charge on paper and reusable bags.
- 114) *Tiburon* - The town adopted a plastic bag ban in supermarkets, drug and convenience stores on September 3, 2014.
- 115) *Truckee* - The Town of Truckee adopted an ordinance banning single-use carryout bags on November 25, 2013, which became effective in all retail stores June 1, 2014. Paper and reusable bags can be sold for \$0.10 each.
- 116) *Ukiah* – The city council adopted an ordinance on May 2, 2012 banning plastic bags and placing a \$0.10 charge on paper bags in all retail stores. The ban is operative starting in large stores within six months of adoption.
- 117) *Walnut Creek* - In March of 2014, the council adopted a plastic bag ban and \$0.10 minimum paper bag charge in all retail stores and restaurants.
- 118) *Watsonville* - On May 8, 2012, Watsonville became the first city in Santa Cruz County to ban plastic bags in all retail stores. An initial \$0.10 charge on paper bags increased to \$0.25 after the first year.
- 119) *West Hollywood* – The city council adopted a plastic bag ban with \$0.10 paper charge on August 20, 2012. This ordinance became effective in large stores in six months and in all other retail stores in one year.
- 120) *Yountville* - On February 2, 2016, Yountville became the final town in Napa County to ban single-use carryout bags in all retail stores except for restaurants with a \$0.10 charge for paper bags. This ordinance became effective on March 31, 2016.

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