

CALIFORNIA COASTAL COMMISSION

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**W-24**

July 7, 2010

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR JULY 2010

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 06/29/10. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ Current status of any bill may be checked by visiting the California Senate Homepage at www.senate.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

2010 Legislative Calendar

Jan 1	Statutes take effect
Jan 4	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 31	Last day for each house to pass bills introduced in 2009
Feb 19	Last day for bills to be introduced
March 25	Spring Recess begins
April 5	Legislature reconvenes
April 23	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 7	Last day for Policy Committees to hear and report 1 st House nonfiscal bills to the Floor
May 14	Last day for Policy Committees to meet prior to June 7
May 28	Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor
June 1-4	Floor Session only. No committees may meet
June 4	Last day to pass bills from house of origin
June 7	Committee meetings may resume
June 15	Budget must be passed by midnight
June 24	Last day for a legislative measure to qualify for the November General Election ballot
July 2	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 2	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 2	Legislature reconvenes
Aug 13	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 16-31	Floor session only. No committees may meet
Aug 20	Last day to amend bills on the Floor
Aug 31	Last day for any bill to be passed. Interim Recess begins on adjournment of session

¹ Terms used in this report relating to bill status. 1) "On Suspense" means bill is held in Appropriations because of potential costs to state agency. Bills usually heard by Appropriations near Fiscal Committee Deadline in June. 2) "Held in committee" means bill was not heard in the policy committee this year. 3) "Failed passage" means a bill was heard by policy committee but failed to get a majority vote. Reconsideration can be granted by the committee.

PRIORITY LEGISLATION

AJR 44 (Hill) Commercial whaling: moratoriums

This Joint Resolution would request that the President and the Congress of the United States to take stronger steps to conserve and protect whale populations. It would memorialize the Legislature's opposition to the International Whaling Commission's proposal to lift the current moratorium on commercial whaling, which would legalize commercial whaling.

Introduced 02/14/10
Status Assembly Water, Parks & Wildlife Committee
Commission Position: Recommend Support, analysis attached

AB 68 (Brownlee) Solid waste: single-use carry out bags

This bill would prohibit stores from providing single-use carryout bags to customers after July 10, 2010, unless the store charges a fee of not less than \$0.25 for the bag. The fees collected would be deposited into the Bag Pollution Fund, which the bill would establish, on a quarterly basis. Funds would be expended, after appropriation by the Legislature, to implement programs that educate consumers and reduce the use of plastic bags, and to reduce and mitigate the effects of plastic bag litter.

Introduced 12/12/08
Last Amended 01/13/10
Status Assembly Appropriations Committee, Suspense File

AB 226 (Ruskin) Coastal resources: enforcement

This bill would give the Coastal Commission administrative civil liability authority and deposit any resulting revenues into the Coastal Act Services Fund (CASF). This bill would also redirect existing civil penalty revenue from State Coastal Conservancy to the Commission's CASF, subject to appropriation by the Legislature. Amendments taken by the author in Senate Natural Resources Committee 6/23 clarify that a lien filed by the Commission would not be a "super lien" and that the provisions of the bill would not apply to local governments when acting in their legislative or quasi-judicial capacity.

Introduced 02/03/09
Amended 09/03/09
Status Passage refused, reconsideration granted, Senate Inactive File
Commission Position Support

AB 291 (Saldana) Coastal resources: coastal development permits

This bill would prohibit the issuance of a coastal development permit for any property for which a notice of violation has been received, unless the Executive Director of the Commission determines that an application has been filed that fully resolves the violation. Amendments of 5/11 clarify that the violation runs with the land, not the person, and exclude de minimis violations from the provisions of the bill. Amendments of 8/17 exempt local governments functioning in their quasi-legislative or quasi-adjudicative capacity.

Introduced 02/13/09
Last amended 8/17/09
Status Passage refused, reconsideration granted, Senate Inactive File
Commission Position Support

AB 925 (Saldana) Recycling: single use beverage container caps

This bill would prohibit the sale of single-use plastic beverage containers without a cap that is not affixed to the container.

Introduced 02/26/09
Last amended 06/30/09
Status Senate Inactive File
Commission position Support

AB 1253 (Harkey) Coastal resources: development: fireworks displays

This bill would amend Section 30106 of the Coastal Act to exempt local governments from any requirement to obtain a coastal development permit for a fireworks display. This is an urgency measure.

Introduced 02/18/10
Last Amended 06/09/10
Status Senate Natural Resources & Water Committee. Hearing cancelled at request of author.

AB 1998 (Brownley) Solid waste: single use carry out bags

This bill would, after July 1, 2013, prohibit convenience food stores, foodmarts, and certain specified stores from providing a single-use carryout bag to a customer. The bill would require stores to only provide reusable bags, as defined, or to make available for sale recycled paper bags at a reasonable cost, but not less than \$0.05.

Introduced 02/18/10
Last Amended 05/28/10
Status Senate Environmental Quality Committee
Commission position: Recommend Support, analysis attached

AB 2074 (Monning) Natural resources: Andrew Molera State Wilderness

This bill would designate the Andrew Molera State Park Wilderness as a component of the California wilderness preservation system. The bill also would authorize the California Coastal Trail to be located, designed, constructed, or operated within the Andrew Molera State Wilderness.

Introduced 02/18/10
Status Assembly Water, Parks & Wildlife Committee

AB 2125 (Ruskin) Coastal resources: marine spatial planning

This bill would direct the Ocean Protection Council (OPC) to prepare a report to the Legislature, upon receipt of sufficient funding, on the advantages and disadvantages of using marine spatial planning for ocean and marine ecosystem management. The bill would also direct the OPC to assess the ability of California's public agencies to gather, manage, use, and share information and decision-support tools relevant to ecosystem-based management in the coastal and ocean environment, and award grants to public agencies that seek to improve geo-spatial data gathering capabilities.

Introduced 02/18/10
Last Amended 04/15/10
Status Senate Appropriations Committee

AB 2503 (Perez) Ocean resources: artificial reefs

This bill would repeal Section 6429.5 of the Public Resource Code, which establishes the Artificial Reef Program administered by the Department of Fish and Game. In its place, it would create the Marine Life Legacy Act, establishing a program of artificial reef research and development, administered by DFG. The act would authorize the department to conditionally approve the conversion of an offshore oil platform or production facility into an artificial reef, pursuant to CEQA and consistent with specified criteria. The act would require the Ocean Protection Council to consult with and advise the California Coastal Commission and other responsible agencies in determining criteria against which the environmental benefit of any proposed conversions will be judged. It would authorize the department to take title to a decommissioned offshore oil platform or production facility in either state or federal waters, with an accelerated platform decommissioning program. The bill would establish the California Endowment for Marine Preservation, specify the appointment structure for the governing Board of Directors, and require that 10% of the funding be made available to qualified state agencies for approved projects and programs that will conserve, protect, restore, and enhance the open coastal marine resources of the state.

Introduced 02/19/10
Last Amended 06/21/10
Status Senate Appropriations Committee

AB 2228 (Lieu) Vehicles: overnight parking

This bill that would exempt the City of Los Angeles from requiring a coastal development permit to establish a preferential parking zone in the community of Venice, if the parking restrictions applied to public streets between the hours of 2-5 a.m. the bill would also allow the city to establish ordinances that would allow residents to park during those times, without the need for Coastal Commission approval.

Introduced 02/03/10
Last Amended 04/08/10
Status Assembly Natural Resource Committee. Hearing cancelled at request of author

Commission position: Oppose

AB 2598 (Brownlee) Tidelands and submerged lands: seal level action plans

This would require trustees of granted public trust lands to take all reasonable actions to prepare for sea level rise. The bill would require the agencies to prepare a sea level rise plan prior to July 1, 2011, and submit the plan to Natural Resources Agency, the Governor's Office of Planning and Research, and the State Lands Commission. The bill would require the plan to include, among other things, an assessment of the impact of sea level rise on granted public trust lands, an estimate of the financial cost of this impact, and strategies to prevent or mitigate damage to development and infrastructure and to protect and enhance habitat.

Introduced 02/19/10
Last Amended 06/16/10
Status Senate Natural Resources and Wildlife Committee

AB 2664 (Chesbro) State Lands Commission: violations

This bill would authorize the State Lands Commission to administer a civil penalty for any violation involving the placement of any structure or facility on any lands under the Commission's jurisdiction without a valid lease or permit. The civil penalty could not exceed \$1,000 per day.

Introduced 02/19/10
Last Amended 06/16/10
Status Senate Appropriations Committee

AJR 26 (Chesbro) Climate change

This joint resolution request that the U.S. congress establish a comprehensive framework for climate change adaptation focusing on wildlife, habitats, coasts, watersheds, rivers and other natural resources and ecosystems, and dedicate funding to that effort.

Introduced 09/09/09
Status Senate Third Reading

SB 4 (Oropeza) State beaches and parks: smoking

This bill would prohibit smoking of any tobacco product on a state coastal beach on in any unit of the State Parks system. The bill authorizes the Department of Parks and Recreation, or any other relevant state agency, to develop and post signs to provide notice of the smoking prohibition. Amendments of 3/11 allow smoking in campgrounds and the Oceano Dunes State Vehicular Recreation Area.

Introduced 12/01/08
Last amended 03/11/10
Status Vetoed by Governor

Commission Position Support

SB 21 (Simitian) Fishing gear

This bill would require the Department of Fish and Game to include on all fishing licenses any toll-free telephone numbers, websites or addresses available for the purpose of reporting derelict fishing gear. Amendment taken on 6/10/10 would authorize the Ocean Protection Council to develop recommendations for the identification, removal and disposal of derelict fishing gear, and develop procedures that enable fishers to voluntarily recover and remove derelict fishing gear.

Introduced 12/01/08
Last amended 06/10/10
Status Assembly Appropriations Committee

SCR 56 (Oropeza) Coastal development and Marina del Rey

This measure would request that the County of Los Angeles undertake a comprehensive review of its Local Coastal Program prior to any further LCP amendments or permit approvals.

Introduced 08/20/09
Status Senate Natural Resources and Water Committee

SB 941 (Wyland) Parks and recreation: State park system

This is a spot bill that may be amended to address a coastal issue.

Introduced 02/03/10
Status Senate Rules Committee

SB 959 (Ducheny) Development: expedited permit review

This bill would require the Office of Planning and Research (OPR) to develop guidelines to cities and counties for the development of an expedited permitting process. The guidelines would be advisory only. The bill would require every county or city to provide for coordinated review and decision making and the provision of information regarding the status of all applications and permits for residential, commercial, and industrial developments by a single administrative entity. Amendments of 04/05 declare this to be an urgency statute, requiring a 2/3 vote.

Introduced 02/05/10
Last amended 06/22/10
Status Senate Appropriations Committee, Suspense File

SB 1001 (Strickland) State property: San Buenaventura State Beach

This bill would terminate a recorded deed restriction from a vacant parcel of land and an adjacent public pier which limits its use to public recreational purposes. The parcel was given to the City of Ventura by the Department of Parks and Recreation in 1987 on the condition that it would be used exclusively for public park purposes. Removal of the deed restriction would make the property available for non-park uses such as commercial and/or residential facilities.

Introduced 02/09/10
Status Senate Governmental Organization Committee. Hearing cancelled at request of author.

SB 1006 (Pavley) Natural resources: climate change

This bill would require the Strategic Growth Council too coordinate programs that address global climate change, and provide guidelines to local governments to assist in developing climate change adaptation strategies. The bill would also authorize the Council to provide financial assistance to local governments, special districts, JPAs of non-profits that undertake climate adaptation plans, projects or strategies.

Introduced 02/10/10
Last Amended 06/21/10
Status Assembly Natural Resources Committee

SB 1034 (Ducheny) Archeological resources: civil penalties

This bill would establish the maximum penalty for someone who knowingly excavates or damages an archeological resource on public lands to be \$10,000, one-year in a County jail, or both. The bill would also require a court to order restitution to the state agency with primary management jurisdiction over the land on which the damage occurred. The bill also authorizes forfeiture of the archeological resource(s), and any vehicles and/or equipment used in its excavation.

Introduced 02/12/10
Last Amended 04/14/10
Status Assembly Appropriations Committee

SB 1177 (Kehoe) Agriculture: 22nd District Agricultural Association

This bill would require the 22nd Agricultural District in the County of San Diego to establish and maintain a 100-foot greenway buffer zone and public access trail between the San Dieguito River and adjacent wetlands, and proposed new development at the District's property at that location. The bill would require the 22nd Ag district to submit its greenway plan to the Coastal Commission prior to or concurrent with any application for a coastal development permit to replace an existing exhibit hall.

Introduced	02/03/10
Last Amended	06/01/10
Status	Assembly Appropriations Committee

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BILL ANALYSIS

AJR 44 (Hill)

As introduced, June 14, 2010

SUMMARY

AJR 44 would memorialize the Legislature's opposition to the International Whaling Commission's proposal to lift the current moratorium on commercial whaling, which would legalize commercial whaling. It also requests that the President and the Congress of the United States to take stronger steps to conserve and protect whale populations. It would

PURPOSE OF THE MEASURE

The purpose of the measure is to convey the California Legislature's support for the conservation of whale populations, and its opposition to U.S.-sponsored efforts to remove the ban on any future commercial whaling activities through its participation on the International Whaling Commission (IWC).

EXISTING LAW

The current moratorium on commercial whaling was enacted by the International IWC in 1986, with the strong backing of the United States. Since that time, the countries of Japan, Norway and Iceland have continued to kill whales by loopholes in the international convention, or in outright defiance of the ban. Japan in particular has been lobbying relentlessly for the IWC to lift the ban on commercial whaling. The IWC meets annually to discuss global conservation issues that pertain to whales, set aboriginal subsistence quotas, receive reports on the status of whale species, populations and changes to habitat, and consider changes to the existing program.

BACKGROUND

By its own terms, the moratorium is to remain in effect until such time as the IWC undertakes a comprehensive assessment of whale stocks with the intent to modify the moratorium and establish new catch limits. Pro-whaling nations have been pushing to implement this clause for decades, and as part of their campaign, have systematically recruited numerous developing nations onto the IWC, paying their membership fees and travel costs, and granting them economic aid and other bribes as detailed in a recent expose published by the London Times. As a result, the current make up of the IWC is approximately equally split between pro- and anti-whaling countries. Although a $\frac{3}{4}$ supermajority vote is required to lift the moratorium, the United States and other traditionally anti-whaling member states now actively support a resumption of commercial whaling and in return for some concessions that may reduce of the number of whales currently killed under the "scientific" program and the commercial activities of Iceland and Norway.

In addition, some NGOs that previously opposed all commercial whaling activities are now equivocating. In advance of the 2010 IWC meeting in Agadir, Morocco, Greenpeace, Pew and the World Wildlife Fund signed a joint statement supporting IWC authorization for setting catch limits for some species of whales, in return for a prohibition on whaling in the Southern Sanctuary.

While the IWC meeting in June failed to produce a consensus agreement on the issue of lifting the moratorium on commercial whaling, and the U.S.-backed proposal did not garner enough votes to pass, the proposal or some variation of it will continue to be discussed over the coming months.

ANALYSIS

AJR 44 is consistent with the Coastal Commission's position on this issue, as memorialized in the unanimous passage of a similar resolution in May, 2010. Although the 2010 meeting of the IWC has concluded, it is still relevant for the California Legislature to take a position on this issue, as the negotiations for next year's IWC meeting will continue to raise the possibility of lifting the moratorium.

SUPPORT/OPPOSITION

Support for AJR 44:

None on file

Opposition to AJR 44:

None on file

RECOMMENDED POSITION

Staff recommends the Commission Support AJR 44.

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BILL NUMBER: AJR 44 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Hill
(Coauthors: Assembly Members Huffman and Nava)

JUNE 14, 2010

Relative to marine mammal conservation.

LEGISLATIVE COUNSEL'S DIGEST

AJR 44, as introduced, Hill. Commercial whaling: moratoriums

This measure would request that the President and the Congress of the United States provide for the proper conservation of whale stocks. This measure would memorialize the Legislature's opposition to the International Whaling Commission's proposal to lift the current moratorium on commercial whaling, which would legalize commercial whaling, leave enforcement of new whaling quotas to nations that have been violating the current moratorium, and allow the resumption of whale hunting in the Southern Ocean Whale Sanctuary.

Fiscal committee: no.

WHEREAS, Whales are evolutionarily complex, highly intelligent, and extremely important for the health and viability of ocean ecosystems; and

WHEREAS, In 1982, the International Whaling Commission voted to implement a pause on commercial whaling beginning in 1986 in order to allow significantly depleted whale stocks to recover and quotas on whales were set to zero; and

WHEREAS, On April 15, 2010, the United States announced its intention to broker an agreement that would allow commercial whale hunting for the first time since the moratorium was enacted in 1986; and

WHEREAS, California is a coastal state dedicated to the protection of our marine mammal populations, fisheries, and ocean resources; and

WHEREAS, California's ocean waters support several species of whales, including blue whales, gray whales, pilot whales, fin whales, humpbacks, and orcas, all of which have special biological, ecological, aesthetic, cultural, political, and symbolic qualities and are particularly sensitive to the threats of whale hunting; and

WHEREAS, The protection of whales is of the utmost importance to Californians and our state's coastal and ocean-dependent industries, including tourism; and

WHEREAS, Whaling, pollution, and climate change threaten these peaceful creatures; and

WHEREAS, Whaling has decimated these once abundant species, including the blue whale, which has gone from a population of several hundred thousand to near extinction and only an estimated 5,000 to 12,000 blue whales remain throughout the world; and

WHEREAS, The whaling moratorium has staved off extinction, but must remain in place to support a population of many different species of whales that continue to struggle; and

WHEREAS, Lifting the moratorium could result in significant, irreversible, and harmful consequences to whale populations; and

WHEREAS, California has led the way in marine responsibility and in 2008, the Legislature passed Assembly Joint Resolution 49, which calls on the National Marine Fisheries Service to undertake an immediate and comprehensive assessment of the California gray whale to determine if the gray whale should be added to the endangered species list; and

WHEREAS, Legalizing commercial whaling, which would decimate whale stocks, is contrary to our state's goal of protecting our marine mammal populations, fisheries, and ocean resources; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully requests that the President and the Congress of the United States do everything in their power to provide for the proper conservation of whale stocks; and be it further

Resolved, That the Legislature of the State of California respectfully opposes the International Whaling Commission's proposal to lift the whaling moratorium, which would legalize commercial whaling, leave enforcement of new whaling quotas to nations that have been violating the current moratorium, and allow whale hunting in the Southern Ocean Whale Sanctuary; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

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BILL ANALYSIS
AB 1998 (Brownley)
As Amended May 28, 2010

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 1998.

SUMMARY

AB 1998 would prohibit the sale of single-use, carryout plastic bags in certain types of retail stores after January 1, 2012.

PURPOSE OF THE BILL

The purpose of the bill is to reduce the incidence of plastic bag litter in the environment, including the marine environment.

EXISTING LAW

No statewide statute currently regulates the availability of plastic carryout bags, although some local governments have enacted or are considering bans on their use within local jurisdictions. Existing law does require that retail outlets which provide single-use, carryout plastic bags also provide recycling receptacles for their return.

PROGRAM BACKGROUND

As the primary sponsor of California Coastal Cleanup Day, the Commission has been collecting data on beach litter since 1985. Since that time, over 900,000 volunteers have collected more than 14 million pounds of garbage. Every year, plastic bags are the 4th most collected item by Coastal Cleanup Day volunteers, behind only cigarette butts, food wrappers, and caps/lids. On average, CCD volunteers pick up over 51,000 bags every year. This only accounts for 3 hours of activity at coastal sites around California, and does not take into account pieces of bags, bags that have been ripped apart, and the bags that are collected but not counted (about half our Cleanup sites don't collect data during the Cleanup).

ANALYSIS

AB 1998 would prohibit, after January 1, 2012, certain types of stores (grocery stores, foodmarts, convenience stores) from providing a single-use carryout bag to a customer. The bill would, on and after July 1, 2013, require that specified stores to only provide reusable bags, or to make available for sale recycled paper bags at a reasonable cost not less than \$0.05. This bill would preempt local regulations on the use and sales of reusable bags, single-use carryout bags, recycled paper bags, or other specified bags at stores, as defined.

The bill exempts the City and County of San Francisco, as long as the carryout bags are compostable.

As noted above, cigarette butts are one of the most prevalent items of debris collected from public beaches. Because plastic bags are so lightweight and easily lifted by the wind, they tend to be one of the more problematic debris items to manage even when disposed of “properly.” Plastic bags are easily blown out of open trash cans or lost from trash cans in the process of being transferred to garbage trucks. When left on streets, they winds can easily blow them great distances, often resulting in them ending up in or near a waterway or in the ocean.

Plastic bags are also buoyant, and when in the ocean, resemble jellyfish, which is a primary food source for sea turtles. Turtles regularly ingest plastic bags, resulting in several potential problems:

- a. Plastic bags can fill a turtle’s stomach, giving them a false sense of being full and leading them to eat less and grow weaker as a result.
- b. Plastic bags can become lodged in a turtle’s throat, preventing other food from being ingested and essentially starving the turtle.
- c. Plastic bags can foul a turtle’s digestive system and prevent proper intestinal function.

In addition to the potential health impacts to marine wildlife, plastic bags are a blight on our beaches. While no specific economic study has been conducted on the financial impact of dirty beaches, California has a \$46 billion ocean-dependent economy, and economic studies conducted on the east coast have shown a direct economic impact to surrounding communities due to dirty or unhealthy beaches.

There is no way to distinguish between plastic bags that make their way into the coastal and marine environment from beaches, versus those that are washed down from inland areas. However, it is reasonable to assume that if fewer single use carryout plastic bags were distributed statewide, it would reduce the overall number of bags in the environment.

A secondary benefit could be realized from the public education aspect of this bill. If the retail outlets informed consumers that single use plastic bags were no longer available in such a way as to inform shoppers of the dangers associated with marine litter, and/or coordinated with a public outreach media campaign, it could result in heightened awareness of the issue and a change in habits over time.

Certainly, marine debris and beach litter takes many forms, and plastic bags are only a single component. But addressing the issue from many angles is necessary to make incremental progress on such a complex issue. Reducing the waste stream is a proven approach, and banning the use of single use, plastic carryout bags is a step in that direction.

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 1998.

SUPPORT/OPPOSITION (as of 6/28/10)

Support for AB 1998:

AFSCME,
Amerigreenbag.com,
Association of Communities United of South Los Angeles,
Ballona Creek Renaissance,
Bay Area Council,
California Association of Environmental Health Administrators,
California Coastal Coalition,
California Coastkeeper Alliance,
California Grocer's Association,
California League of Conservation Voters,
California State Lands Commission,
Californians Against Waste,
Chico Bag,
Cities of Burbank, Del Mar, Long Beach, Newport Beach, Pasadena, San
Buenaventura,
Solana Beach, Ventura,
Clean South Bay,
Clean Water Action California,
Defenders of Wildlife,
Downtown Encinitas Main Street Association,
Duro Bag Manufacturing Company,
Earth Resource Foundation,
Earthwise Bag Company,
East Bay Municipal Utility District,
Environment California,
Envirosax,
Forest Ethics,
Fresh and Easy Neighborhood Market Inc.,
Friends of Five Creeks,
Global Green USA,
Green Sangha,
Humboldt Coastkeepers,
Humboldt County Board of Supervisors,
Los Angeles County,
Los Angeles County Solid Waste Management Committee,
Marin County Board of Supervisors,
Monterey County Board of Supervisors,
Monterey Regional Waste Management District,

Natural Resources Defense Council,
Neighborhood Market Association,
Northcoast Environmental Center,
OCEANA,
Orange County Coastkeeper,
Ormond Beach Observers,
Pam Slater-Price, Chairwoman, San Diego County Board of Supervisors,
Planning and Conservation League,
Plastic Pollution Coalition,
PW Supermarkets Inc. (San Jose),
Rainforest Action Network,
Rite Aid,
San Diego Coastkeeper,
San Francisco Chamber of Commerce,
San Luis Obispo County Integrated Waste Management Authority,
Santa Barbara Channelkeeper,
Santa Clara County Board of Supervisors,
Santa Monica Bay Restoration Commission,
Santa Monica Baykeeper,
Save Mart Supermarkets,
Seventh Generation Advisors,
Sierra Club of California,
Solid Waste Solutions, Inc,
StopWaste.org
Alameda County Waste Management Authority,
Steven Bochco Productions,
Suja Lowenthal - Councilmember - City of Long Beach,
Super A Food Inc. (Commerce),
Surfers' Environmental Alliance,
Surfrider Foundation (plus Humboldt & Santa Barbara Chapter),
State Lands Commission,
Urban Semillas,
Washington Elementary PTA,
Western States Council of the United Food & Commercial Workers,
WILDCOAST,
Wild Heritage Planners,
WinCo Foods Inc.,
Wisdom Academy for Young Scientists,
Youth Opportunities for High School and Associations of Communities United of South
Los Angeles,
1 Bag at a Time, Inc.,
910 individuals

Opposition to AB 1998:

American Chemistry Council, American Forest & Paper Association,
Biodegradable Products Institute,
Bradley Packaging Systems,
California Film Extruders & Converters Association,
California Forestry Association,
Californians for Extended Producer Responsibility,
Central California Hispanic Chamber of Commerce,
Command Packaging,
Corona Chamber of Commerce,
Crown Poly Inc.,
Great American Packaging,
Heritage Bag, Hispanic Chamber of Commerce,
Howard Jarvis Taxpayers Association,
Metabolix,
Long Beach Area Chamber of Commerce, Redondo Beach Chamber of Commerce

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1998

Introduced by Assembly Member Brownley

(Principal coauthor: Senator Leno)

(Coauthors: Assembly Members Ammiano, Chesbro, De Leon, Evans, Feuer, Hill, Bonnie Lowenthal, Nava, Ruskin, Skinner, Torlakson, and Yamada)

(Coauthors: Senators DeSaulnier, *Hancock*, *Liu*, *Lowenthal*, and Pavley)

February 17, 2010

~~An act to amend Section 42257 of, and to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, the Public Resources Code, relating to solid waste. An act to add Chapter 5.3 (commencing with Section 42280) to, and to repeal Chapter 5.1 (commencing with Section 42250) of, Part 3 of Division 30 of the Public Resources Code, relating to solid waste.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Brownley. Solid waste: single-use carryout bags.

Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. This requirement is repealed on January 1, 2013.

This bill would repeal those at-store recycling program requirements on January 1, ~~2012~~ 2011, and would instead, on and after January 1, 2012, prohibit ~~a store~~ *certain types of stores*, as defined, from providing

a single-use carryout bag to a customer. *The bill would, on and after July 1, 2013, prohibit convenience food stores, foodmarts, and certain specified stores from providing a single-use carryout bag to a customer. The bill would require a store, on and after July 1, 2013, to only provide reusable bags, as defined, or to make available for sale recycled paper bags at a reasonable cost, but not less than \$0.05. The bill would exempt the sale of certain specified bags from the above prohibition and restriction. The bill would, beginning January 1, 2013, require a reusable bag manufacturer to obtain a biennial certification from the Department of Resources Recycling and Recovery by submitting a certification fee and a certification that its reusable bag meets specified requirements. The bill would specify administrative civil penalties for a person who violates the above requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund, and to deposit the penalties and fines collected into the Penalty Subaccount, which would be established by the bill in the account. The bill would provide that moneys in the account and the subaccount would be expended by the department, upon appropriation by the Legislature, to implement the above requirements.*

~~The bill would require the department, on or before January 1, 2015, to submit to the Legislature a report regarding the effectiveness of the bill's provisions and recommendations to further encourage the use of reusable bags. The requirement for submitting the report would become inoperative on January 1, 2019.~~

This bill would preempt local regulations on the use and sales of reusable bags, single-use carryout bags, recycled paper bags, or other specified bags at stores, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 ~~(a) The prohibition imposed by this act, pursuant to Section~~
- 4 ~~42281 of the Public Resources Code, is necessary for the~~
- 5 ~~environmental, public health, and societal burdens imposed by~~
- 6 ~~single-use plastic carryout bags.~~

1 ~~(b) Despite global treaties to prevent dumping at sea and~~
2 ~~minimize land-based sources of pollution, and increasing efforts~~
3 ~~worldwide to protect water quality, the quantity of marine debris~~
4 ~~in the world's oceans is increasing.~~

5 ~~(c) Despite recycling and voluntary solutions to control pollution~~
6 ~~from plastic bags in California, only 5 percent of plastic carryout~~
7 ~~bags are recycled and the rest either take up valuable landfill space~~
8 ~~or are discarded in the environment.~~

9 ~~(d) The North Pacific Gyre in the Pacific Ocean is home to the~~
10 ~~largest accumulation of plastic pollution, now estimated to be the~~
11 ~~size of the United States and is increasing rapidly.~~

12 ~~(e) According to the California Coastal Commission, the~~
13 ~~majority of marine debris is composed of plastic materials; 60 to~~
14 ~~80 percent overall and 90 percent of floating debris is plastic.~~

15 ~~(f) It is estimated that at least 267 species of wildlife have been~~
16 ~~threatened by marine debris through ingestion or entanglement,~~
17 ~~including sea turtles, fish, marine mammals, and various species~~
18 ~~of sea birds.~~

19 ~~(g) Paper bags made from virgin materials are not~~
20 ~~environmentally sound alternatives to plastic carryout bags because~~
21 ~~the production of these types of bags contributes to deforestation,~~
22 ~~natural resource depletion, greenhouse gas emissions, and~~
23 ~~waterborne wastes.~~

24 ~~(h) Though recycled content paper carryout bags are recyclable~~
25 ~~and have fewer negative impacts than virgin paper bags, recycled~~
26 ~~content paper carryout bags are not environmentally sound~~
27 ~~alternatives to plastic carryout bags, because the production of~~
28 ~~these types of bags contributes to greenhouse gas emissions and~~
29 ~~waterborne wastes.~~

30 *(a) The prohibition imposed by this act, pursuant to Section*
31 *42281 of the Public Resources Code, is necessary to reduce the*
32 *environmental, public health, economic, and societal costs resulting*
33 *from the production, use, and discard of single-use plastic carryout*
34 *bags.*

35 *(b) Despite local and state efforts to minimize land-based*
36 *sources of pollution, and increasing efforts worldwide to protect*
37 *water quality, the quantity of plastic pollution in the world's*
38 *aquatic environments is increasing.*

39 *(c) Recycled content paper carryout bags, while not without*
40 *their impacts, when made with 40 percent or more postconsumer*

1 *content, are a high value recyclable collected in every curbside*
2 *and community recycling program in California.*

3 ~~(i)~~

4 (d) Plastics made from bio-based sources that are marketed as
5 “compostable” or “biodegradable” are not environmentally sound
6 alternatives to plastic carryout bags because they have not been
7 shown to degrade in aquatic environments and require conditions
8 only available in composting facilities to rapidly break down into
9 constituents that assimilate back into the environment. Most
10 Californians lack access to composting facilities capable of
11 accepting compostable plastic bags.

12 ~~(j)~~

13 (e) On September 18, 2006, the West Coast Governor’s
14 Agreement on Ocean Health was signed by Governor
15 Schwarzenegger of California, Governor Kulongoski of Oregon,
16 and Governor Gregoire of Washington to address the challenges
17 of the Pacific coast’s declining health and to establish its protection
18 as a regional priority.

19 ~~(k)~~

20 (f) On February 8, 2007, the California Ocean Protection Council
21 approved a resolution to call for statewide action to reduce the
22 amount of land-based sources of marine debris and the resulting
23 implementation strategy was adopted by the Ocean Protection
24 Council in November 2008, which called for aggressive actions
25 to reduce the use of single-use plastic products, including plastic
26 bags.

27 ~~(l) On World Oceans Day 2009, the Under-Secretary General~~
28 ~~and Executive Director of the United Nations Environmental~~
29 ~~Programme called for an outright ban or rapid phaseout of thin~~
30 ~~film plastic carryout bags worldwide.~~

31 ~~(m) In the United States, and in California, many cities have~~
32 ~~already enacted bans, or are seriously considering banning plastic~~
33 ~~single-use bags.~~

34 ~~(n) The Legislature finds and declares that proliferation of these~~
35 ~~bans should be of statewide interest and concern and that the state~~
36 ~~should take action regulating the use of plastic and paper single-use~~
37 ~~bags.~~

38 (g) *In the United States, and in California, many cities have*
39 *already introduced or enacted bans of single-use carryout bags*

1 *creating a patchwork of rules and regulations governing the use*
2 *and disposal of these bags.*

3 *(h) The Legislature finds and declares that environmental and*
4 *economic costs posed by single-use bags is of statewide interest*
5 *and concern and that the state should take action to substantially*
6 *reduce the use of plastic and other single-use bags.*

7 ~~SEC. 2. Section 42257 of the Public Resources Code is~~
8 ~~amended to read:~~

9 ~~42257. This chapter shall remain operative only until January~~
10 ~~1, 2012, and as of that date is repealed, unless a later enacted~~
11 ~~statute, that is enacted before January 1, 2012, deletes or extends~~
12 ~~that date.~~

13 *SEC. 2. Chapter 5.1 (commencing with Section 42250) of Part*
14 *3 of Division 30 of the Public Resources Code is repealed.*

15 *SEC. 3. Chapter 5.3 (commencing with Section 42280) is added*
16 *to Part 3 of Division 30 of the Public Resources Code, to read:*

17
18 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

19
20 Article 1. Definitions

21
22 42280. For purposes of this chapter, the following definitions
23 shall apply:

24 (a) "Department" means the Department of Resources Recycling
25 and Recovery.

26 (b) "Recycled paper bag" means a paper carryout bag provided
27 by a store to a customer at the point of sale that meets all of the
28 following requirements:

29 (1) Contains a minimum of 40 percent postconsumer recycled
30 content.

31 (2) Is accepted for recycling in curbside programs in a majority
32 of households that have access to curbside recycling programs in
33 the state.

34 (3) Is capable of composting, consistent with the timeline and
35 specifications of the American Society of Testing and Materials
36 (ASTM) Standard Specifications for Compostable Plastics D6400,
37 as published in September 2004.

38 (4) Has printed on the bag the name of the manufacturer, the
39 location (country) where the bag was manufactured, and the
40 percentage of postconsumer content.

1 ~~(b) “Reusable bag” means a bag that meets both of the following~~
2 (c) (1) *Until a standard is established and enforceable by the*
3 *department, “reusable bag” means a bag that meets both of the*
4 *following requirements:*
5 ~~(1)~~
6 (A) Is designed and manufactured for at least 100 uses.
7 ~~(2) (A)–~~
8 (B) (i) Is made of a washable material that does not contain
9 lead or any other heavy metal in a toxic amount, as determined by
10 the department.
11 ~~(B) The requirement of subparagraph (A)~~
12 (ii) *The requirements of clause (i) shall not affect any authority*
13 *of the Department of Toxic Substances Control pursuant to Article*
14 14 *(commencing with Section 25251) of Chapter 6.5 of Division*
15 20 *of the Health and Safety Code and, notwithstanding subdivision*
16 (c) *of Section 25257.1 of the Health and Safety Code, shall not be*
17 *considered as a product category already regulated or subject to*
18 *regulation.*
19 ~~(e) “Single-use carryout bag” means a bag that meets all of the~~
20 ~~following conditions:~~
21 ~~(1) Is designed for one or more uses, but fewer than 100 uses.~~
22 ~~(2) Is made of plastic, paper, or other material.~~
23 ~~(3) Is provided by a store to a customer at the point of sale.~~
24 (2) *By January 1, 2013, the department shall establish standards*
25 *in regulations that define “reusable bag,” using the standards*
26 *specified in paragraph (1), and any additional durability, material*
27 *content, or labeling requirements. Labeling requirements shall,*
28 *at a minimum, require reusable bags to be imprinted, in a manner*
29 *sufficient to be identifiable and readable, with both of the*
30 *following:*
31 (A) *The name of the reusable bag producer.*
32 (B) *The reusable bag seal or logo, as determined by the*
33 *department, showing compliance with the minimum standards.*
34 (d) *“Reusable bag producer” means either of the following:*
35 (1) *A person or entity that manufactures a reusable bag.*
36 (2) *A person or entity that initially sells or offers for sale or*
37 *distribution a reusable bag in California.*
38 (e) (1) *“Single-use carryout bag” means a bag made of plastic,*
39 *paper, or other material, that is provided by a store to a customer*

1 at the point of sale and that is not a reusable bag, as defined in
2 subdivision (c).

3 (2) A single-use carryout bag does not include either of the
4 following:

5 (A) A bag provided by a pharmacy to a customer purchasing
6 prescription medication.

7 (B) A nonhandled bag used to protect a purchased item from
8 damaging or contaminating other purchased items when placed
9 in a recycled paper bag or reusable bag.

10 ~~(d)~~

11 (f) “Store” means a retail establishment that provides single-use
12 carryout bags to its customers as a result of the sale of a product
13 and that meets any of the following requirements:

14 (1) Meets the definition of a “supermarket” in Section 14526.5.

15 (2) Has over 10,000 square feet of retail space that generates
16 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
17 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
18 Division 2 of the Revenue and Taxation Code) and has a pharmacy
19 licensed pursuant to Chapter 9 (commencing with Section 4000)
20 of Division 2 of the Business and Professions Code.

21 ~~(3) Is a convenience food store or foodmart engaged in retailing
22 a limited line of goods that generally includes milk, bread, soda,
23 and snacks.~~

24 (3) Is a convenience food store, foodmart, or other entity
25 engaged in the retail sale of a limited line of goods that generally
26 includes milk, bread, soda, and snack foods with a Type 20 or 21
27 license issued by the Department of Alcoholic Beverage Control.

28

29 Article 2. Carryout Bag Regulation

30

31 42281. (a) (1) On and after January 1, 2012, a store, as defined
32 in paragraph (1) or (2) of subdivision (f) of Section 42280, shall
33 not provide a single-use carryout bag to a customer at the point of
34 sale.

35 (2) On and after July 1, 2013, a store, as defined in paragraph
36 (1) or (2) of subdivision (f) of Section 42280, shall only provide
37 reusable bags, as defined by subdivision (c) of Section 42280, that
38 meet the requirements of this chapter and standards established
39 by the department.

1 (b) A store shall make reusable bags available for purchase by
2 a customer. A store, as defined in paragraph (1) or (2) of
3 subdivision (f) of Section 42280, may provide reusable bags to
4 customers at no cost.

5 (c) Notwithstanding any other law, a store may provide a
6 customer participating in the California Special Supplemental
7 Food Program for Women, Infants, and Children pursuant to
8 Article 2 (commencing with Section 123275) of Chapter 1 of Part
9 2 of Division 106 of the Health and Safety Code with a reusable
10 bag or a recycled paper bag at no cost.

11 (d) Notwithstanding the requirements of subdivision (a), a store
12 shall make available for sale to a consumer at the point of sale a
13 recycled paper bag at a reasonable cost, but not less than five
14 cents (\$.05), except as provided in subdivision (c).

15 (e) Notwithstanding subdivision (a), because the City and
16 County of San Francisco provides residents with curbside
17 collection of food waste for composting, and has encouraged stores
18 to stock compostable plastic bags to facilitate participation in that
19 program, a store in the City and County of San Francisco may sell
20 to a consumer at the point of sale a compostable plastic bag
21 meeting the American Society for Testing and Materials (ASTM)
22 Standard Specification for Compostable Plastics D6400, as
23 published in September 2004, at a cost not less than five cents
24 (\$.05).

25 42282. Beginning July 1, 2013, a store as defined in paragraph
26 (3) of subdivision (f) of Section 42280 shall comply with the
27 provisions of this article.

28 42283. (a) On or after January 1, 2013, and on or before
29 January 1 every two years thereafter, a reusable bag producer
30 that sells, distributes, or makes a reusable bag available to a store
31 in California, shall submit a certification to the department that
32 each reusable bag meets the requirements of subdivision (c) of
33 Section 42280 and associated standards issued by the department.

34 (b) A reusable bag producer shall submit a fee to the department
35 with each certification pursuant to Section 42284.

36 (c) The department shall provide a system to submit
37 certifications online.

38 (d) The department shall publish a list on its Internet Web site
39 that includes:

1 (1) *The name, location, and appropriate contact information*
2 *of a reusable bag producer in compliance with this chapter.*

3 (2) *The reusable bag product or products in compliance with*
4 *this chapter.*

5 42284. (a) *The fee for the initial certification by a reusable*
6 *bag producer, as defined in subdivision (d) of Section 42280, shall*
7 *not exceed ten thousand dollars (\$10,000) per reusable bag*
8 *producer, as determined by the department. In establishing the*
9 *initial fee, consideration by the department shall include, but not*
10 *be limited to, if provided by a reusable bag producer, the annual*
11 *sales revenue of a participating reusable bag producer, the number*
12 *of employees of the participating reusable bag producer, and the*
13 *number of reusable bag products to be submitted for certification*
14 *by the participating reusable bag producer.*

15 (b) *The fee for biennial certification thereafter shall be two*
16 *thousand dollars (\$2,000). The department may adjust the biennial*
17 *certification fee, not to exceed three thousand dollars (\$3,000) per*
18 *certification, if the department determines that additional fees are*
19 *necessary to support implementation of this chapter. Notification*
20 *of any fee increases shall be provided to certified producers and*
21 *posted on the department's Internet Web site 60 days in advance*
22 *of the fee increase.*

23 (c) *The fees in this section shall not exceed the amount necessary*
24 *to cover the department's reasonable costs associated with the*
25 *implementation of this chapter.*

26 42285. (a) *The department may inspect and audit any entity*
27 *subject to this chapter.*

28 (b) *On or after July 1, 2013, the department may test any*
29 *reusable bag manufactured by a reusable bag producer and*
30 *provided to a store for sale or distribution for compliance with*
31 *this chapter and associated regulations.*

32 (c) *The department may enter into an agreement with other*
33 *state entities that conduct inspections to provide necessary*
34 *enforcement of this chapter.*

35 42286. (a) *Any violation of Section 42281 shall be subject to*
36 *an administrative civil penalty assessed by the department in an*
37 *amount not to exceed five hundred dollars (\$500) for the first*
38 *violation. Subsequent violations may be increased by up to five*
39 *hundred dollars (\$500) per violation, not to exceed five thousand*
40 *dollars (\$5,000) per violation.*

1 (b) Any violation of Section 42283, or any submission of false
2 or misleading information to the department, shall be subject to
3 an administrative civil penalty assessed by the department of up
4 to fifty thousand dollars (\$50,000) per violation, not to exceed an
5 annual total of one hundred fifty thousand dollars (\$150,000).

6 (c) The department shall publish a list on its Internet Web site
7 of any fines or penalties that have been levied against a violator
8 of this section for failure to comply with the requirements of this
9 chapter.

10 42287. (a) The department shall deposit all certification fees
11 paid pursuant to this article into the Reusable Bag Account, which
12 is hereby created in the Integrated Waste Management Fund in
13 the State Treasury. The moneys deposited in the Reusable Bag
14 Account shall be expended by the department, upon appropriation
15 by the Legislature, to assist the department with its costs of
16 implementing this chapter.

17 (b) The department shall deposit all penalties and fines collected
18 pursuant to this article into the Penalty Subaccount, which is
19 hereby created in the Reusable Bag Account, and shall be expended
20 by the department, upon appropriation by the Legislature, to assist
21 the department with its costs of implementing this chapter.

22 42288. The department may adopt regulations that are
23 reasonable and necessary to implement this chapter.
24

25 Article 3. Report and Administration
26

27 ~~42282. (a) On or before January 1, 2015, the department shall~~
28 ~~submit a report to the Legislature regarding the effectiveness of~~
29 ~~this chapter. The report shall also include recommendations to~~
30 ~~further encourage the use of reusable bags by consumers and~~
31 ~~retailers and to reduce the consumption of single-use carryout~~
32 ~~bags, including at a minimum, expanding the definition of stores~~
33 ~~that are subject to this chapter to all other stores and retail~~
34 ~~establishments distributing single-use bags.~~

35 ~~(b) The requirement for submitting a report imposed under~~
36 ~~subdivision (a) is inoperative on January 1, 2019, pursuant to~~
37 ~~Section 10231.5 of the Government Code.~~

38 ~~(c) A report to be submitted pursuant to subdivision (a) shall~~
39 ~~be submitted in compliance with Section 9895 of the Government~~
40 ~~Code.~~

1 ~~42283. The department shall administer and enforce this~~
2 ~~chapter.~~

3
4 *Article 3. Preemption*

5
6 *42289. This chapter is a matter of statewide interest and*
7 *concern and is applicable uniformly throughout the state.*
8 *Accordingly, this chapter occupies the whole field of regulation*
9 *of reusable bags, single-use carryout bags, recycled paper bags,*
10 *or any other bag referred to in this chapter. No city, county, or*
11 *other local public agency may enforce or implement any existing*
12 *or new ordinance, resolution, regulation, or rule on any store as*
13 *defined by this chapter relating to reusable bags, single-use*
14 *carryout bags, recycled paper bags, or any other bag referred to*
15 *in this chapter unless expressly authorized by this division.*