



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	04/23/13	Bill No:	Senate Bill 700
Tax Program:	Plastic Bag	Author:	Wolk
Sponsor:	Author	Code Sections:	PRC Chapter 5.2
Related Bills:	SB 405 (Padilla)	Effective Date:	Upon enactment

This analysis only addresses the provisions of the bill that impact the Board of Equalization (BOE)

BILL SUMMARY

Among its provisions, this bill imposes a \$0.05 charge on each single-use carryout bag provided to a customer making a purchase from a retail establishment.

ANALYSIS

CURRENT LAW

Under current law,¹ sales of non-returnable containers, such as single-use carryout bags, are generally exempt from sales and use tax when they are used to hold customer purchases. However, retail sales of individual bags and containers are subject to the tax.

PROPOSED LAW

Among its provisions,² this bill imposes on each customer making a purchase from a retail establishment a charge of \$0.05 for each single-use carryout bag. A retail establishment must remit the charges collected to the BOE.

A retailer may retain five mills (\$0.005) of each \$0.05 paid. A retailer may also retain an additional \$0.005 of each \$0.05 paid if the retailer does all of the following:

- Credits a consumer at least \$0.05 for each carryout bag provided by the consumer, regardless of whether the bag is paper, plastic, or reusable.
- Prominently advertises at each checkout register the \$0.05 credit a consumer receives if they provide their own bag.
- Reflects the total credit amount on the consumer’s receipt.

The provisions require the retailer to indicate on the receipt the number of single-use carryout bags provided and the total amount of the charge.

The bill excludes the bag charge from “sales price” subject to the sales and use tax.

Definitions. This bill defines "retail establishment" to mean a retail establishment that sells food for consumption on or off premises or that is issued a Type 20 or Type 21 license³ by the Department of Alcoholic Beverage Control (ABC).

¹ Revenue and Taxation Code (RTC) Section 6364 of the Sales and Use Tax Law.

² Chapter 5.2 (commencing with Section 42280) of Part 3 of Division 30 of the Public Resources Code (PRC).

³ See ABC, [Common ABC License Types and their Basic Privileges](#), for a brief description.

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“Reusable grocery bag” means a bag made of cloth or other machine washable fabric that has handles or a durable plastic bag with handles that is at least 2.25 mils thick, contains at least 20% postconsumer recycled material, and is specifically designed for multiple uses.

"Single-use carryout bag" is a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale that is not a “reusable grocery bag.”

Administration. This bill requires the BOE to administer and collect the charge pursuant to the Fee Collection Procedures Law (FCPL).⁴ For purposes of the charge, the bill clarifies that, under the FCPL, “feepayer” includes a consumer or retail establishment.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement. The bill also specifically authorizes the BOE to regulations for the frequency and method of reporting and transmitting the charges collected.

The BOE may retain up to 5% of the charges annually collected for reimbursement of expenses, subject to the Legislature’s appropriation.

Local Environmental Enhancement Fund. All charges collected by the BOE, except those retained by the retailer and BOE, would be deposited in the Local Environmental Enhancement Fund (Fund), which this bill establishes. While the Natural Resources Agency may retain up to 5% of the annual amount deposited in the Fund, the balance is intended for cities’ and counties’ local parks and local programs related to litter reduction and clean up.

Miscellaneous. The bill’s provisions related to single-use carryout bags do not preempt or prohibit any local program or law with regard to the sale or distribution of single-use carryout bags.

Additionally, cities and counties may adopt an ordinance to exempt their jurisdictions from imposing the statewide single-use carryout bag charge that this bill creates.

As a tax levy, this bill would take effect immediately upon enactment but would not take effect if [SB 405 \(Padilla\)](#) is enacted on or before January 1, 2014. SB 405 would prohibit stores from providing single-use carryout bags to customers at the point of sale.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author to fund local parks’ litter and environmental clean-up programs.
- 2. This bill should have a delayed operative date.** This bill takes effect immediately as a tax levy. However, the BOE needs at minimum a six-month delayed operative date from enactment. A delayed operative date provides time to interact with the affected retail industries, assess the need for regulatory actions, and, if necessary, adopt regulations to implement the proposed charge. Within that time the BOE would also perform the necessary administrative start-up tasks. BOE staff suggests that the charge become operative on the first day of the first calendar quarter commencing at least six months following the bill’s effective date.

⁴ RTC Part 30 (commencing with Section 55001).

- 3. Administrative start-up cost funding is essential.** The \$0.05 charge per bag would be imposed upon enactment. As a result, the BOE must begin to implement the bill in fiscal year 2013-14. However, the BOE's 2013-14 budget does not include funding to implement the bill. Consequently, the BOE requires an adequate appropriation to cover administrative implementation costs.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, this bill creates the Fund, which lacks funding to reimburse the BOE prior to collection of the charge. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund (GF) or other eligible fund to the Fund. The loan would be repaid from charges collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed program. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the proposed tax program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

- 4. Impacted retail establishments.** The bill identifies stores that sell food that can be eaten on- or off-premises. This would seem to include grocery stores, restaurants, and any retail store that sells any food for consumption. The bill does not exempt any retailers from collection requirements, including local and state governments, schools, farmer's market or street fair stalls, or non-profit retailers. The bill also does not exempt any plastic bags, such as those used by customers inside stores to package bulk food, produce, meat, and other unpackaged or potentially unsanitary items. Although not defined in this chapter, "food for consumption" probably means food for *human* consumption, as opposed to any type of food that supplies nourishment to non-human organisms (animal or plant). The author may wish to address some of these issues to clarify which retail establishments would need to charge their customers for single-use carryout bags.

Additionally, retailers issued a Type 20 or Type 21 ABC license also need to collect the charge. According to ABC, of their approximately 80 different licenses, there are only two "off-sale" licenses. Off-sale refers to beer, wine, and/or distilled spirits being sold for consumption off the premises where sold. Generally, these retailers are the supermarket and convenience stores.

- 5. Retailer's reimbursement.** Retailers are authorized to retain \$0.005 of the \$0.05 they collect. A retailer may retain an additional \$0.005 under specified circumstances. Therefore, a retailer may retain up to 20% (\$0.01 of the \$0.05 charge) of the bag charge they collect. The additional half-cent (\$0.005) is intended to encourage retailers to credit their customers for bringing in their own shopping bags. Although anecdotal information suggests that certain retail chains offer carryout bag credit programs to their customers, formal reported information was unavailable from the California Retailers Association or the California Grocers Association. The Washington DC Department of the Environment, did not have specific information on retailer participation rates in their carryout bag credit program.

BOE staff would assume that retailers that currently offer a customer carryout bag credit program would continue to offer that credit. However, at this time, we are unable to quantify definitively the impact of the half-cent (\$0.005) incentive on retailers.

6. **The bill needs administrative and collection provisions.** BOE staff suggests technical issues be addressed before the bill becomes law. BOE staff will work with the author's office as the bill progresses through the Legislature. Some of the administrative issues are as follows: (1) the bill should provide that the FCPL reference to "fee" should include the charge imposed by this bill; (2) the bill should establish requirements related to time frame and manner in which charges are reported and paid to the BOE; (3) the bill should include language consistent with the BOE's electronic registration and filing requirements; and (4) language is needed to authorize BOE to prescribe, adopt, and enforce regulations related to the administration and collection of the bag charge, other than regulations that address the frequency and method for reporting and transmitting the charges collected.
7. **Bill requires BOE to track revenues by city or county.** The bill requires BOE to establish a procedure for tracking all revenues deposited in the Fund based on the city or county where the retail establishment is located. The tracking of revenues in such a manner would add complexity and costs to the BOE. In order to track the revenues, the BOE may need to require a retailer with multiple locations to file a separate return for each location. Moreover, it is unclear if revenue tracking by county is to include only the unincorporated areas in the county, or all of the county? How would the revenue for certain retailers be tracked, such as food vendors at a farmers market – especially since they may not be registered with the BOE for sales tax purposes? BOE staff suggests that the retailers be required to report to the BOE the charges collected by city or county.
8. **Other issues that may affect the single-use carryout bag charge program.** This bill does not ban the use of plastic bags. Therefore, it may create fluctuations in plastic bag usage and revenues. The author's office indicates that it used the Washington D.C. "bag tax"⁵ as a model. That model provides certain useful information. According to one article,⁶ the DC bag tax revenue projections missed the mark because business compliance and consumer behavior was overestimated. For example, analyses assumed a reduction in consumer bag usage in response to the fee. However, as the Senate Committee on Environmental Quality explained in its [analysis](#) of SB 700, a subsequent increase in bag usage due to customer apathy and familiarity with the bag fee resulted in a "rebound effect."

Moreover, cities and counties may pass an ordinance to exempt themselves from the statewide bag charge program. According to information available from Californians Against Waste, over 70 local governments have local plastic bag ordinances,⁷ including San Francisco, San Jose, and Los Angeles and Alameda Counties. If certain large local governments opt-out of the statewide program, then revenues may be significantly impacted.

9. **Technical correction.** Subdivision (e) of Section 42281 as it is currently written only addresses use tax and not sales tax. The charge imposed by this bill would not normally be subject to sales tax because it is imposed on the consumer and, although collected by the retailer, would not be included in the retailer's gross receipts.

⁵ Otherwise known as the DC Bag Law, or officially known as the [Anacostia River Clean Up and Protection Act of 2009](#).

⁶ [New Report Examines Failed D.C. Bag Tax](#), by Patrick Gleason, National Review Online, August 23, 2012.

⁷ [Single-Use Bag Ordinances in CA \(updated 03/19/13\)](#), as compiled by Californians Against Waste.

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However, since the provision adds clarity, BOE staff suggests amending Section 42280, subdivision (e), to read: “The charge imposed pursuant to this section is not included in “sales price” under Revenue and Taxation Code section 6011 or “gross receipts” under Revenue and Taxation Code section 6012.

COST ESTIMATE

A detailed cost estimate is pending. However, the BOE would incur substantial costs to (1) identify and notify affected retailers, (2) create a new return, (3) program computer systems, (4) develop regulations, (5) revise manuals and publications, (6) train staff, and (7) answer numerous retailer and public inquiries.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The California Department of Resources Recycling and Recovery estimates Californian’s annual paper and plastic bag usage is 13.261 billion bags. A *Beacon Hill Institute*⁸ study indicated that consumer response to the District of Columbia’s \$0.05 fee resulted in a 67% reduction of carry out bag usage in fiscal year 2011-12.

We assume that all affected retailers will comply with the law and charge \$0.05 per single-use carryout bag. Assuming that California follows trends similar to Washington DC, we estimate bag usage to be 4.376 billion (13.262 X 33 %).⁹

Based on the above bag usage estimate and the proposed charge of \$0.05, the estimated annual revenue amounts to \$218.8 million (4.376 billion x \$0.05 = \$218.8 million). However, assuming all retailers comply with the law, the retailers would be allowed to retain \$0.005 per bag for related costs. The estimated amount of charge revenues retained by retailers would be \$21.9 million (4.376 x \$0.005 = \$21.9 million).

Estimated Full Year Revenue Impact

CA-Plastic Bags Usage	12,033,077,420
CA-Paper Bag Usage	1,228,307,742
Total Plastic and Paper Bag Usage	13,261,385,162
67% Consumer Response	4,376,257,103
Est. charge \$0.05 per bag – Revenue	\$218,812,855
Est. \$0.005 per bag - Retained by retailer	\$ 21,881,286
Grand Total Revenue	\$196,931,570

⁸ [Two Years of the Washington, D.C. Bag Tax: An Analysis](#), The Beacon Hill Institute at Suffolk University, August 2012.

⁹ Assumes a reduction in use of single-use carryout bags of 67%.

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REVENUE SUMMARY

Total revenue is estimated to be \$196.9 million (\$218.8 million - \$21.9 million).

Qualifying Remark. Based on the study done by *Beacon Hill Institute*, bag usage declined by 67% in the first fiscal year. In subsequent years, this percentage declined or had a “rebound effect”. It is estimated that this rebound effect will caused bag usage to increase by 57% by 2016. There is insufficient data to estimate a rebound effect in California.

Additionally, a retailer that meets the requirements for the carryout bag credit program would keep an additional half-cent (\$0.005). The credit program could **reduce** the revenue estimates by as much as \$21.9 million if 100% of retailers met the credit program requirements.

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