

***1053 THE CALIFORNIA PLASTIC BAG BAN: WHERE DO WE GO FROM HERE?**

INTRODUCTION

On September 30, 2014, the Governor of California signed the nation's first statewide ban on single-use bags, including plastic bags. Senate Bill (SB) 270, as of July 1, 2015, will prohibit stores that exceed a designated amount of revenue or retail floor space from providing free single-use bags to customers at the point of sale. The bill also sets the minimum price for reusable bags at ten cents (\$.10) with certain limitations and exceptions.¹

The debate over SB 270 was one of the biggest battles in California's most recent legislative session. While a lot of people in and out of California were cheering for the passage of the bill, others, including plastic bag manufacturers, environment activists and even legislators from both major political parties expressed their concerns about the possible negative effects of the ban.² Both the goal of the legislation and the debate over SB 270 are really focusing on *plastic* bags even though SB 270 regulates "single-use" bags.³ The debate will continue across the country with pending legislations on plastic bag restrictions in other states and cities. This comment mainly discusses the possible environmental effects and economic effects of the plastic bag restrictions found in SB 270, and reveals why such a bag ban is a right move to reduce plastic waste without substantial side-effects.

***1054 I. ENVIRONMENTAL IMPACT OF PLASTIC BAGS AND RELATED REGULATIONS**

Single-use plastic bags make up a large portion of our garbage because we always throw them away. According to the U.S. Environmental Protection Agency, in 2012, 1,020,000 tons of plastic trash bags were produced in the United States.⁴ Researchers suggest that a large number of plastic bags end up in the ocean. Marine debris such as the Great Pacific Garbage Patch comes from plastic bags and plastic water bottles.⁵ Some studies also prove that plastic bags are harmful to marine life, such as the turtle which may accidentally eat plastic bags or be suffocated by them.⁶ In addition, a study of predatory fish in the North Pacific Subtropical Gyre found that many of the chemicals found in plastic bags can make their way into the human digestive system through several commonly consumed fish species.⁷ The study found that 19% of the individuals examined contained some form of marine debris, most of it plastic.⁸

Many jurisdictions have adopted policies regulating the use of plastic bags after becoming aware of the environmental problems caused by plastic bags.⁹ One way to regulate the use of plastic bags is banning deposable plastic bags altogether.¹⁰ For example, New Delhi, India has a blanket plastic bag ban that prohibits sale, storage and use of plastic bags.¹¹ The penalty for violation could be a fine of up to 100,000 rupees (\$1620) or five years in jail.¹² An alternative is imposing a charge or tax for plastic bags.¹³ China, for example, requires stores to charge customers for single-use plastic bags. In 2008, these provisions were expected to save 6 million tons of oil by 2013.¹⁴ Other countries, such as Ireland, ***1055** impose a tax on

single use plastic bags.¹⁵ Irish survey data available for 2013 shows that plastic bags constitute 0.14% of litter pollution produced nationally compared to an estimated 5% prior to the introduction of the levy.¹⁶ Besides plastic bag bans and taxation regimes, some jurisdictions utilized recycling projects.¹⁷ For example, Tucson, Arizona has a plastic bag ordinance that requires retailers provide bins for the collection of plastic bags for recycling.¹⁸ While the recycling project in Tucson has collected a substantial number of plastic bags for recycling, it has not reduced the usage of single-use plastics bags.¹⁹

II. THE CALIFORNIA BAG BAN

The California “plastic bag ban” is really not an accurate name for SB 270.²⁰ In fact, SB 270 is a comprehensive solution for reducing solid waste and other problems caused by plastic bags while simultaneously preventing possible negative effects.²¹

First, SB 270 will not affect California’s economy like the opponents claimed. The bill includes \$2 million dollars in loans for plastic bag manufacturers to shift their operations from producing single use plastic bags to making recycled and reusable plastic bags.²² The alleged unemployment and economic downfall are not likely to happen. Data strongly suggest that in Los Angeles County, a local single-use bag ban encouraged the development of a reusable bag industry and substantially reduced the expense of cleanups.²³ Retailers can also reduce cost in operating their businesses.²⁴

***1056** Second, a ban of single-use bags helps to reduce the production of solid waste and plastic bags related pollution. Similar bag bans have proved effective in reducing single-use bags.²⁵ For example, Los Angeles County experienced a 95% reduction in overall single-use bag usage (both plastic and paper).²⁶ Some people claim that prohibition of plastic bags would lead to more usage of paper bags, which is in general more costly. This misreads SB 270. The bill prohibits all single-use bags including paper bags and requires recycled paper bags to be sold at a minimum of ten cents per bag.²⁷ Moreover, even if consumers opt to buy reusable paper bags because of the ban, paper product has a higher rate of recycling. The statistics provided by the EPA indicate that while the recycling rate of paper product in 2012 is 64.7%, the rate of plastic product is only 8.8%, which is less than 1/7 of the rate of paper product.²⁸

Third, SB 270 also avoids financial burden on citizens. The government will be giving out free reusable bags.²⁹ And the ban also exempts certain customers receive government benefits.³⁰ In addition, people are also worried that reusable bags can cause infection and disease.³¹ However, bacteria are only likely to grow in reusable bags if people do not wash them regularly.³² Tomás Aragón, an epidemiologist at UC Berkeley and health officer for the city of San Francisco, suggests that there is no proof of a nexus between reusable bags and food safety.³³

III. WHERE DO WE GO FROM HERE?

Congress has declared that in the United States, “pollution should be prevented or reduced at the source whenever feasible” and “disposal or other release into the environment should be employed only as a last resort.”³⁴ Plastic bags are only a small portion of the solid waste Americans produce, but this doesn’t mean that Americans don’t need to do anything about it. Recent examples suggest that the single-use plastic bag ban is ***1057** an effective and direct way to reduce plastic debris by helping citizens to develop a habit of bringing their own reusable bags to the grocery stores.³⁵

Moreover, plastic bag bans or taxes could eventually spread from coastal areas to landlocked cities or states due to ecology and environment concerns.³⁶ As more waste is produced everyday, the land available to the disposal of waste is continually shrinking.³⁷ Meanwhile, the number of US landfills has been declining because of regulation.³⁸ In addition, communities always resist having such dumpsites close to their homes.³⁹ The gas emitted from landfills, and possible landfill leaks, are also factors that a state should consider when looking at a plastic bag ban.⁴⁰ Plastic bag bans are becoming a national trend.⁴¹ As the California Governor stated: “We’re the first to ban these bags, and we won’t be the last.”⁴² A plastic ban like SB 270 is by far the most effective way to reduce the usage of disposable bags especially single-use plastic bags.⁴³ It could slowly change people’s habits and encourage the growth of recycling and the reusable product industry.⁴⁴ In addition, the SB 270 legislation is inclusive because it also addresses possible side effects by implementing methods that help manufactures and citizens transition to a disposable-bag-free society.⁴⁵ Hopefully, more jurisdictions will adopt similar bag bans in the near future.

^{a1} Qiying Zhu is a third-year law student at the James E. Rogers College of Law, where she serves an Associate Editor on the Arizona Journal of Environmental Law & Policy. She graduated from the Southwestern University of Finance and Economics, China in 2010 with a LLB and a Bachelor of Arts in English.

¹ 2014 Cal. Legis. Serv. Ch. 850 (S.B. 270) (WEST) [hereinafter SB 270].

² See Press Release, AM. PROGRESSIVE BAG ALLIANCE, STATEMENT FROM THE AMERICAN PROGRESSIVE BAG ALLIANCE ON INTENT TO REPEAL SENATE BILL 270, PRNEWswire (Sept. 30, 2014), <http://www.prnewswire.com/news-releases/statement-from-the-american-progressive-bagalliance-on-intent-to-repeal-senate-bill-270-through-referendum-277618371.html>.

³ See Press Release, SENATOR ALEX PADILLA, SENATOR PADILLA ANNOUNCES KEY SUPPORT FOR STATEWIDE SINGLE-USE PLASTIC BAG BAN (Jan. 24, 2014), http://californianewswire.com/2014/01/24/CNW18790_130807.php/calif-senator-padillaannounces-key-support-statewide-single-use-plastic-bag-ban/.

⁴ ENVTL. PROT. AGENCY, MUNICIPAL SOLID WASTE GENERATION, RECYCLING, AND DISPOSAL IN THE UNITED STATES, TABLES AND FIGURES FOR 2012 (Feb. 2014), available at http://www.epa.gov/osw/nonhas/municipal/pubs/2012_msw_dat_tbls.pdf.

⁵ NAT'L OCEANIC AND ATMOSPHERIC ADMIN., THE GREAT PACIFIC GARBAGE PATCH (June 26, 2014), <http://oceanservice.noaa.gov/podcast/june14/mw126-garbagepatch.html>.

⁶ OCEAN CONSERVANCY, TURNING THE TIDE ON TRASH (2014), <http://www.oceanconservancy.org/our-work/marine-debris/icc-data-2014.pdf>.

⁷ C. Anela Choy & Jeffery C. Drazen, *Plastic for dinner? Observations of Frequent Debris Ingestion by Pelagic Predatory Fishes from the Central North Pacific*, 485 MAR. ECOL. PROG. SER.155 (2013), available at http://www.int-res.com/articles/meps_oa/m485p155.pdf.

⁸ *Id.*

⁹ CAL. AGAINST WASTE, NATIONAL LIST OF LOCAL PLASTIC BAG ORDINANCES [hereinafter *The List*], http://www.cawrecycles.org/issues/plastic_campaign/plastic_bags/national.

¹⁰ SB 270, *supra* note 1.

¹¹ BBC, INDIAN CAPITAL DELHI BANS PLASTIC BAGS (Nov. 23, 2012), <http://www.bbc.com/news/world-asia-india-20457764>.

¹² *Id.*

¹³ Xinhua, *China's Plastic Bag Ban Saves 6m Tons Of Oil*, CHINA DAILY (May 06, 2013), http://www.chinadaily.com.cn/china/2013-05/31/content_16553713.htm.

¹⁴ *Id.*

15 GOV'T OF IR., OFFICE OF REVENUE, Environmental Levy on Plastic Bags,
<http://www.revenue.ie/en/tax/env-levy/environmental-levy-plastic-bags.html>.

16 GOV'T OF IR., DEP'T OF THE ENV'T, Community and Local Government, National Litter Monitoring System Report 2013,
<http://www.envron.ie/en/Publications/Environment/Waste/LitterPollution/FileDownload,38314,en.pdf>.

17 TUCSON, ARIZ., CODE OF ORDINANCES, § 15-60 (2010), [http://www.amlegal.com/nxt/gateway.dll/Arizona/tucson_az/partiitucsoncode/chapter15environmentalservicesdepartment?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:tucson_az\\$sanc=JD_15-60](http://www.amlegal.com/nxt/gateway.dll/Arizona/tucson_az/partiitucsoncode/chapter15environmentalservicesdepartment?f=templates$fn=default.htm$3.0$vid=amlegal:tucson_az$sanc=JD_15-60).

18 *Id.*

19 CITY OF TUCSON, TUCSON'S PLASTIC BAG ORDINANCE, <http://es.tucsonaz.gov/es/tucsonsplastic-bag-ordinance>.

20 SB 270, *supra* note 1.

21 *Id.* ("Single-use carryout bag means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.").

22 *Id.*

23 L.A. CNTY. DEP'T. OF PUB. WORKS, L.A. CARRYOUT BAG ORDINANCE, <http://dpw.lacounty.gov/epd/aboutthebag/>.

24 *Id.*

25 L.A. CNTY. DEP'T. OF PUB. WORKS, *supra* note 23; GOV'T. OF IR., DEP'T OF THE ENV'T, *supra* note 15.

26 L.A. CNTY. DEP'T. OF PUB. WORKS, *supra* note 23.

27 *Id.*

28 ENVTL. PROT. AGENCY, *supra* note 4.

29 SB 270, *supra* note 1.

30 *Id.*

31 Jonathan Klick & Joshua D. Wright, *Grocery Bag Bans and Food Borne Illness*, UNIV. PA. INST. FOR LAW & ECON. RESEARCH PAPER NO. 13-2 (2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2196481.

32 Memorandum from Tomás Aragón, Health Officer to Eileen Shields, Pub. Health Info. Officer of San Francisco Dep't of Pub. Health (Feb. 10, 2013), http://blogs.berkeley.edu/wpcontent/uploads/2013/02/SF-Health-Officer-MEMO-re-Reusable-Bag-Study_V8-FIN1.pdf.

33 *Id.*

34 42 U.S.C. § 13101(b).

35 ENVTL. PROT. AGENCY, REDUCING AND REUSING BASICS, [http:// www2.epa.gov/recycle/reducing-and-reusing-basics](http://www2.epa.gov/recycle/reducing-and-reusing-basics) (“The most effective way to reduce waste is to not create it in the first place”); *see* GOV’T OF IR., DEP’T OF THE ENV’T, *supra* note 16.

36 *See The list, supra* note 9.

37 ENVTL. PROT. AGENCY, *supra* note 32.

38 ENVTL. PROT. AGENCY, LIST OF MUNICIPAL SOLID WASTE LANDFILLS INTRODUCTION, <http://www.epa.gov/wastes/nonhaz/municipal/landfill/intro.pdf> (1995); *Landfills: Hazardous to the Environment*, ZEROWASTEAMERICA.ORG, [http:// www.zerowasteamerica.org/landfills.htm](http://www.zerowasteamerica.org/landfills.htm).

39 Susan Buchanan, *Plaquemines community opposes new landfill permits*, THE LOUISIANA WEEKLY (June 30, 2014), [http:// www.louisianaweekly.com/plaquemines-community-opposes-new-landfill-permits/](http://www.louisianaweekly.com/plaquemines-community-opposes-new-landfill-permits/); Amy Wold, *Alsen residents oppose another landfill*, THE ADVOCATE (Jul. 16, 2013), <http://theadvocate.com/home/6495821-125/alsen-residents-oppose-another-landfill>.

40 *Analyzing Why All Landfills Leak*, RACHEL’S HAZARDOUS WASTE NEWS #116 (Envtl. Research Found., D.C.), Feb. 14, 1989, [http:// www.ejnet.org/rachel/rhwn116.htm](http://www.ejnet.org/rachel/rhwn116.htm).

41 James Larsen & Savina Venkova, *Plastic Bans Spreading in the United States*, EARTH-POLICY.ORG (Apr. 22, 2014), http://www.earth-policy.org/plan_b_updates/2014/update122.

42 Fenit Nirappil, *California Becomes First State To Ban Single-Use Plastic Bags*, HUFFINTON POST (last updated Sep. 30, 2014, 3:01 am), [http:// www.huffingtonpost.com/2014/09/30/california-plasticbag-ban_n_5904766.html](http://www.huffingtonpost.com/2014/09/30/california-plasticbag-ban_n_5904766.html).

43 ENVTL. PROT. AGENCY, *supra* note 34.

44 SB 270, *supra* note 1.

45 *Id.*