

# Concessions of a Shopaholic: An Analysis of the Movement To Minimize Single-Use\* Shopping Bags from the Waste Stream and a Proposal for State Implementation in Louisiana

Rebecca Fromer†

I.	INTRODUCTION .....	494
II.	BACKGROUND .....	496
	A. <i>Single-Use Paper and Plastic Bags: History and Production</i> .....	496
	B. <i>Single-Use Paper and Plastic Bag Waste-Related Issues</i> .....	497
III.	GOVERNMENTAL RESPONSE TO SINGLE-USE BAG WASTE & LEGISLATIVE AND POLICY CHALLENGES TO THESE INITIATIVES.....	500
	A. <i>Local Initiatives Lead the Way</i> .....	502
	1. San Francisco: A Thwarted Tax and A Successful Ban .....	502
	2. Local Initiatives Face Potential State Preemptions .....	502
	3. The Problem with Bans and the Need for Environmental Impact Reports.....	503
	4. Other Local Initiatives.....	506
	B. <i>Statewide Initiatives: A Potential for Success</i> .....	506
	1. Washington D.C.’s Anacostia River Clean Up and Protection Act of 2009 .....	506
	2. Proposals and Potential for Other State Legislative Successes .....	508
	3. Economic Concerns .....	509
	4. Accessibility of Reusable Bags .....	511

---

\* For the purposes of this Comment, I adopt the definition of “single-use bag” utilized by the District of Columbia in its Anacostia River Clean Up and Protection Act of 2009, D.C. Code § 8-102.01 (2001): a bag “of any material, commonly plastic or kraft paper, which is provided to a consumer at the point of sale to carry purchases.”

† © 2010 Rebecca Fromer. J.D. candidate 2011, Tulane University School of Law; B.A., 2005, Brandeis University. The author would like to thank the *Tulane Environmental Law Journal* editorial board for its assistance and Professors David A. Marcello and Oliver Houck for their advice and encouragement. She would also like to thank her family for their endless support.

5. Single-Use Bag Reduction Can Help States  
 Comply with Waste Reduction Mandates ..... 512

C. *A Federal Initiative: The Plastic Bag Reduction Act  
 of 2009*..... 513

IV. CONCLUSION: A CALL FOR LEGISLATION IN THE STATE OF  
 LOUISIANA ..... 514

I. INTRODUCTION

On February 1, 2010, pursuant to the Energy, Climate Change, and Economic Security Act of 2008,<sup>1</sup> the Florida Department of Environmental Protection (FDEP) introduced its Retail Bags Report (Report) to Florida’s Governor, Senate, and House of Representatives to provide a strategy for the reduction of single-use bags.<sup>2</sup> The Report began with a familiar, yet innocuous question: “[P]aper or plastic?” and concluded with a divergent answer: neither.<sup>3</sup> The choice between paper or plastic bags has presented retail customers at the checkout line with a seeming opportunity to choose the environmentally preferable bag.<sup>4</sup> Today, we are confronted with the reality that mass consumption of both plastic and paper creates environmental hazards.<sup>5</sup> The FDEP’s Report acknowledged the continued ubiquity of paper or plastic retail bags at nearly all retail establishments, followed by the rather startling statistic that in 2003, Americans used more than ninety billion of these bags.<sup>6</sup> The report went on to assess the environmental harm caused by retail bags, and the efficacy of other jurisdictions’ regulations aimed at reducing both “the number and impact” of them.<sup>7</sup> Its proposition seems clear: neither single-use bag is an environmentally suitable choice, and instigating a surge in use of reusable bags is necessary.<sup>8</sup> Single-use bags are a pragmatic environmental regulatory target: because their use remains largely uncontrolled, a unique opportunity exists for regulation

---

1. FLA. STAT. § 403.7033 (2008) (mandating FDEP to analyze “the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments”).

2. FLA. DEP’T OF ENVTL. CONSERVATION, *RETAIL BAGS REPORT FOR THE LEGISLATURE* 3 (2010).

3. *Id.* at 19.

4. *See* DANIEL IMHOFF, *PAPER OR PLASTIC?* 8 (2005).

5. *See* Jane Burns, *The Bag that Keeps on Giving: Madison’s Plastic Bag Recycling Law Triggers Renewed Interest in the Reusable Variety*, WIS. ST. J., Jan. 24, 2010, at C1 (“Advocates for paper or plastic cite environmental advantages and disadvantages with each.”).

6. FLA. DEP’T OF ENVTL. CONSERVATION, *supra* note 2, at 1.

7. *Id.* at 4, 8, 10, 29-51.

8. *Id.* at 12.

that will shift consumer habits away from items that are excessive and disposable.<sup>9</sup>

Florida is not the only government to have analyzed policy options for reducing consumption of single-use bags. In at least thirty states, legislators at either the statewide or local level have proposed or enacted legislation to combat the excessive use of single-use bags.<sup>10</sup> Single-use bags, seemingly innocuous carriers received at checkout, often doubled within one another,<sup>11</sup> have become the subject of heated discussion, both within the legislature, and among consumers worldwide. Single-use bags have a “propensity to become litter,”<sup>12</sup> and their regulation offers a potential source of revenue for needed environmental improvement projects.<sup>13</sup>

Legislatures at multiple levels have begun to devise creative ways to reduce the production and dissemination of these bags because of their widespread, unbridled use. In addition to the environmental benefits that single-use bag reduction would ultimately create, “[a]ccelerating the widespread use of reusable bags will . . . redirect environmental preservation efforts and resources towards ‘greener’ practices.”<sup>14</sup> This Comment explores these recent legislative attempts in an effort to illuminate the most advantageous and potentially successful methodology for combating the excessive production and consumption of single-use bags.

Part II of this Comment provides a background of waste-related problems and identifies single-use bag waste as an issue worthy of particularized attention; Part III examines local, statewide, and federal governmental initiatives that have attempted to minimize single-use bag waste, and addresses certain legal and policy challenges arising from these programs; Part IV concludes with an appeal for legislation in the state of Louisiana that would reduce single-use bags, and provide revenue for a much-needed comprehensive recycling program.

---

9. See generally Emily Long, *Solid Waste: D.C. Officials Say Bag Tax Will Help River Cleanup*, GREENWIRE, Jan. 18, 2010, art. 13 (“The benefit of a tax is that it can be applied widely across products, ‘highlighting the problem of disposables in general’ . . .” (quoting Darby Hoover, Senior Resource Specialist at the Natural Resources Defense Council)).

10. FLA. DEP’T OF ENVTL. CONSERVATION, *supra* note 2, at 13.

11. Californians for Extended Producer Responsibility, *The Carryout Bag EPR Program* (2009), <http://www.californians4epr.com/Waste-reduction.html>.

12. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *AN OVERVIEW OF CARRYOUT BAGS IN LOS ANGELES COUNTY* 3 (2007).

13. See Comment, *Tax Plastic Bags To Curb Their Use*, BELFAST TELEGRAPH, Feb. 2, 2010, at 26 (noting that Ireland’s plastic bag tax raised over 109 million pounds for environmental initiatives).

14. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 1.

## II. BACKGROUND

A. *Single-Use Paper and Plastic Bags: History and Production*

Not until the 1980s did plastic bags become a commonplace alternative to paper bags for consumers making purchases at retail and grocery stores.<sup>15</sup> Previously, paper bags were customers' single option for a complimentary retail tote.<sup>16</sup> However, throughout the 1970s, federal environmental regulation emerged that publicized many previously undiscussed environmental concerns, including that of the rapid degradation of American forests.<sup>17</sup> Awareness of paper bag manufacturing's impact on this degradation, coupled with a decline in the cost of plastic, expanded the presence of plastic bags in retail stores.<sup>18</sup>

Paper bags are the result of a manufacturing process that often begins with the clear-cutting of forests, a process by which an entire multilayer plot of forest is razed to clear the land for rapid and mechanized replanting of a single crop of trees.<sup>19</sup> This process can annihilate a panoply of plant and animal species as their habitats are destroyed, eliminate forest growth that previously absorbed water and prevented polluted runoff, and increase the forests' susceptibility to disease outbreaks that would not have destroyed an entire forest at a time when its ecosystem was varied.<sup>20</sup> Once timber is cut, large amounts of energy must be exerted to grind the wood, bleach it with frequently carcinogenic compounds, and further process it.<sup>21</sup> Although wood is theoretically "renewable," the degradation that results from clear-cutting inevitably leads to permanent environmental losses.<sup>22</sup> "Paper consumption grows far faster than [tree] population[s]."<sup>23</sup> The average American consumes nearly seven hundred pounds of paper per year.<sup>24</sup>

---

15. Burns, *supra* note 5.

16. Jennie Reilly Romer, *The Evolution of San Francisco's Plastic-Bag Ban*, 1 GOLDEN GATE U. ENVTL. L.J. 439, 442 (2007).

17. *See id.*; 42 U.S.C. § 4331(a) (2006) (noting in policy section of National Environmental Policy Act the impacts of "resource exploitation" on the natural environment).

18. Romer, *supra* note 16, at 442.

19. Collin Dunn, Paper Bags or Plastic Bags? Everything You Need To Know (2008), <http://www.treehugger.com/files/2008/07/paper-bags-or-plastic-bags-everything-you-need-to-know.php>.

20. DERRICK JENSEN & GEORGE DRAFFAN, STRANGELY LIKE WAR: THE GLOBAL ASSAULT ON FORESTS 32-37 (2003).

21. IMHOFF, *supra* note 4, at 8.

22. *Id.*

23. JENSEN & DRAFFAN, *supra* note 20, at 122.

24. *Id.*

The plastic bag<sup>25</sup> manufacturing process presents an alternative challenge. The process includes a series of steps, beginning with the heating of chemical chains called polymers.<sup>26</sup> To “polymerize” “polyethylene”—the plastic comprising those bags familiar to us—natural gas and petroleum are processed to form plastic resin; the resin is continually heated, and then shaped and cut to form bags.<sup>27</sup> Because “low-density polyethylene” requires huge amounts of resin, the plastics industry is particularly dependent upon the availability of oil.<sup>28</sup> Currently, the plastic bag manufacturing industry is the third largest industry in the country.<sup>29</sup> Between five hundred billion to one trillion “petroleum-based plastic bags are used each year, which equals over one million per minute, the production and use of which uses over 12 million barrels of oil.”<sup>30</sup>

*B. Single-Use Paper and Plastic Bag Waste-Related Issues*

In 2008, Americans produced nearly two hundred fifty million tons of trash.<sup>31</sup> This is equivalent to .82 tons,<sup>32</sup> or 1640 pounds, of trash per person, per year.<sup>33</sup> The generation, disposal, and decomposition of this quantity of waste negatively impacts the environment; indeed, “studies have shown that waste reduction can achieve 7% of the greenhouse gas emission reductions needed to put us on the path to stabilize the climate by 2050.”<sup>34</sup> Although the advent of recycling programs throughout the country has reduced the tonnage of municipal solid waste entering United States landfills, the solid waste generated per person per day has

---

25. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 17. For the remainder of this Comment, “plastic bag” refers to the two primary types of single-use carryout plastic bags offered by retailers nationally: HDPE 2, which is more lightweight and offered most often by grocers, and LDPE 4, a heavier bag usually offered by retail stores.

26. JACOB LIEDNER, *PLASTICS WASTE: RECOVERY OF ECONOMIC VALUE* 5, 7 (Donald E. Hudgin ed., 1981).

27. *Id.*

28. *Id.* at 3 (“The oil crisis of 1974 showed how vulnerable the plastics industry is to the disruptions of the oil supply.”).

29. The Plastics Indus. Trade Ass’n (SPI), About SPI, <http://www.plasticsindustry.org/aboutspi/?navItemNumber=1009> (last visited Apr. 6, 2010).

30. BERKELEY, CAL., MUN. CODE § 11.37.010(B)(1) (2009).

31. U.S. ENVTL. PROT. AGENCY (EPA), MUNICIPAL SOLID WASTE GENERATION, RECYCLING, AND DISPOSAL IN THE UNITED STATES: FACTS AND FIGURES FOR 2008, at 1 (2008).

32. Population Reference Bureau, 2008 World Population Data Sheet (2010), <http://www.prb.org/Publications/Datasheets/2008/2008wpds.aspx>.

33. The per-person amount was calculated by dividing total U.S. population by total 2008 annual trash production.

34. Waste Reduction, <http://www.greencitiescalifornia.org/waste-reduction> (last visited Feb. 20, 2010).

only increased, greatly due to our “throwaway culture.”<sup>35</sup> It is therefore imperative that producers and consumers shift to a lifestyle that advocates and supports sustainable and reusable goods.

Although single-use bags do not comprise a large percentage of total solid waste,<sup>36</sup> “Americans used almost 90 billion retail bags” in 1993.<sup>37</sup> While it might seem counter-intuitive to focus on the need for reduction of an item that is arguably a small portion of the municipal waste stream, single-use bag manufacturing represents an issue broader in scope: the need for a diversion from mass utilization of disposable goods, and towards sustainable consumption. In addition to environmental challenges such as global warming that are arguably larger in scope, “[i]t is equally important that we address manageable basic issues as well as the looming, daunting challenges.”<sup>38</sup> A more progressive approach to reducing the waste stream is crucial, and guiding consumers away from disposable bags and towards reusable bags is a realistic step in the right direction.

“The problem with plastic bags isn’t just where they end up, it’s that they never seem to end.”<sup>39</sup> Because the decomposition process for plastics utilizes solar radiation to “photo-degrade” the plastic, or to continually corrode the plastic into small pieces, when plastic bags come to rest in marine ecosystems that lack direct sunlight, decomposition is nearly unattainable.<sup>40</sup> Research shows that “plastics do not ever fully ‘go away,’” but rather tear and degrade into small and toxic “microplastics.”<sup>41</sup> The pieces absorb and concentrate additional chemicals such as Polychlorinated Byphenyl (PCBs), and are subsequently ingested and passed through the food chain.<sup>42</sup> Although it is difficult for researchers to

---

35. EPA, *supra* note 31, at 2 (finding an increase from “3.66 to 4.50 pounds per person per day between 1980 and 2008”); Charlie Devereux, *Disposing of Our Throwaway Culture*, CNN, Mar. 17, 2008, <http://edition.cnn.com/2008/WORLD/europe/03/12/throwaway.culture/index.html> (“The side effects of our throwaway society are ever-larger waste mountains festering with toxic chemicals and the depletion of natural resources such as rare metals . . .”)

36. *E.g.*, L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 2-3 (stating that 0.4% of Los Angeles’ yearly twelve million ton solid waste disposal rate was comprised of plastic bags, while 1% of the total is from paper bags).

37. David Royse, *DEP: Discourage Use of Paper and Plastic Bags: The State Agency Stopped Short of Recommending a Ban in Florida*, LEDGER (Fla.), Feb. 2, 2010, at B4; *see also* Assem. B. 1643, 214th Legis. (N.J. 2010).

38. IMHOFF, *supra* note 4, at 6.

39. Katharine Mieszkowski, *Plastic Bags Are Killing Us*, SALON, Aug. 10, 2007, available at [http://www.salon.com/news/feature/2007/08/10/plastic\\_bags](http://www.salon.com/news/feature/2007/08/10/plastic_bags).

40. Nat’l Oceanic & Atmospheric Admin., *Plastic Marine Debris: What We Know*, <http://marinedebris.noaa.gov/info/plastic.html> (last visited Apr. 10, 2010).

41. *Id.*

42. ‘Microplastics’ May Pose Previously Unrecognized Pollution Threat, SCIENCE DAILY, Nov. 2, 2007, <http://www.sciencedaily.com/releases/2007/10/071029092034.htm>.

quantify precisely how many plastic bags pollute our waters, or the specific damage that these bags have created, it is known that plastics can entangle wildlife, destroy habitats, and become ingested by species that are subsequently fished and eaten by consumers.<sup>43</sup> Additionally, plastic bags are lightweight and aerodynamic, so they easily become litter, which in turn requires cleanup that passes additional costs on to taxpayers.<sup>44</sup> Even when placed in disposal bins, plastic bags frequently end up landing in public spaces.<sup>45</sup> In South Africa, before banning plastic bags, plastic bag litter was so pervasive that people referred to it as “the new national flower.”<sup>46</sup>

Although many plastic single-use bags are recyclable, few facilities accept plastic bags.<sup>47</sup> Those facilities that do recycle plastic bags face challenges: the bags often end up attached to other recyclable items, interfering with recycling machinery, or have to be disposed before processing because of contamination from prior use.<sup>48</sup> It is estimated that approximately 90% of single-use plastic bags that reach recycling facilities end up at landfills.<sup>49</sup> Even in California, where bag recycling programs have existed in retail stores for over ten years, “less than 2% of all plastic bags” are being recycled.<sup>50</sup> Few facilities undertake plastic bag recycling because it has little economic value.<sup>51</sup> In 2007, *The Christian Science Monitor* reported that according to Jared Blumenthal, then-Director of San Francisco’s Department of the Environment, recycling one ton of plastic bags costs \$4000 to process, yet the processed plastic is “sold on the commodities market for \$32.”<sup>52</sup>

---

43. Nat’l Oceanic & Atmospheric Admin., Impacts of Marine Debris: Habitat Damage, <http://marinedebris.noaa.gov/info/impacts.html#habitat> (last visited Apr. 6, 2010); *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 105 Cal. Rptr. 3d 41, 50 (Cal. Ct. App. 2010); Jim Ash & Jim Waymer, *State Studies Tax, Eventual Ban of Paper, Plastic Bags*, FLA. TODAY, Jan. 18, 2010, at A1.

44. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 4.

45. *Id.*

46. *South Africa Bans Plastic Bags*, BBC NEWS, May 9, 2003, available at <http://news.bbc.co.uk/2/hi/africa/3013419.stm>.

47. *E.g.*, L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 2 (“[A]pproximately 45,000 tons of plastic carryout bags are disposed by residents countywide each year.”).

48. *Id.*

49. *Id.* at 21.

50. Romer, *supra* note 16, at 445.

51. *See id.*

52. Ben Arnoldy, *Seldom Recycled, Plastic Grocery Bags Face Bans in S.F.*, CHRISTIAN SCI. MONITOR, Mar. 29, 2007, available at <http://www.csmonitor.com/2007/0329/p01s03-ussc.html?page=2>.

Certain retail stores, such as Safeway Inc., maintain recycling bins into which customers can dispose of their plastic bags.<sup>53</sup> While such stores' intent is admirable, some believe that increasing bag recycling programs would be counterproductive: arguably, increasing the amount of plastic bag recycling, particularly through increased curbside recycling programs, could make this packaging "seem more environmentally friendly [and] people may feel comfortable buying more."<sup>54</sup>

As some jurisdictions have resorted to legislation aimed at reducing plastic (but not paper) bag waste, it is important to consider that "plastic bans [may be] a bad idea if the alternative is paper bags."<sup>55</sup> Paper bags may be heavier than plastic bags, thus less aerodynamic, and more easily and frequently recycled,<sup>56</sup> yet the paper bag manufacturing process hosts its own set of environmental problems.<sup>57</sup> Although many paper bags are composed of recycled materials,<sup>58</sup> these bags do not address the important goal of limiting excess waste from its source. After all, "[i]t takes 14 million trees to produce the 10 billion paper grocery bags used every year by Americans, according to the Natural Resources Defense Council."<sup>59</sup>

It is no longer a question of paper versus plastic, but rather how single-use bags as a whole can be reduced from our waste stream. Not only will proper legislation effectuate the use of reusable bags, but it can also drastically reduce the amount of disposable waste. Thus, throughout this Comment, I will focus primarily on legislation that aims to reduce both plastic *and* paper bags.

### III. GOVERNMENTAL RESPONSE TO SINGLE-USE BAG WASTE & LEGISLATIVE AND POLICY CHALLENGES TO THESE INITIATIVES

In 2002, Ireland's Minister for the Environment, after determining that plastic carryout bag consumption was creating immense litter problems for the country, imposed the PlasTax: a twenty-cent tax per

---

53. Steve Painter, *3 Wal-Marts Testing Purge of Plastic Bags, California Option Is 15¢ Reusable Model*, ARK. DEMOCRAT-GAZETTE, Jan. 24, 2010, at E1.

54. Plastics Task Force: Seven Misconceptions About Plastic and Plastic Recycling, <http://www.ecologycenter.org/ptf/misconceptions.html> (last visited Feb. 20, 2010).

55. Painter, *supra* note 53.

56. L.A. COUNTY'S PLASTIC BAG WORKING GROUP, *supra* note 12, at 31.

57. *See supra* note 19 and accompanying text.

58. *E.g.*, Bruce Horovitz, *Whole Foods Sacks Plastic Bags*, USA TODAY, Jan. 22, 2008, available at [http://www.usatoday.com/money/industries/food/2008-01-21-whole-foods-bags\\_N.htm](http://www.usatoday.com/money/industries/food/2008-01-21-whole-foods-bags_N.htm) (reporting that Whole Foods has ceased offering disposable plastic bags, and complimentary paper bags are made of 100% recycled paper).

59. Mieszkowski, *supra* note 39.

plastic carryout bag to curb their consumption.<sup>60</sup> Ireland was the first country to introduce such a tax, and its effect was immediate: within a year plastic bag use dropped by 90%.<sup>61</sup> Ireland increased the tax to 25 cents per bag in 2007.<sup>62</sup> The tax raised 109 million pounds in revenue, earmarked for expenditure on environmental measures.<sup>63</sup>

Following Ireland's lead, in 2005, the Scottish government produced a report to consider a levy on plastic single-use bags. The study looked at eight potential environmental impacts, ranging from nonrenewable energy consumption to risk of litter, and the effects that several policy actions, including taxes assessed on plastic, paper, or both, would produce.<sup>64</sup> The study's results showed that "the biggest environmental improvement is seen . . . where paper bags are included in the levy."<sup>65</sup> Although Scotland has not yet imposed a countrywide tax on single-use bags, at least one town within Scotland has banned plastic bags.<sup>66</sup>

Throughout the world, many governments have banned or imposed per-bag fees on plastic bags.<sup>67</sup> A domino effect has occurred, as jurisdictions looking to impose a ban or fee of single-use bags now have "ample precedent."<sup>68</sup> It seems the current trend is to address both paper and plastic bags within reduction ordinances and prompt a shift toward reusable bags by making them a more desirable alternative.

Governmental focus on increasing the use of reusable bags would provide environmental and economic benefits to consumers, retailers, and the environment alike: utilizing reusable bags "conserve[s] energy and natural resources, reduce[s] the total volume of waste disposed in landfills, diminish[es] plastic bag litter, and invite[s] citizens to actively participate in practices that promote a clean and sustainable environment."<sup>69</sup> When grocers purchase single-use bags, these costs are passed along to consumers and from then on are saved by the utilization of reusable bags.<sup>70</sup> Additionally, purchasing reusable bags supports

---

60. SCOTTISH EXECUTIVE ENV'T GROUP, PROPOSED PLASTIC BAG LEVY—EXTENDED IMPACT ASSESSMENT 7 (2005).

61. See Comment, *supra* note 13.

62. *Id.*

63. *Id.*

64. SCOTTISH EXECUTIVE ENV'T GROUP, *supra* note 60, at 48.

65. *Id.* at 31.

66. FLA. DEP'T OF ENVTL. CONSERVATION, *supra* note 2, at 50.

67. Painter, *supra* note 53 (noting bans in Bangladesh, France, Italy, and China).

68. H.B. 2645, 25th Legis. (Haw. 2010) (noting "several countries, international cities, domestic cities and counties" that have already discouraged or banned certain plastic and paper checkout bags).

69. L.A. COUNTY'S PLASTIC BAG WORKING GROUP, *supra* note 12, at 5.

70. *Id.*

businesses that utilize sustainable practices. Perhaps with consumer support, manufacturers will increase their development of reusable and sustainable products. Indeed, Los Angeles' 2007 Report entitled *Carryout Bags in Los Angeles County* concluded that "accelerating the widespread use of reusable bags will diminish plastic bag litter and redirect environmental preservation efforts and resources towards 'greener' practices."<sup>71</sup> The *Wall Street Journal* reported in 2008 that "reusable totes [are] the nation's fastest-growing fashion accessory, with sales this year up 76% to date over last year."<sup>72</sup>

#### A. Local Initiatives Lead the Way

##### 1. San Francisco: A Thwarted Tax and A Successful Ban

San Francisco was the first city in the United States to successfully impose a ban on single-use bags.<sup>73</sup> Inspired by the success of Ireland's ban, San Francisco initially tried in 2005 to impose a seventeen-cent tax on each single-use bag.<sup>74</sup> However, the city's taxing scheme was thwarted when plastics groups pressured the Department of the Environment to abandon the tax.<sup>75</sup> Around the same time, California Governor Arnold Schwarzenegger faced similar pressure; he signed into law Assembly Bill 2449, the Plastic Bag and Litter Reduction Act, which prohibited localities from setting plastic carryout bag fees.<sup>76</sup> The city signed an agreement with local grocers, and instead implemented a ban on plastic bags and a requirement that paper bags contain a minimum recyclable content.<sup>77</sup>

##### 2. Local Initiatives Face Potential State Preemptions

San Francisco's inability to implement its desired per-bag tax reflects the challenges that local jurisdictions face when states preempt their power to tax. Additionally, it provides an argument in favor of statewide fee implementation. In fact, Berkeley, California's Department of Public Works Web site explicitly states that its proposed "ordinance

---

71. *Id.* at 1.

72. Ellen Gamerman, *An Inconvenient Bag*, WALL ST. J., Sept. 26, 2008, available at <http://online.wsj.com/article/SB122238422541876879.html>.

73. Charlie Goodyear, *S.F. First City To Ban Plastic Shopping Bags*, S.F. CHRON., Mar. 28 2007, available at [http://articles.sfgate.com/2007-03-28/news/17235798\\_1\\_compostable-bags-plastic-bags-california-grocers-association](http://articles.sfgate.com/2007-03-28/news/17235798_1_compostable-bags-plastic-bags-california-grocers-association).

74. Romer, *supra* note 16, at 451.

75. *Id.* at 454.

76. Assem. B. 2449, Gen. Assem. Reg. Sess. (2006).

77. Romer, *supra* note 16, at 454.

establishes a ban rather than a fee on plastic carryout bags, because current California state law prohibits local jurisdictions from placing a fee on plastic bags.”<sup>78</sup>

California is not the only state to have proposed or passed preemptive legislation. The Florida Legislature took a similar measure when it passed the Climate Change and Economic Security Act of 2008, which prohibited local Florida governments from passing bag bans until state legislators could further study the issue, which culminated in FDEP’s report.<sup>79</sup> Local governments in Connecticut would be similarly preempted by the passing of H.B. 5215.<sup>80</sup> Fortunately, Connecticut’s act would not affect jurisdictions that have already implemented bans, which is significant for towns such as Westport that currently have a successful bag ban.<sup>81</sup>

### 3. The Problem with Bans and the Need for Environmental Impact Reports

If cities are preempted from implementing taxes on single-use bags, they may turn to bans as a feasible alternative. However, a ban of one type of single-use bag can lead to an increase in a single-use bag of an alternative material. California cities, preempted from implementing local taxing schemes on single-use bags pursuant to California A.B. 2449 (which effectively prohibited local communities and counties from doing so), have resorted to bans as the next available reduction alternative.<sup>82</sup> Unfortunately, such materials-based bans have resulted in further legal and environmental problems for communities. Following San Francisco’s plastic bag ban, the editors of the Use Less Stuff Report analyzed four studies on the environmental efficacy of banning plastic bags versus paper bags, and concluded that “while the data appear[s] to indicate that paper and compostable plastic bags may account for less litter, data also indicates that this finding is offset by the increased

---

78. Dep’t of Pub. Works, City of Berkeley, Proposed Bag Reduction Ordinance, <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=44530> (last visited Feb. 20, 2010).

79. Jim Ash & Jim Waymer, *State Studies Tax, Eventual Ban of Paper, Plastic Bags*, FLA. TODAY, Jan. 18, 2010, at A1.

80. H.B. 5215, Jan. Sess. (Conn. 2009) (prohibiting municipalities from adopting ordinances that restrict retail use of plastic or paper bags).

81. Westport, Conn., Retail Checkout Bags Ordinance (Sept. 2, 2008).

82. *E.g.*, S.F., CAL., ENV’T CODE ch. 17, §§ 1701-1709 (2007).

environmental impacts these bags produce versus traditional plastic bags.”<sup>83</sup>

Capturing this argument, Save the Plastic Bag Coalition (STPBC), an industry lobbying group for the American Chemistry Council, launched an extensive campaign to halt the proliferation of plastic bag bans in California.<sup>84</sup> Its primary tactic has been to force those local governments proposing plastic bag bans to draft environmental impact reports on the bans’ effects pursuant to the California Environmental Quality Act.<sup>85</sup> STPBC has already frozen efforts by ten California cities to ban plastic bags.<sup>86</sup> Most recently, on January 27, 2010, the Second District Court of Appeal in Los Angeles invalidated Manhattan Beach’s proposal for a plastic bag ban, holding that the town was required to conduct an environmental impact report before implementing the ban. STPBC argued that preparation of an environmental impact report would have revealed that a ban on plastic bags would “inevitably result in increased use of paper bags,” which they argued “are worse for the environment.”<sup>87</sup>

Because paper bags were not banned by Manhattan Beach’s ordinance, a subsequent increase in paper use had the potential to create “greater nonrenewable energy and water consumption, greenhouse gas emissions, solid waste production, and acid rain.”<sup>88</sup> Oakland and Fairfax, California adopted ordinances banning plastic bags, but both faced lawsuits by the Coalition to Support Plastic Bag Recycling.<sup>89</sup> Fairfax,

---

83. USE LESS STUFF REPORT, REVIEW OF LIFE CYCLE DATA RELATING TO DISPOSABLE, COMPOSTABLE, BIODEGRADABLE, AND REUSABLE GROCERY BAGS 4 (Robert Lilienfeld ed., 2007), [http://www.deq.state.mi.us/documents/deq-ess-p2-recycling-PaperPlasticsummary\\_2.pdf](http://www.deq.state.mi.us/documents/deq-ess-p2-recycling-PaperPlasticsummary_2.pdf).

84. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 105 Cal. Rptr. 3d 41, 46 (Cal. Ct. App. 2010) (“Plaintiff [STPBC] alleged it is an unincorporated association of plastic bag manufacturers, distributors, and others . . . formed to counter myths, misinformation and exaggerations about plastic bags by various groups purporting to promote environmental quality and to require governmental agencies to comply with the California Environmental Quality Act before banning plastic bags.”); Mike Verespej, *Two Calif. Bag Bills Shut Down in Committee*, PLASTICS NEWS, Feb. 1, 2010, at 12.

85. *Save the Plastic Bag Coal.*, 105 Cal. Rptr. 3d at 44.

86. See Mike Verespej, *LA Court Sides with Bag Makers on Ban*, WASTE & RECYCLING NEWS, Feb. 15, 2010, at 11 (noting that Save the Plastic Bag Coalition has “forestalled plastic bag bans in Encinitas, Oakland, Los Angeles County, Santa Clara County, San Diego, Santa Monica, Morgan Hill, Mountain View and San Jose”).

87. *Save the Plastic Bag Coal.*, 105 Cal. Rptr. 3d at 46.

88. *Id.* at 58.

89. *Coal. To Support Plastic Bag Recycling v. City of Oakland*, No. RG07339097 (Super. Ct. Alameda 2007); *N. Bay Coal. To Support Plastic Bag Recycling v. Town of Fairfax*, No. CV074051 (Super. Ct. Marin 2007); see also *Banning Plastic Bags Is ‘Bad’ for the Environment?*, <http://www.natural-environment.com/blog/2008/01/31/banning-plastic-bags-is-bad-for-the-environment> (last visited Feb. 20, 2010).

however, succeeded in implementing the ordinance by a ballot initiative.<sup>90</sup> Other California cities contemplating bans on single-use plastic bags have been threatened with lawsuits by Save the Plastic Bag Coalition.<sup>91</sup>

Although *Plastics News* called the Second District's holding "a serious blow to communities looking to implement plastic bag bans in California,"<sup>92</sup> this holding can serve as a beneficial lesson for communities hoping to avoid legal challenges to their own potential bag reduction ordinances: bag bans should not address one type of single-use bag. Indeed, the Court in *Save the Plastic Bag Coalition* stated "that an environmental impact report must be prepared" because there was a "fair argument" that the proposed project might create a "significant environmental impact."<sup>93</sup>

A jurisdiction intending to implement a ban should take the precautionary measure of conducting an environmental impact report (EIR) pursuant to the state's environmental mandates. Because facilitating this environmental review is an expensive undertaking, Green Cities California (GCC), a coalition of nine California cities and Marin County, initiated a "master environmental assessment" (MEA) of the environmental impacts of plastic bag bans, so that this research and analysis will not have to be repeatedly expended by cities that wish to impose a bag ban and need to carry out the requisite EIR.<sup>94</sup> On March 8, 2010, GCC released its MEA, which detailed the potential impacts of single-use bags, and regulatory tools for minimizing their use.<sup>95</sup> It also suggested that "reusable bags have significantly lower environmental impacts" than single-use bags.<sup>96</sup> Carol Misseldine, coordinator of Green Cities California, predicts that the MEA will result in a cascade of single-use bag bans in California, because its content will be so useful to

---

90. Sustainable Fairfax, *Plastic Bag Ban Is On!*, <http://www.sustainablefairfax.org/content/view/199/4/> (last visited Feb. 20, 2010).

91. Mike Verespej, *Calif. Report May Encourage Single-Use Bag Bans*, PLASTIC NEWS, Mar. 9, 2010, available at <http://www.plasticsnews.com/headlines2.html?id=18049&channel=117>.

92. See Verespej, *supra* note 86.

93. *Save the Plastic Bag Coal.*, 105 Cal. Rptr. 3d at 57 ("[I]ncreased use could have negative environmental effects including . . . power plant, paper mill and recycling plant emissions, traffic involved in shopping paper bags to retail establishments; and emissions from trucks carrying heavier, bulkier paper bags.").

94. Telephone Interview with Carol Misseldine, Coordinator, Green Cities California (Feb. 12, 2010); GREEN CITIES CAL., MASTER ENVIRONMENTAL ASSESSMENT ON SINGLE-USE AND REUSABLE BAGS 1 (Mar. 2010), [http://www.greencitiescalifornia.org/sites/all/modules/green\\_cities\\_library/images/MEA.Single%20%Use%20Bags.pdf](http://www.greencitiescalifornia.org/sites/all/modules/green_cities_library/images/MEA.Single%20%Use%20Bags.pdf). MEA includes data that will ultimately be included in a final EIR. GREEN CITIES CAL., *supra*, at 1.

95. GREEN CITIES CAL., *supra* note 94, at 1.

96. *Id.* at 2.

localities:<sup>97</sup> “Since an EIR is prohibitively expensive, particularly for small cities, the MEA will dramatically decrease the cost of an EIR and will facilitate fees and bans on single use bags.”<sup>98</sup>

#### 4. Other Local Initiatives

Many other cities have proposed or are considering bans or fees on single-use bags. It would behoove these localities, particularly those in California that can benefit from the release of the MEA, to include paper should they choose to effectuate bans. Los Angeles County’s Plastic Bag Working Group has already conducted a Carryout Bags Report that assessed potential bag bans, and proposed measures to supplement the chosen alternative, including a “comprehensive public education campaign.” The campaign would track the progress of single-use bag consumption by the Plastic Bag Working Group, partnering with retail stores, attempting to repeal AB 2449’s prohibitory provision denying localities the right to impose fees, and urging a statewide fee.<sup>99</sup>

Berkeley’s proposed ordinance addressed both paper and plastic bags. It states: “Paper versus plastic is not the issue addressed by this ordinance. Rather it is to urge Berkeley residents and visitors to the City to avoid single-use bags altogether in favor of reusable bags when purchasing goods.”<sup>100</sup> Additionally, the ordinance would mandate that the twenty-five-cent fee be reviewed by the city council every two years “to judge its effectiveness.”<sup>101</sup> “[S]ome sort of action is an agenda item in seemingly every boardroom and city hall across the U.S., according to Vincent Cobb, founder of Chicago, Illinois-based Reusablebags.com.”<sup>102</sup>

#### B. *Statewide Initiatives: A Potential for Success*

##### 1. Washington D.C.’s Anacostia River Clean Up and Protection Act of 2009

Legislators in several states have proposed legislation that would effectively tax single-use bags to reduce their consumption, carrying out what states have arguably deemed a “compelling interest in protecting

---

97. *Id.*

98. About Green Cities California, <http://www.greencitiescalifornia.org/about-green-cities-california> (last visited Feb. 20, 2010).

99. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 9.

100. *Id.*

101. *Id.*

102. John Roach, *Plastic-Bag Ban Gaining Momentum Around the World*, NAT’L GEOGRAPHIC NEWS, Apr. 4, 2008, available at <http://news.nationalgeographic.com/news/2008/04/080404-plastic-bags.html>.

[their] precious natural environment by decreasing the amount of waste that flows into [their] landfills.”<sup>103</sup> Washington D.C. is currently the only jurisdiction to have successfully implemented such legislation.<sup>104</sup> North Carolina has passed legislation that bans plastic bags, but its scope is limited only to the delicate barrier islands.<sup>105</sup>

Washington D.C.’s Act, known as the Anacostia River Clean Up and Protection Act of 2009, mandates that “a consumer making a purchase from a retail establishment<sup>106</sup> shall pay at the time of purchase a fee of \$.05 for each disposable carryout bag.”<sup>107</sup> The disposable carryout bags that a retail establishment is allowed to sell are strictly limited to plastic bags that are 100% recyclable,<sup>108</sup> made of specifically marked polyethylene film, and “[d]isplay the phrase ‘Please Recycle This Bag’ or a substantially similar phrase, in a highly visible manner on the bag exterior.”<sup>109</sup> Disposable carryout paper bags must be (1) “100% recyclable; (2) Contain a minimum of 40% post-consumer recycled content; and (3) Display the phrase ‘Please Recycle This Bag,’ or a substantially similar phrase, in a highly visible manner on the bag exterior.”<sup>110</sup> The number of bags provided and total fee charged to each customer is indicated on his receipt.<sup>111</sup>

Of the five cents charged, the retail establishment retains one cent, unless it operates a “carryout bag credit program”<sup>112</sup> to customers, in which case the store retains an additional cent per bag.<sup>113</sup> The remaining three or four cents per bag that the store does not retain enters the “Anacostia River Clean Up and Protection Fund,” which is used “solely for the purposes of cleaning and protecting the Anacostia River and other

---

103. H.B. 2645, 25th Legis. (Haw. 2010).

104. Long, *supra* note 9.

105. S.B. 1018, 2009 Sess. (N.C. 2009).

106. “Retail establishment” is defined in section 2(3) as “any licensee under a Public Health: Food Establishment Retail endorsement to a basic business license under Chapter 28 of Title 47 of the District of Columbia Official Code or under an off-premises retailer’s license, class A or B, pursuant to D.C. Official Code Section 25-112.”

107. D.C. CODE § 8-102.03 (2001).

108. *Id.* § 8-102.02(a) (“[D]isposable carryout bags made of plastic that cannot be recycled shall not be sold or distributed, retail or wholesale, in the District.”).

109. *Id.*

110. *Id.*

111. *Id.* § 8-102.03.

112. Pursuant to D.C. CODE § 8-102.03, such a program requires the store to “(i) credit the consumer no less than \$.05 for each carryout bag provided by the consumer for packaging their purchases, regardless of whether that bag is paper, plastic, or reusable; (ii) is prominently advertised at each checkout register; and (iii) [r]eflects the total credit amount on the consumer transaction receipt.”

113. *Id.* § 8-102.05.

impaired waterways.”<sup>114</sup> Section (6)(b) lists fourteen different uses for funds, in order of priority, beginning with funding a public education program on trash-related health problems and “providing reusable carryout bags to District residents, with priority distribution to seniors and low-income residents.”<sup>115</sup> City officials estimate that the fees amassed from consumer retail bag sales will aggregate to over \$3 million of revenue for the District over the year 2010.<sup>116</sup> D.C. retailers reported that by February 1, 2010, use of single-use bags had already dropped by half since the imposition of D.C.’s five-cent fee.<sup>117</sup>

## 2. Proposals and Potential for Other State Legislative Successes

Similar legislation in multiple states has not fared as well as that of the District of Columbia. For example, legislators in both Virginia and Maryland quickly followed D.C.’s lead with the introduction of similar legislation to place a five-cent tax on plastic and paper single-use bags.<sup>118</sup> Virginia’s proposed bill, H.B. 1115, had a stated goal of encouraging “shoppers to avoid the tax by bringing their own reusable bags.”<sup>119</sup> Virginia’s bill would have required in-state retailers to impose a per-bag tax of five cents on all plastic and paper bags, the money from which would enter the “Virginia Water Quality Improvement Fund.”<sup>120</sup> It was tabled on February 9, 2010.<sup>121</sup>

Maryland’s Bills, S.B. 462 and H.B. 351, are currently in the Senate Committee on Education, Health and Environmental Affairs. Should the Bills be passed, paper and plastic bags in Maryland will face five-cent-per-bag taxes.<sup>122</sup> Notably, Maryland’s Bills propose a “Customer Bag Credit Program,” wherein for each bag charged, the retail store receives one cent per bag *or* two cents if the store has such a program in place.<sup>123</sup> The program is defined in the Act as one in which the customer gets a credit from the store for each bag he personally brings to the store to be used in packaging his goods; the program is advertised at the checkout

---

114. *Id.* § 8-102.03(b)(2).

115. *Id.* §§ (6)(b)(1)-(14).

116. Long, *supra* note 9.

117. Verespej, *supra* note 84.

118. *Id.*

119. Frances Correa, *Plastic Bag Tax Tabled*, SUFFOLK NEWS-HERALD, Feb. 16, 2010, available at <http://www.suffolknews herald.com/news/2010/feb/16/plastic-bag-tax-tabled/>.

120. Posting of Jenny Kincaid Boone to The Storefront, <http://blogs.roanoke.com/rtblogs/storefront/2010/02/09/virginia-bag-tax-bill-shelved/> (Feb. 9, 2010, 10:49 EST).

121. *Id.*

122. H.B. 351, Reg. Sess. (Md. 2010); S.B. 462, Reg. Sess. (Md. 2010).

123. H.B. 351, Reg. Sess.

register. The remaining money goes into The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.<sup>124</sup>

In Florida, the government was considering a per-bag tax on both paper and plastic that would have begun at five cents in 2011, and shifted to twenty-five cents in 2014, culminating in a complete ban in 2015; this proposal was shut down in committee.<sup>125</sup> Although FDEP's report recommended that the most optimal way to minimize damage caused by single-use bags would be to outlaw or tax them,<sup>126</sup> the report noted that such fees or taxes could result in industry job losses.<sup>127</sup>

Connecticut's H.B. 5215 would charge customers five cents per each disposable bag and, similar to California's bill, would prohibit municipalities from adopting ordinances that restricted plastic or paper bags' retail use.<sup>128</sup> Section 3 of the bill directs the Department of Environmental Protection to establish a "municipal recycling matching grant program" to award grants to municipalities to either implement or improve their recycling programs.<sup>129</sup> However, because municipalities are prohibited from adopting local ordinances, they face challenges in funding any expansion of desired recycling. These legislative attempts should be construed as an illustration of the continued interest in devising mechanisms to reduce the waste stream. Additionally, "[o]fficials who worked on the [D]istrict [of Columbia]'s bag tax say the secret to their success is in the water—and wording. They have been careful to use the term 'fee,' rather than 'tax.' A tax is something you have to pay . . . a fee is something you can avoid."<sup>130</sup> Legislators made "it about the [Anacostia] river, not about the plastic bag."<sup>131</sup> D.C.'s Act reflects lawmakers' use of strategic economic incentives to get consumers to reduce their consumption of disposable bags.

### 3. Economic Concerns

Not surprisingly, manufacturers of single-use bags are concerned about the viability of their businesses. Plastic industries acknowledge that plastic bags create litter, but also argue that they have become undeserved scapegoats of the larger problem of lack of recycling, and that in-store and curbside plastic bag recycling programs need to

---

124. *Id.*

125. Verespej, *supra* note 84.

126. FLA. DEP'T OF ENVTL. CONSERVATION, *supra* note 2, at 18-21.

127. *Id.* at 21.

128. H.B. 5215, Jan. Sess. (Conn. 2009).

129. *Id.*

130. Long, *supra* note 9.

131. *Id.*

expand.<sup>132</sup> The American Chemistry Council is supporting proposed California S.B. 531, an industry response to the outcry against single-use bags, through which single-use bag manufacturers will “take responsibility by sharing the cost of removing litter.”<sup>133</sup> The Carryout Bag Extended Producer Responsibility Program would require each manufacturer or supplier of paper and plastic single-use bags to pay a fee of \$0.007 per bag “sold to a ‘store’ in California.”<sup>134</sup> A “store” is defined as either a supermarket or a retail store that includes a pharmacy and has over 10,000 square feet of space.<sup>135</sup> Because Californians for Extended Producer Responsibility (CEPR) estimated that these stores distribute more than twelve billion plastic and three billion paper carryout bags, the fee would allegedly produce over \$100 million for California per year, the proceeds of which could be used by the state for litter abatement and cleanup programs.<sup>136</sup> CEPR claims “no consumer tax or fee means no consumer resentment,” noting that amidst the currently difficult economic climate, opposition to consumer fees, the potential for job losses and consumers’ desire to choose “paper, plastic or reusable,” financial responsibility on the producers makes the most sense.<sup>137</sup>

However, this program does little to affect the single-use bag markets; it does little to reduce the number of single-use bags actually being produced. CEPR proposes exempting from funding any city, county, or public agency that prohibits, limits, or bans stores’ use of single-use bags.<sup>138</sup> The bill also imposes a waste-reduction goal of fifty percent of single-use carryout plastic bags by the year 2014, as well as mandating levels of recycled content for all single-use plastic bags.<sup>139</sup> Yet, as described in Part III.B., *supra*, increased bag recycling programs may be counter-productive.

Another concern is how a fee on single-use bags would affect low-income individuals. On a local level, Berkeley’s ordinance addressed this issue: while government-subsidized purchase programs for low-income residents, such as the Social Services Food Stamp program, do not have to pay fees, San Francisco exempted individuals on similar programs from paying the fees.<sup>140</sup> Before Washington D.C.’s bag fee was adopted,

---

132. L.A. COUNTY’S PLASTIC BAG WORKING GROUP, *supra* note 12, at 44.

133. Californians for Extended Producer Responsibility, *supra* note 11.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Verespej, *supra* note 84.

140. BERKELEY, CAL., MUN. CODE § 11.37.030(D) (2009).

the *Washington Post* reported that the American Chemistry Council had financed a group called Progressive Bag Affiliates to urge residents of low-income neighborhoods to contact their D.C. Council members to condemn the bill. The group alleged that the tax would disproportionately affect the poor because, as Mark Daniels, vice president of the United States' largest plastic bag maker, Hilex-Poly, stated, "these 'taxes' really affect the minority individuals who are walking to the store."<sup>141</sup> A Safeway spokesman, however, stated that "the industry's class-based campaign" was wrong in assuming "that people of lower means are not sensitive to the environment."<sup>142</sup> He noted that many manufacturers and city officials would make efforts "to get free reusable bags to those who cannot afford them."<sup>143</sup> Additionally, lobbying groups such as Save the Plastic Bags Coalition, which are purporting to advocate on behalf of disadvantages individuals, are often comprised of industry stakeholders.

Enforcement costs should also be considered. For example, Maryland, a state facing a budget deficit, would need to pay annual enforcement costs of at least \$200,000.<sup>144</sup> Legislative analysis also revealed that the five-cent fee would probably raise approximately \$4 million in revenue, although this could change if bag use dropped as a result of the bag fee; after all, D.C. retailers report that use has "dropped in half" since the imposition of D.C.'s five-cent fee.<sup>145</sup>

#### 4. Accessibility of Reusable Bags

Notwithstanding the implementation of fees, some state legislatures have also instigated a movement towards consumption of reusable bags by either requesting or requiring stores to stock reusable bags for customers to purchase.<sup>146</sup> In 2008, California enacted A.B. 2449, the goal of which was "to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use carryout bags."<sup>147</sup> In addition to requiring all large supermarkets and retail stores to make reusable bags available for purchase,<sup>148</sup> each store was required to have a plastic carryout bag recycling program in its store, and recycled bags

---

141. Marc Fisher, *You Can Wrap that Herring in a Plastic (or Paper) Bag*, WASH. POST, Apr. 2, 2009, at B01.

142. *Id.*

143. *Id.*

144. Mike Verespej, *Calif. Legislature Kills 25-Cent Bag Tax*, PLASTICS NEWS, Jan. 26, 2010, <http://plasticsnews.com/headlines2.html?id=17699>.

145. Verespej, *supra* note 84.

146. *See, e.g.*, Assem. B. 2449, Gen. Assem. Reg. Sess. (2006).

147. *Id.*

148. *Id.*

were taken to distribution centers throughout the country.<sup>149</sup> Likewise, Arizona's H.B. 2416, which failed in committee, would have required all stores to carry reusable bags available for customers to purchase.<sup>150</sup> Berkeley's proposed language, albeit weak, states that "retail stores are strongly encouraged to make reusable bags available for sale to customers at a reasonable price."<sup>151</sup> The presence of reusable bags in retail stores is already becoming widespread.<sup>152</sup> Making reusable bags even more readily available will facilitate their use by customers.

##### 5. Single-Use Bag Reduction Can Help States Comply with Waste Reduction Mandates

Many states have enacted legislation comprising waste reduction goals and mandates, which often leave municipalities to execute waste reduction and recycling programs in order to implement these goals, and localities frequently seek to minimize their landfill waste to carry them out.<sup>153</sup> For example, California set a 50% waste reduction mandate: every city and county is required to divert at least 50% of landfill-bound solid waste.<sup>154</sup> Florida faces a similar 75% waste reduction mandate.<sup>155</sup>

Waste reduction goals have become popular enough as a means of reducing waste that some commercial establishments have set their own. For example, Wal-Mart has made a "zero-waste commitment" through which it "aims to reduce its plastic-bag waste by one-third by the end of 2013."<sup>156</sup> As part of this endeavor, Wal-Mart has rid three of its California-based stores of free single-use plastic bags to ascertain consumers' "willingness to change."<sup>157</sup> Wal-Mart's experiment is an example of a business phasing out bags on its own, and just "mov[ing] to reusable bags."<sup>158</sup> Arguably, plans to reduce the number of single-use bags in favor of reusable ones will assist states with effectuating these waste reduction goals.

---

149. L.A. COUNTY'S PLASTIC BAG WORKING GROUP, *supra* note 12, at 43.

150. H.B. 2416, 2009 Sess. (Ariz. 2009).

151. BERKELEY, CAL., MUN. CODE § 11.37.010(F) (2009).

152. FLA. DEP'T OF ENVTL. CONSERVATION, *supra* note 2, at 13 (noting that many large retailers are making reusable bags available to customers, and are "increas[ing] the number of shoppers exposed to this way of thinking and acting").

153. Romer, *supra* note 16, at 440.

154. CAL. PUB. RES. CODE § 40000 (2007).

155. FLA. STAT. § 403.7032(2) (2010).

156. Painter, *supra* note 53.

157. *Id.*

158. *Id.*

*C. A Federal Initiative: The Plastic Bag Reduction Act of 2009*

In April 2009, Virginia Congressman Jim Moran introduced 111 H.R. 2091—federal legislation that would have assessed a tax of five cents per single use bag throughout the nation. In his remarks, he stated, “The Trash Free Watersheds Act creates a tax that I hope no American will choose to pay.”<sup>159</sup> He suggested that the legislation would reduce single-use packaging, a major source of damage to the nation’s watersheds and marine environments.<sup>160</sup> On January 1, 2010 and thereafter, the legislation would impose a tax of five cents per each transaction of a single-use carryout bag, and the tax rises to twenty-five cents on January 1, 2015. A retail seller can apply for a tax credit of one cent from the five-cent charge, if he carries out a “qualified carryout bag recycling program,” a program wherein the retail store (1) assesses the tax pursuant to Section 4056, tracking the bags purchased as well as the amount of tax assessed; (2) has printed or displayed on each such bag, in a manner visible to a customer, the words ‘PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING’; (3) places recycling bins for collection of single-use bags in the store, recycles these bags, maintains at least three years’ worth of records; and (4) “makes available to customers within the retail establishment reusable bags . . . which may be purchased and used in lieu of using a single-use carryout bag.”<sup>161</sup> Section 9511 establishes a Single-Use Carryout Bag Trust Fund within the U.S. Treasury, wherein the taxes are placed, and from which one cent (prior to January 1, 2015, at which point the amount changes to five cents) is transferred to the Land and Water Conservation Fund established by the Land and Water Conservation Fund Act of 1965.<sup>162</sup>

Section 9511(d) mandates the U.S. Comptroller General to conduct a study on the Act’s effectiveness at reducing single-use bags and encouraging their recycling, and requires him to submit a report of this study to both the Committee on Ways and Means of the House of Representatives and the Senate Finance Committee.<sup>163</sup> The Act is currently in Committee.<sup>164</sup> It would present a cohesive scheme for limiting single-use bags, but states would lose the potential flexibility that statewide plans afford.

---

159. 155 CONG. REC. E 947-03 (daily ed. Apr. 23, 2009) (statement of Rep. Moran).

160. *Id.*

161. Plastic Bag Reduction Act of 2009, H.R. 2091, 111th Cong. (2009).

162. *Id.*

163. *Id.*

164. *Id.* As of the date of this Comment, this piece of legislation has been referred to the House Subcommittee on National Parks, Forests and Public Lands for deliberation.

#### IV. CONCLUSION: A CALL FOR LEGISLATION IN THE STATE OF LOUISIANA

Legislation remains a powerful tool to reduce the consumption of single-use bags, both paper and plastic. Louisiana would benefit from such a policy, as single-use bags have a detrimental effect on the state's natural environment. The manufacturing, consumption, and disposal of these bags wastes natural resources and energy, consumes vast quantities of oil, threatens species and their habitats, and overburdens landfills. It is in the best interest of the people of Louisiana to reduce the distribution of single-use bags. A statewide approach to single-use bag reduction is most appropriate because it provides the state with flexibility over how to manage its revenue.

Louisiana's current waste reduction goal of thirty percent has not yet been met.<sup>165</sup> If legislation assessed a five-cent fee for each single-use bag sold within the state, Louisiana would begin not only to reduce its waste, but would also build revenue to expand its recycling industry. Few cities in Louisiana have operative recycling programs; New Orleans, the state's capital, has lacked a citywide-funded curbside recycling program since Hurricane Katrina struck the city in 2005.<sup>166</sup> The fee should be assessed every two years and should increase in five years in order to further reduce reliance on disposable bags. All retail establishments, grocery and otherwise, that currently offer single-use bags should be affected by this act. One cent of the five should return to the retailer for each bag that is sold.

The Louisiana Department of Environmental Quality (LDEQ) should be empowered to develop rules and regulations to establish a fund for the fee-based revenue, enforce the act by ensuring retail establishments are abiding by the law, and disburse the funds to appropriate entities that can grow the recycling industry in the state. LDEQ should develop rules and regulations to implement recycling programs throughout the state, and should augment these programs with the newly established fund.

Individuals who utilize food stamps and other government-subsidized programs should not be adversely impacted, so these programs should be made to cover the fee. Each receipt should include the number and total price of bags purchased. Each retail establishment should retain a copy of each receipt for its records for two years. A

---

165. LA. REV. STAT. ANN. § 30:2411(B) (2006).

166. NOLA Recycles 2010, <http://www.sierraclub.org/coal/la/downloads/whitepaper.pdf> (last visited Feb. 20, 2010).

public education campaign will be crucial to this endeavor, and some of the garnered funds can be used to assist LDEQ with educating the public on the act. All stores should be required to offer reusable bags for sale. Tax incentives should be offered to stores that provide free reusable bags to customers.

It will be advantageous if single-use bag manufacturers begin to shift their production focus to reusable bags, so that their businesses are sustained, while their product base shifts to that which is environmentally progressive. As different jurisdictions continue to experiment with legislation aimed at reducing the consumption of single-use bags, hopefully these acts will be met with a simultaneous response by industry so that the shift to reusable bags will be as easy as answering the question “Paper or plastic?” with “Neither.”