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Proposition 67:
Ban on Single-Use Plastic Bags.

Referendum Statute

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I. EXECUTIVE SUMMARY

Proposition 67, also known as the California Plastic Bag Ban Veto Referendum, is a vote to approve or repeal California Senate Bill 270 (“SB 270”). SB 270 was designed to phase in a prohibition on the provision of single-use plastic bags by certain types of stores regulated under the new law.¹ If Proposition 67 is passed by the voters, the entirety of SB 270 will become law. However, if it does not pass most of SB 270 will not become law. There is a small portion of SB 270 that is not subject to the referendum, and it will become law regardless of the vote outcome.

Enacting Proposition 67 will prohibit regulated stores from providing customers with single-use plastic bags at the point of sale.² It also requires the establishment of minimum standards for reusable bags and the imposition of a \$0.10 minimum fee to be charged by regulated stores for every reusable bag or recycled paper bag provided by the store to a customer at the point of sale.³ Special exemptions apply for Californians who use benefits received from the California Special Supplemental Food Program, CalFresh, California Food Assistance Program benefits, or cash aid benefits.⁴ If enacted, the bill language is designed to preempt any local ordinance adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carry-out bags, or recycled paper bags.⁵

The only part of SB 270 that is not subject to the veto referendum is the financial provision which allocates \$2 million from the Recycling Market Development Revolving Loan Subaccount.⁶ The subaccount is within the Integrated Waste Management Account and the funds are to be transferred to the Department of Resources, Recycling, and Recovery (“CalRecycle”) for the purpose of providing loans for the creation and retention of jobs and economic activity in California.⁷ The funds are also to be used for the manufacture and recycling of plastic reusable grocery bags that use recycled content, including post-consumer recycled material.⁸

A “YES” vote on Proposition 67 is a vote in favor of ratifying the statewide single-use plastic bag ban that was enacted into state law by the California State Legislature as SB 270 in its entirety.

A “NO” vote on Proposition 67 is a vote that will veto the statewide single-use plastic bag ban that was enacted into state law by the California State Legislature as SB 270, but will not affect the \$2 million financial provision in SB 270 to provide loans to the California plastic bag industry.

¹ Cal. Proposition 67 (2016), *approving* CAL. PUB. RES. CODE, §§ 42280(g), 42283(a) (2016).

² *Id.*

³ *Id.*, *approving* CAL. PUB. RES. CODE, §§ 42283(b)-(e) (2016).

⁴ *Id.*, *approving* CAL. PUB. RES. CODE, § 42283(d) (2016).

⁵ *Id.*, *approving* CAL. PUB. RES. CODE, § 42287 (2016).

⁶ *Id.*, *approving* CAL. PUB. RES. CODE, § 42288 (2016).

⁷ *Id.*

⁸ *Id.*

II. PATH TO THE BALLOT

A. Existing State Law

Existing state law regulates single-use plastic bags and reusable plastic bags through the At-Store Recycling Program codified in California Public Resources Code section 42250 et seq.⁹ The law mandates that supermarkets and stores, with a retail space of 10,000 square feet or more that contain a pharmacy, develop and maintain at-store recycling programs for single-use plastic bags.¹⁰ The law also requires that reusable bags be made available to customers at regulated stores and defines a reusable plastic bag as a bag with handles, made from cloth or plastic which is a minimum of 2.25 millimeters thick, and is designed for multiple uses.¹¹

Existing law also requires that: (1) plastic bags have labels designed to encourage customers to return the bags to the store for recycling; (2) recycling bins be readily accessible to consumers; (3) regulated stores ensure collected plastic bags are recycled in a manner consistent with the recycling plan for the store's local jurisdiction; and (4) regulated stores keep program records for a three year period during which the records are required to be made available to the local jurisdiction or CalRecycle.¹² The At-Store Recycling Program also requires plastic carry-out bag manufacturers to create and make available to stores materials designed to educate and encourage recycling of plastic carry-out bags.¹³

Other aspects of the existing law include the ability for cities and counties to implement and enforce local laws regarding curbside or drop-off recycling programs, and authorization for cities, counties, or the state to enforce the law against regulated stores in violation.¹⁴ Existing law also established the Toxics in Packaging Prevention Act to prohibit offering for sale packaging made in whole or in part from a regulated metal such as: lead, mercury, cadmium, or hexavalent chromium.¹⁵

B. Existing Local Laws

San Francisco became the first city to place a ban on single-use plastic bags in 2007.¹⁶ Before the ban went into effect, it was estimated that within San Francisco 180 million single-use bags were used per year.¹⁷ Through a phase-in process, the ban first restricted large stores; however, it now restricts all stores within San Francisco.¹⁸ The ban not only prohibits all single-use plastic

⁹ CAL. PUB. RES. CODE § 42251(a) (2007).

¹⁰ CAL. PUB. RES. CODE §§ 42250(e), 42251 (2007).

¹¹ CAL. PUB. RES. CODE § 42250(d) (2007).

¹² CAL. PUB. RES. CODE § 42252 (2007).

¹³ CAL. PUB. RES. CODE § 42253 (2007).

¹⁴ CAL. PUB. RES. CODE § 42254 (2016).

¹⁵ CAL. PUB. RES. CODE § 42281(a)(5) (2016).

¹⁶ S.F., CAL., ENVIRONMENT CODE § 1701 (2007); *Checkout Bag Ordinance*, SF Environment <http://sfenvironment.org/article/checkout-bag-ordinance> (last visited Oct. 15, 2016).

¹⁷ Wyatt Buchanan, *Starting Tuesday, plastic bags illegal at big S.F. grocery stores*, S.F. GATE, Nov. 19, 2007, <http://www.sfgate.com/bayarea/article/Starting-Tuesday-plastic-bags-illegal-at-big-3236322.php> (last visited Oct. 15, 2016).

¹⁸ S.F., CAL., ENVIRONMENT CODE § 1706 (2007).

bags and mandates a \$0.10 charge for ordinance approved bags, it also allows stores to keep the fee, requires the fee be displayed separately on the receipt, and does not apply to EBT, WIC, SNAP, or CalFresh program transactions.¹⁹

The ordinance allows for three types of bags to be used by stores: (1) compostable bags labeled with a certification logo; (2) paper bags labeled with 40% post-consumer recycled content; and (3) reusable checkout bags designed to be washable and last for at least 125 uses.²⁰ Types of bags not included in the ban include those made for the purpose of: containing prescription drugs, covering newspaper, laundry or dry cleaning; containing loose bulk items; carrying leftover food from sit down dining; carrying unwrapped prepared foods; preventing contamination; preventing harm to goods; and containing prescription drugs.²¹

Since San Francisco's 2007 bag ban ordinance, similar ordinances have been adopted in thirteen counties including the counties of Los Angeles, Sacramento, Santa Barbara, and Santa Cruz.²² Over one hundred and thirty cities including Los Angeles, San Jose, Long Beach, and Pasadena have also enacted bans.²³ These local ordinances helped shape Proposition 67 because when SB 270 was going through the legislative process, careful consideration was made of the requirements within the existing laws in cities and counties.²⁴ This consideration was given because the statewide bag ban was meant to complement, not contradict, local laws which were already in effect, such as the ban in Los Angeles.²⁵ Consideration of these local laws and using them as a framework for SB 270 was important for the bill because it allowed the bill to be based on laws which have been successful.²⁶

C. Proposed Law SB 270 (Padilla) Path through the Legislature

1. Path Through the California Senate

Proposition SB 270 was originally introduced on the Senate Floor by Senator Padilla on February 14, 2013.²⁷ The first committee the bill was referred to was the Senate Labor and Industrial Relations Committee where on April 10, 2013, the bill received a "Do Pass" recommendation after a unanimous vote of 4 in favor and 0 against.²⁸ Subsequently, on April 22, 2013, the bill went to the Senate Appropriations Committee where it received a recommendation

¹⁹ S.F., CAL., ENVIRONMENT CODE §§ 1703.5(a)-(d) (2007).

²⁰ S.F., CAL., ENVIRONMENT CODE §§ 1702(b)-(j) (2007).

²¹ S.F., CAL., ENVIRONMENT CODE § 1702(c) (2007).

²² *Plastic Carry-out Bags: California Cities and Counties with Bag Ban Ordinances as of January 1, 2016*, CALIFORNIA DEPARTMENT OF RESOURCES, RECYCLING, AND RECOVERY, <http://www.calrecycle.ca.gov/plastics/carryoutbags/ordinances.htm> (last visited Oct. 15, 2016).

²³ *Id.*

²⁴ Interview with Bill Mabie, Chief Deputy Secretary of State, California Secretary of State and James Schwab, Chief of Legislative Affairs, California Secretary of State (Sept. 20, 2016) (Notes on files with the *California Initiative Review*).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Complete Bill History of SB 270, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB270 (last visited Oct. 15, 2016).

²⁸ *Id.*

to be sent to the Senate floor.²⁹ Upon completion of the Senate floor's procedural requirements the bill received its final reading on the Senate floor and passed with a vote of 37 in favor and 0 against.³⁰ The bill was then referred to the Assembly.³¹

2. *Path Through the California Assembly*

SB 270 was submitted to the Assembly floor on April 29, 2013.³² Subsequently it was referred to multiple Assembly committees which included: the Committee on Labor and Employment; the Rules Committee; the Appropriations Committee; and the Committee on Natural Resources.³³ During the committee process the bill was amended, however it successfully passed out of the committees and after completion of the Assembly floor's procedural requirements it came up for an Assembly floor vote. The bill failed to pass the first vote, receiving 38 of the 41 required number of votes.³⁴ However, the bill was granted a reconsideration vote which took place one week later.³⁵ The bill passed the reconsideration vote with a vote of 45 in favor and 31 against.³⁶ Thus, the bill was sent back to the Senate for the amendments to be ratified.³⁷

3. *Path to the Governor*

Passage through the Assembly resulted in the bill being sent back to the Senate for the Assembly amendments to be reviewed and either confirmed or rejected.³⁸ The Senate re-referred the bill to the Committee on Rules where it passed with a vote of 5 in favor and 0 against, at which time the bill was referred to the Senate Environmental Quality Committee for the second time.³⁹ On August 29, 2014, the Senate Environmental Quality Committee recommended an adoption of the bill with the Assembly amendments with a vote of 5 in favor and 2 against.⁴⁰ The Senate floor approved and concurred with the Assembly amendments on August 29, 2014, with a vote of 22 in favor and 15 against.⁴¹

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*; *Bag Ban To Get Reconsideration Vote Today (Watch Live)*, CALIFORNIANS AGAINST WASTE, <http://www.cawrecycles.org/recycling-news/1597> (last visited Oct. 16, 2016) (reconsideration is a motion that permits a failed or passed measure be to reheard in committee or on the floor of the house the bill is in; in the case of SB 270 the motion for reconsideration was made because the bill failed to pass by 3 votes and 8 Assembly-members failed to vote, thus the proponents spent several days educating and informing legislators who did not vote and several who voted against the bill to gain a minimum of 3 additional votes).

³⁶ Complete Bill History of SB 270, https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB270 (last visited Oct. 15, 2016).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

The bill was enrolled and presented to the Governor on September 8, 2014.⁴² It was approved by the Governor on September 30, 2014, and became enacted state law.⁴³ The bill was chaptered by the Secretary of State as Chapter 850, Statutes of 2014.⁴⁴

D. Enacted Law

SB 270 by Senator Padilla was initially designed to prohibit large grocery stores and retail stores of over 10,000 feet with a pharmacy from providing plastic single-use carryout bags to consumers as of July 1, 2015.⁴⁵ The ban was to extend to small grocery stores, convenience stores, and liquor stores on July 1, 2016.⁴⁶ However, SB 270 was designed to exclude from the ban single-use plastic bags used for meat, produce, bulk foods, and perishable items.⁴⁷ Additionally, SB 270 was designed to prohibit stores from giving away reusable bags or recyclable paper bags without charging consumers a minimum of \$0.10 per bag at the point of sale.⁴⁸ The bill exempts consumers who receive benefits from the California Special Supplemental Food Program, the CalFresh program, the California Food Assistance Program, or cash aid benefits program.⁴⁹ The bill also provides \$2 million to state plastic bag manufacturers for the purpose of helping them retain jobs and transition to making thicker, multi-use, recycled plastic bags.⁵⁰

The bill creates certification requirements and minimum standards that all types of reusable grocery bags must meet to become certified as acceptable reusable bags under the law.⁵¹ The standards which must be met for the bag to meet the certification requirements are that it must: (1) have a handle designed to last for a minimum of 125 uses; (2) be able to carry at least 15 liters; (3) be machine washable or made from material that can be disinfected or cleaned; and (4) have printed on it, or attached by a tag in a manner that is not removable, the name of the manufacturer of the bag, the country where the bags was manufactured; and a statement that the bag is reusable and is designed for 125 uses.⁵² The bill also requires if the bag is made of a material which makes it eligible for recycling in California it must have instructions to return the bag to the store or another appropriate facility for recycling.⁵³ Bags that meet the required criteria must include the chasing arrows recycling symbol or the term “recyclable,” consistent with the Federal Trade Commission guidelines.⁵⁴ The bill prohibits bag manufacturers from using lead,

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See Cal. Proposition 67 (2016), *approving* CAL. PUB. RES. CODE § 42283(a) (2014); SB 270, 2014 Leg., 2013-2014 Reg. Sess. (Cal. 2014).

https://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201320140SB270 (last visited Oct. 15, 2016).

⁴⁶ Cal. Proposition 67 (2016), *approving* CAL. PUB. RES. CODE § 42283(a) (2014).

⁴⁷ *Id.*, *approving* CAL. PUB. RES. CODE § 42280(f)(2) (2014).

⁴⁸ *Id.*, *approving* CAL. PUB. RES. CODE § 42283(b)(3) (2014).

⁴⁹ *Id.*, *approving* CAL. PUB. RES. CODE § 42283(d) (2014).

⁵⁰ *Id.*, *approving* CAL. PUB. RES. CODE § 42288(a) (2014).

⁵¹ *Id.*, *approving* CAL. PUB. RES. CODE § 42281(a) (2014).

⁵² *Id.*, *approving* CAL. PUB. RES. CODE §§ 42281(a)(1)-(4) (2014).

⁵³ *Id.*, *approving* CAL. PUB. RES. CODE § 42281(a) (2014).

⁵⁴ *Id.*, *approving* CAL. PUB. RES. CODE § 42281(a)(4)(D) (2014).

cadmium, or any other toxic material.⁵⁵ Compliance with this requirement must be shown by bag manufacturers obtaining a no objection letter from the Federal Food and Drug Administration.⁵⁶

Reusable plastic bags made from plastic film must comply with the requirements and standards for all reusable bags as well as specific requirements regarding the quality of reusable plastic bags, the percentage of recycled material from which the bags are made, and labeling.⁵⁷ On January 1, 2016, reusable plastic bags made from plastic film must consist of a minimum of 20% postconsumer recycled material and on and after January 1, 2020, the rate increases to 40%.⁵⁸ The labeling requirement mandates that bag manufacturers include a statement on the bag informing the consumer the bag is made wholly or partly from post-consumer recycled material.⁵⁹ If the bag is made partly of post-consumer recycled material the percentage of the bag made from that material must be printed on the bag.⁶⁰ The quality requirements mandate the bag be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and that it be a minimum of 2.25 millimeters thick measured according to the American Society of Testing and Materials (ASTM).⁶¹ The bag must also be recyclable in California and accepted for return at stores subject to the At-Store Recycling Program.⁶²

E. Referendum of Enacted Law

1. California Referendum Process

The referendum power is provided in Article II, Section 9 of the California Constitution.⁶³ The referendum process is similar to the initiative process in procedure, however instead of creating a new law or amending a current law as an initiative would, a referendum is a chance for the voters to approve or disapprove a recently (within 90 days) enacted piece of legislation.⁶⁴ The referendum process is sometime referred to as the “people’s veto” for its power to repeal legislation.⁶⁵

A proponent seeking a referendum must submit a request in writing to the California Attorney General for a title and summary to be prepared and circulated.⁶⁶ When all procedural and substantive requirements are met the Attorney General must prepare the title and summary as provided for by law.⁶⁷ The title and summary are due to the proponents and to the California Secretary of State’s office within 10 days of the proposed referendum being submitted.⁶⁸ When

⁵⁵ *Id.*, approving CAL. PUB. RES. CODE § 42281(a)(5) (2014).

⁵⁶ *Id.*

⁵⁷ *Id.*, approving CAL. PUB. RES. CODE § 42281(b)(1) (2014).

⁵⁸ *Id.*, approving CAL. PUB. RES. CODE §§ 42281(b)(1)(A)-(B) (2014).

⁵⁹ *Id.*, approving CAL. PUB. RES. CODE § 42281(b)(1)(D) (2014).

⁶⁰ *Id.*

⁶¹ *Id.*, approving CAL. PUB. RES. CODE § 42281(b)(1)(E) (2014).

⁶² *Id.*, approving CAL. PUB. RES. CODE § 42281(b)(1)(C) (2014).

⁶³ Cal. Const., art. II, § 9 (2012).

⁶⁴ *Referendum*, CALIFORNIA SECRETARY OF STATE, <http://www.sos.ca.gov/elections/ballot-measures/referendum/> (last visited Oct. 16, 2016).

⁶⁵ *Id.*

⁶⁶ CAL. CONST. art. II, § 10(d) (2012); CAL. ELEC. CODE § 9004 (2016).

⁶⁷ CAL. ELEC. CODE § 9001(e) (2016).

⁶⁸ CAL. ELEC. CODE § 9006(b) (2016).

the Secretary of State's office receives the title and summary it must notify the proponents and county elections officials of the official summary date, provide them with a copy of the circulating title and summary, and provide a "complete schedule showing the maximum filing and certification deadline by the counties to the secretary of state."⁶⁹

The Attorney General has the exclusive authority to prepare the ballot summary for a ballot measure.⁷⁰ This role is purely ministerial which means the Attorney General does not determine and is not affected by any potential invalidity of the proposed measure. The sole question to be determined by the Attorney General upon submission of a referendum is whether the proposed referendum has the proper form and meets all the constitutional and statutory procedural requirements.⁷¹

Once the referendum has a circulating title and summary, the proponent must gather signatures to qualify the referendum for the ballot. The minimum signature amount allowed is 5% of the total number of voters in the previous gubernatorial election.⁷² The version of the referendum submitted to the Attorney General must be the same as the version circulated among the electorate for signatures.⁷³ When the required number of signatures are collected and submitted to the Secretary of State a sample of the signatures is analyzed to ensure the signatures are valid. If all the procedural requirements are met the referendum is put on the next ballot for a general election as long as the election is at least 31 days away.⁷⁴ The referendum must pass with a majority vote, meaning a "YES" vote approves the enacted law and a "NO" vote rejects the enacted law.⁷⁵

2. *Referendum of SB 270*

The referendum process for SB 270 began when Doyle B. Johnson submitted a letter to the California Attorney General's office on September 30, 2014, requesting a title and summary for a veto referendum. The deadline for signature collection was December 29, 2014.⁷⁶ The title and summary were issued by the Attorney General's office on October 10, 2014, and the signature collection for the referendum began.⁷⁷ The deadline for signature collection was December 29, 2014 and the number required to be collected was 504,760.⁷⁸ After the referendum proponents collected over 800,000 signatures and 555,000 of them were verified qualifying the

⁶⁹ CAL. ELEC. CODE § 9006(c) (2016).

⁷⁰ *Howard Jarvis Taxpayers Ass'n v. Bowen*, 192 Cal. App. 4th 110 (3d Dist. 2011).

⁷¹ *Planning & Conservation League, Inc. v. Lungren*, 38 Cal. App. 4th 497 (3d Dist. 1995).

⁷² *Id.*

⁷³ *Costa v. Superior Court*, 37 Cal. 4th 986 (2006).

⁷⁴ *Id.*; CAL. CONST. art. II, § 9 (2012).

⁷⁵ CAL. CONST. art. II, § 9 (2012).

⁷⁶ Melissa Murphy, *Group Seeks Signatures for Referendum to Repeal California's Plastic Bag Ban*, SAN JOSE MERCURY NEWS, Oct. 22, 2014, <http://www.mercurynews.com/2014/10/22/group-seeks-signatures-for-referendum-to-repeal-californias-plastic-bag-ban/> (last visited Oct. 15, 2016); CAL. CONST. art. II, §9 (2012).

⁷⁷ *California Proposition 67, Plastic Bag Ban Veto Referendum (2016)*, BALLOTEDIA, [http://ballotpedia.org/California_Proposition_67_Plastic_Bag_Ban_Veto_Referendum_\(2016\)](http://ballotpedia.org/California_Proposition_67_Plastic_Bag_Ban_Veto_Referendum_(2016)) (last visited Oct. 16, 2016).

⁷⁸ See MURPHY, *supra* note 76; CAL. CONST. art. II, § 9 (2012).

referendum to become Proposition 67.⁷⁹ The signature collection cost a total of \$2,911,945.89, which is \$5.77 per signature.⁸⁰

III. DRAFTING ISSUES

A. Legal Issues When SB 270 was Drafted

The legal issues involved with drafting SB 270 included ensuring that it did not repeal any existing laws related to the At-Store Recycling Program and that it did not create a tax which would require a 2/3 vote in both houses of the Legislature in accordance with Proposition 26 (2010).⁸¹ The bill was carefully drafted to avoid these concerns by ensuring it did not contain language that would repeal any part of the At-Store Recycling Program and that the minimum fee charged for bags provided to customers at the point of sale was not remitted back to the state.⁸² Former Senator Padilla's staff sought guidance from the Office of Legislative Counsel to ensure the bill language would not require the 2/3 vote required for all new taxes and was informed that if the fee does not get remitted back to the state to be used for public good it is not a tax and therefore would not require a 2/3 vote.⁸³ The bill was drafted to allow stores to keep the \$0.10 fee which allows stores to recoup some of the costs associated with providing the bag and does not qualify as a tax. Thus, SB 270 was carefully drafted to avoid conflicting with existing law and from being considered a bill generating a tax which would change the vote threshold for the bill to pass each house of the legislature.⁸⁴

B. Previous Bills Attempted in Assembly and Senate but Not Passed

There have been several attempts in both houses of the California Legislature to pass a bill that addresses single-use plastic bags beyond the At-Store Recycling Program already statutorily required. Table A shows that of the bills attempted, eight failed during the process of being reviewed by a committee. It also shows two failed to pass off the floor of the Senate, one was moved to the inactive file at the request of the author, and another was pulled from its scheduled committee hearing at the request of the author.

The first bill was proposed by Assemblymember Paul Koretz from California's 42nd district in 2003.⁸⁵ The bill was held in the Assembly Natural Resources Committee. The last bill was introduced by Senator Alex Padilla in 2013, but it failed to pass the Senate floor losing in a

⁷⁹ Jeremy White, *California Plastic Bag Ban Referendum has Enough Signatures, Backers Say*, SACRAMENTO BEE, Dec. 29, 2014, <http://www.sacbee.com/news/politics-government/capitol-alert/article5122236.html> (last visited Oct. 15, 2016).

⁸⁰ *California Proposition 67, Plastic Bag Ban Veto Referendum (2016)*, BALLOTPEdia, [http://ballotpedia.org/California_Proposition_67_Plastic_Bag_Ban_Veto_Referendum_\(2016\)](http://ballotpedia.org/California_Proposition_67_Plastic_Bag_Ban_Veto_Referendum_(2016)) (last visited Oct. 16, 2016).

⁸¹ Interview with Angela Manetti, State Staff, California Retailers Association (Sept. 20, 2016) (Notes on files with the *California Initiative Review*) (former member of Secretary of State Padilla's staff when he was in the California Senate); Cal. Proposition 26 (2010).

⁸² Interview with Angela Manetti, *supra* note 81.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Complete Bill History of SB 405, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB405 (last visited Oct. 15, 2016).

vote with 18 in favor, 17 against, and 4 abstentions.⁸⁶ In between these bills many attempts were made to ban or restrict the use of single-use plastic bags; however until SB 405 all of these bills failed. SB 405, although originally voted down on the Senate floor, was given a vote of reconsideration which it passed 38 in favor and zero against.⁸⁷ Despite this success the bill was moved to the inactive file by the Senator Padilla and subsequently died because it did not meet the requirements to be a carryover bill from the first year of the regular legislative session to the second year of the legislative session.⁸⁸ Although it died, SB 405 was an important development because it became the framework for SB 270 the following year, which has now become Proposition 67.⁸⁹

Table A: Bills that did not pass the legislature which contained single-use plastic bag regulations

| Bill # | Author | Year | Bill Status | What Bill Proposed |
|---------------|---------------|-------------|---|---|
| SB 405 | Padilla | 2013 | Died on Senate Floor after bill author put bill in inactive file. | Would have prohibited grocery stores from providing single-use plastic bags to consumers and required reusable bags be made available to customers. |
| SB 700 | Wolk | 2013 | Held up in Senate Appropriations Committee. | Would have required regulated stores to collect \$0.05 fee for every single-use plastic bag provided to a customer and established a fund for grants to cities and counties for local park and community clean-up activities. |
| AB 158 | Levine | 2013 | Moved to Assembly inactive file by bill author. | Would have prohibited grocery stores from providing single-use plastic bags and required stores to make reusable bags available for purchase. The bill did not require a fee for recycled paper bags provided to consumers. |
| SB 1106 | Strickland | 2012 | Failed in Senate Environmental Quality Committee. | Would have banned the manufacture, distribution, and sale of reusable bags without a warning label specifying they need to be cleaned and disinfected because of the risks associated with not cleaning reusable bags. |
| AB 298 | Brownley | 2012 | Failed on Senate Appropriations Committee's suspense file. | Would have generally prohibited stores from providing single-use plastic bags to consumers and to make reusable plastic bags available at a cost. The bill also created standards for reusable bags. |

⁸⁶ Senate Floor Vote of SB 405, https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201320140SB405 (last visited Oct. 15, 2016).

⁸⁷ *Id.*

⁸⁸ SB 405, 2013 Leg., 2013-2014 Reg. Sess. (Cal. 2013) (as amended on May 24, 2013 but not enacted).

⁸⁹ Interview with Bill Mabie, *supra* note 24.

| | | | | |
|---------|------------|------|---|--|
| AB 1834 | Brownley | 2012 | Placed on Senate inactive file and died on Senate floor. | Would have defined reusable bag for the purpose of the At-Store Recycling Program created by AB 2249, now enacted into law as Public Resources Code § 42250. |
| SB 915 | Calderon | 2011 | Committee hearing was canceled at request of the bill author. | Would have set goals for the reduction of the use of single-use plastic bags and set recycled content goals for the bags to be made from. |
| AB 2138 | Chesbro | 2010 | Held on the Assembly Appropriations Committee's suspense file. | Would have established recycling and composting requirements for takeout packaging including bags. |
| AB 1998 | Brownley | 2010 | Failed on the Senate floor by vote of 14 in favor and 21 against. | Would have repealed the At-Store Recycling Program and prohibited stores from providing single-use plastic bags. The bill also required that reusable bags or paper bags be provided to consumers for a fee. |
| SB 531 | DeSaulnier | 2009 | Passed the Senate but died in the Assembly. | Would have established minimum requirements for educational material relating to the At-Store Recycling Program. |

| | | | | |
|---------|----------|------|---|--|
| AB 68 | Brownley | 2009 | Held in Assembly Appropriations Committee. | Would have required a \$0.25 fee on single-use carry-out bags and created a bag pollution fund for liter cleanup and source reduction in cities and counties. |
| AB 87 | Davis | 2009 | Held in Assembly Appropriations Committee. | Would have required a \$0.25 fee on single-use carry-out bags and created a bag pollution fund for liter cleanup and source reduction in cities and counties. |
| AB 2058 | Levine | 2007 | Held in Assembly Appropriations Committee. | Would have prohibited free plastic bags from being dispensed by any store that could not demonstrate at least 70% of the bags it dispensed were diverted from the waste stream. |
| AB 586 | Koretz | 2003 | Held in Assembly Natural Resources Committee. | Would have imposed a \$0.02 fee on all non-exempt disposable plastic bags and cups provided by California retailers with the money being collected and put into a state clean-up fund. |

C. Previous Bills Attempted in Legislature Which Passed

Senate Bill 1219 was introduced by Senator Lois Wolk in 2012.⁹⁰ As shown in Table B the bill was signed into law after passing both houses of the legislature and being signed by the governor.⁹¹ The bill was not a new policy or method of dealing with single-use plastic bags as other failed bills had been. It was specifically designed to extend the sunset provision in the At-Store Recycling Program until January 1, 2020, thereby extending the life of the program.⁹² The bill also repealed any provisions preempting local enforcement actions on violators of the program.⁹³ Although the bill passed it was contested heavily for many reasons including: whether the program actually increased the number of bags recycled; whether the program was cost efficient; and how the change in enforcement actions would affect regulated stores. Despite these concerns the bill passed.⁹⁴ However, no other legislation regarding single-use plastic bags

⁹⁰ Complete Bill History of SB 1219, http://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201120120SB1219 (last visited Oct. 15, 2016).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

has successfully made it out of the California Legislature for over a decade until Senator Padilla’s bill, SB 270.⁹⁵

Table B: Bills that passed through the Legislature containing single-use plastic bag regulations

| Bill # | Author | Year | Bill Status | What Bill Proposed |
|---------|--------|------|---|---|
| SB 1219 | Wolk | 2012 | Signed into law 9/9/12. Passed Assembly 42-30. Passed Senate 22-13. | This bill extended the sunset on the at store single-use plastic bag recycling program. Thus the program will last until January 1, 2020 under the extension. |

IV. CONSTITUTIONAL BASIS

A. Bag “Tax”

Proposition 13 (1978) added article XIII A to the California Constitution, which has limited the taxing powers of state and local governments.⁹⁶ The important aspect of this limitation with regard to whether SB 270’s fee for bags is a tax is that the Constitution now requires that “special taxes imposed by cities, counties and special districts must be approved by a two-thirds vote of the electors.”⁹⁷ Proposition 218 (1992) subsequently amended the Constitution by splitting up taxes by general taxes and special taxes, with general taxes only requiring a majority vote of the electors and special taxes still requiring a two-thirds vote.⁹⁸ Proposition 26 (2010) further amended the California Constitution and expanded the definition of taxes to include “any levy, charge, or exaction of any kind imposed by a local government.”⁹⁹

The opponents of Proposition 67 believe that the proposition is a tax because the government is mandating the \$0.10 fee. However, a California Court of Appeal has confronted this issue at the local level with the Los Angeles County plastic bag ban.¹⁰⁰ The court decided that this was not a tax as defined by the California Constitution as amended by Proposition 26 (2010).¹⁰¹ This is because the \$0.10 fee is not remitted to the county and raises no revenue for the county.¹⁰² The *Schmeer* court concluded that the definition of a tax as defined by the Constitution, as amended, is “limited to charges payable to, or for the benefit of, a local government.”¹⁰³ The fee is not payable to a local government, and therefore is not a tax.

⁹⁵ Complete Bill History of SB 270, https://leginfo.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140SB270 (last visited Oct. 15, 2016).

⁹⁶ *Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310, 1317 (2d Dist. 2013), as modified (Mar. 11, 2013).

⁹⁷ *Id.* at 1317.

⁹⁸ *Id.* at 1320.

⁹⁹ *Id.* at 1323.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 1329.

¹⁰² *Id.*

¹⁰³ *Id.*

Even though the court has said that a fee for bags is not a tax, opponents wanted the vote to go to the people, instead of passing through the Legislature without a supermajority. This is why Proposition 67 exists as a referendum on the ban of single-use plastic bags.

B. Proposition 65 Might Affect Proposition 67

Proposition 65, also on the November 8, 2016 ballot, could affect Proposition 67 depending on whether one, both, or neither of the propositions pass. The Legislative Analyst’s Office (LAO) has done some analysis on the possible outcomes and included a table illustrating those outcomes.¹⁰⁴

Figure 1
Implementation of Referendum Would Be Affected by Outcome of Proposition 65

| | Proposition 67 (SB 270 Referendum) Passes | Proposition 67 (SB 270 Referendum) Fails |
|---|--|--|
| Proposition 65 (Initiative) Passes | Statewide carryout bag law in effect. Use of revenues from sale of carryout bags depends on which proposition gets more votes: <ul style="list-style-type: none"> • If more "yes" votes for referendum, revenue is kept by stores. • If more "yes" votes for initiative, revenue goes to state for environmental programs.^a | No statewide carryout bag law. Revenue from any future statewide law similar to SB 270 would be used for environmental programs. |
| Proposition 65 (Initiative) Fails | Statewide carryout bag law in effect and revenue from the sale of carryout bags is kept by stores. | No statewide carryout bag law. |

^a Alternatively, a provision of Proposition 65 could be interpreted by the courts as preventing Senate Bill (SB) 270 from going into effect at all.

In the case where neither Proposition 65 nor Proposition 67 pass, SB 270 would be vetoed and no statewide plastic bag ban or bag fees would be in force.¹⁰⁵ If Proposition 67 passes

¹⁰⁴ Prop67-110816, LEGISLATIVE ANALYST’S OFFICE, <http://www.lao.ca.gov/ballot/2016/Prop67-110816.pdf> (last visited on Sept. 20, 2016).

¹⁰⁵ *Id.*

but Proposition 65 fails, then the statewide bag ban and fees will become effective and the money from bag fees will be kept by the stores.¹⁰⁶ In the case where Proposition 65 passes and Proposition 67 fails, there would be no statewide bag ban or fee, but any law similar to SB 270 that comes out in the future will put any revenue generated from that law's bag fees into an environmental fund.¹⁰⁷

The final match-up is the most complicated and the least clear. If both measures pass, a question will then arise about whether they are conflicting or complementary. Proposition 65 and Proposition 67 have one major point of contention; the money from selling bags will either go to an environmental fund or the stores, respectively. The thought is that if both propositions pass, the conflicting language of the proposition that receives the most votes will supersede the corresponding language in the proposition that received fewer votes.¹⁰⁸ In other words, if Proposition 65 receives more votes than Proposition 67, then the money generated from bags will go toward the environmental fund. On the other hand, if Proposition 67 receive more votes, the money will go to the stores.

This conclusion comes from the California Constitution and two cases that are informative on the matter. The California Constitution states that “If provisions of two or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.”¹⁰⁹ In the first of the two cases, *Taxpayers To Limit Campaign Spending v. Fair Pol. Practices Com.*,¹¹⁰ the court concluded that out of two competing measures, the one with the most votes would prevail, while the measure with fewer could not be enforced. However, in *Yoshisato v. Superior Court*,¹¹¹ the court decided that two complementary measures could stand side by side, with the proposition receiving the most votes being effective in the case of conflicting provisions.

The issue is that the court has to determine whether the two measures are competing or whether they are complementary. The court in *Yoshisato* looked at how the propositions were presented to the voter. Specifically, the court looked at the materials presented to the voters in the ballot pamphlet, which indicated that they were complementary or supplementary amendments.¹¹²

In the case of Proposition 65 and 67, there are mixed signals. Generally, it seems that the two propositions are competing, as the main proponent of Proposition 65 is the main opponent of Proposition 67. Likewise, many of the proponents of Proposition 67 are opponents of Proposition 65.¹¹³ Additionally, Section 6 of Proposition 65 specifically states that if another measure on the ballot is found in conflict with it, and Proposition 65 receives more votes, then the conflicting

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ CAL. CONST. art. II, § 10(b) (2012).

¹¹⁰ *Taxpayers To Limit Campaign Spending v. Fair Pol. Practices Com.*, 51 Cal. 3d 744, 747 (1990).

¹¹¹ *Yoshisato v. Super. Ct.*, 2 Cal. 4th 978, 988 (1992).

¹¹² *Id.* at 989.

¹¹³ CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 8, 2016, at 112, available at <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf> [“NOVEMBER 2016 VOTER GUIDE”].

measure “shall be null and void.”¹¹⁴ This does not seem to indicate an intention of being complementary or supplementary. This could mean that if Proposition 65 receives more votes than Proposition 67, even if both received a majority, it could lead to Proposition 67 having no effect.

However, Proposition 65 does not do anything unless Proposition 67, or a similar law, passes. It affects how a bag fee would work, but does nothing until a bag fee exists. Therefore, one could argue that Proposition 65 does indeed supplement Proposition 67, and in fact is dependent upon it.

If both Proposition 65 and 67 pass it is not clear how courts will rule in determining which measure, or even which provisions of each measure, would apply. However, since there is reason to believe that they would be found to conflict, if you want Proposition 67 to pass, the safest option would be to vote “YES” for Proposition 67 and “NO” for Proposition 65.

V. PUBLIC POLICY CONSIDERATIONS

A. Support for Proposition 67

As of September 12, 2016, individuals and organizations supporting Proposition 67 have contributed over \$2.3 million.¹¹⁵ The largest contribution came from the Save the Bag Ban, Yes on 67 committee, which raised \$1.3 million.¹¹⁶ The next largest contribution came from the Yes on 67, Protect the Plastic Bag Ban committee, which raised \$526,353.01.¹¹⁷ The top five donors from this committee include Albertsons Safeway, California Grocers Association, Ralphs/Food 4 Less, Raley’s, and Californians Against Waste.¹¹⁸

1. *Arguments for Proposition 67*

Proponents of Proposition 67 have made two main arguments in support of the proposition. First, they argue that Proposition 67 reduces litter and waste and protects the ocean and wildlife.¹¹⁹ Third, Proposition 67 has already seen success at the local level.¹²⁰ These arguments were made in the Voter Guide by Julie Packard, Executive Director at the Monterey Bay Aquarium; John Laird, Chairperson on the California Ocean Protection Council; and Scott Smithline, Director of CalRecycle.¹²¹

a. *Proposition 67 Reduces Litter and Waste, and Protects Our Ocean and Wildlife*

¹¹⁴ *Id.* at 102-03, 112-13.

¹¹⁵ *California Proposition 67, Plastic Bag Ban Veto Referendum (2016)*, BALLOTPEdia, [https://ballotpedia.org/California Proposition 67, Plastic Bag Ban Veto Referendum \(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016)) (last visited Oct. 16, 2016).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

During the drafting process of SB 270 the environmental impacts were taken into account, including impacts on ocean and freshwater resources; general litter prevention; natural areas; and communities in general, but especially socioeconomically disadvantaged communities.¹²² Senator Padilla and the proponents of SB 270 argued that single-use plastic bags were a blight on California communities because they cause harm to residential and communal areas by clogging drainage systems resulting in flooding and making these areas less attractive for residents, businesses, and the community as a whole.¹²³

Although there are recycling programs in place for single-use plastic bags, only about 3% of the bags are recycled.¹²⁴ Because the recycling programs have not been effective, plastic bags have continuously ended up as litter. Plastic bags are a big litter item because of the properties of the bag itself; plastic bags are lightweight and are easily blown around, so even when they are thrown in the garbage they tend to blow away, out of landfills and into communities.¹²⁵

Banning single-use plastic bags creates a double benefit in reduced litter. First, reduction in litter protects our oceans and wildlife.¹²⁶ Wildlife often becomes tangled in plastic, or they eat it and die of starvation.¹²⁷ Second, with a reduction in litter comes a reduction in cleanup costs for litter.¹²⁸ Proponents argue that a ban on plastic not only reduces litter and saves wildlife, but will also save money.

b. *Proposition 67 Has Already Been Successful at the Local Level*

Proponents note that the plastic bag ban was invented by local governments, and that 40% of the state has successfully implemented ordinances similar to Proposition 67.¹²⁹ So far, 122 ordinances have been adopted covering 151 California cities and counties.¹³⁰ Proposition 67 is simply continuing the trend that is already happening across the state and creates a uniform standard for all areas yet to enact a ban.¹³¹

2. *Counters to Arguments Against Proposition 67*

The main arguments that opponents have against Proposition 67 are threefold. First, opponents argue that Proposition 67 creates a hidden bag tax.¹³² Second, opponents argue that

¹²² Interview with Bill Mabie, *supra* note 24.

¹²³ *Id.*

¹²⁴ 2009 Statewide Recycling Rate for Plastic Carryout Bags: At-Store Recycling Program, CALRECYCLE, <http://calrecycle.ca.gov/plastics/atstore/AnnualRate/2009Rate.htm> (last visited Oct. 16, 2016).

¹²⁵ Interview with Mark Murray, Executive Director, Californians Against Waste (Aug. 25, 2016) (Notes on file with the *California Initiative Review*).

¹²⁶ NOVEMBER 2016 VOTER GUIDE, *supra* note 113, at 112.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Interview with Mark Murray, *supra* note 125.

¹³⁰ *List of Local Bag Bans*, CALIFORNIANS AGAINST WASTE, <http://www.cawrecycles.org/list-of-local-bag-bans> (last visited Oct. 16, 2016).

¹³¹ NOVEMBER 2016 VOTER GUIDE, *supra* note 113, at 112.

¹³² *Id.* at 113.

Proposition 67 does not allocate money toward helping the environment.¹³³ Third, opponents argue that Proposition 67 will eliminate jobs in the plastic industry.¹³⁴

a. *Proposition 67 Creates a Hidden Bag Tax*

Proponents have had a few responses to the idea that Proposition 67 creates a hidden bag tax. First, there is nothing hidden about the \$0.10 charge; if anything, the cost of bags was previously hidden because the consumer did not pay for bags.¹³⁵ Second, a similar ordinance in the County of Los Angeles was upheld against a challenge that it was a tax by a California Court of Appeal.¹³⁶ Because the money was not retained by the government, it did not fall under the ordinary usage of the term “tax.”¹³⁷ Lastly, the reason for a charge for bags is to encourage customers to reuse their bags instead of purchasing a new bag every trip.¹³⁸ The \$0.10 fee is also the average cost of a paper bag for a retailer, so although the fee’s main purpose is not to generate income, it also reimburses retailers for the cost of the bag.¹³⁹

b. *Proposition 67 Doesn’t Allocate Money to Helping the Environment*

The proponents’ main counter to Proposition 67 not allocating money to an environmental fund is that it would have then been a tax. Proposition 67 is a referendum on SB 270, which went through the Legislature. If the money in SB 270 has been allocated to an environmental fund, it would have been considered a tax and would have required a supermajority vote in the Legislature to pass.¹⁴⁰

The second counter is that the Legislature wanted SB 270 to closely resemble the local ordinances that were already in place around the state.¹⁴¹ The local ordinances also give the money to the retailers, so that was the model that SB 270 used.¹⁴²

c. *Proposition 67 Eliminates Jobs in the Plastic Industry*

The proponents main counter argument is that jobs in the plastic industry that will be affected are those located outside of California because they are focused on manufacturing single-use plastic bags.¹⁴³ If the ban goes into place, California reusable plastic bag manufacturers will have to significantly increase production of reusable plastic bags to meet

¹³³ *Id.*

¹³⁴ Interview with Phil Rozenski, Policy Chair, American Progressive Bag Alliance (Sept. 8, 2016) (Notes on file with the *California Initiative Review*).

¹³⁵ Interview with Mark Murray, *supra* note 125.

¹³⁶ *Schmeer v. County of Los Angeles*, 213 Cal. App. 4th 1310 (2d Dist. 2013), as modified (Mar. 11, 2013).

¹³⁷ *Id.* at 1326.

¹³⁸ Interview with Mark Murray, *supra* note 125.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Interview with Andy Keller, President and Inventor, Chicobag (Sept. 19, 2016) (Notes on file with the *California Initiative Review*).

demand.¹⁴⁴ Thus, it is more likely that jobs will be added to the industry, as reusable bag manufacturer in California will try to meet this demand by hiring new employees.¹⁴⁵

B. Opposition for Proposition 67

As of September 12, 2016, individuals and organizations opposing Proposition 67 have contributed over \$6.1 million, all of which has come from the American Progressive Bag Alliance (APBA).¹⁴⁶ The top five donors to the APBA were Hilex Poly Co. LLC, Superbag Corp., Formosa Plastics Corporation U.S.A., Advance Polybag, Inc., and Durabag Co., Inc.¹⁴⁷

1. Arguments Against Proposition 67

Opponents of Proposition 67 have made three main arguments against the proposition. First, they argue that Proposition 67 creates a hidden bag tax.¹⁴⁸ Second, they argue that Proposition 67 does not allocate money toward helping the environment.¹⁴⁹ Additionally, a third argument is that Proposition 67 will eliminate jobs in the plastic industry.¹⁵⁰ The arguments against Proposition 67 in the Voter Guide were made by Dorothy Rothrock, President of California Manufacturers & Technology Association; Thomas Hudson, Executive Director of the California Taxpayer Protection Committee; and Deborah Howard, Executive Director of the California Senior Advocates League.¹⁵¹

a. Proposition 67 Creates a Hidden Bag Tax

Opponents of Proposition 67 argue that because the government is imposing the \$0.10 charge, it is a tax, even though the government is not keeping the money.¹⁵² They further argue that the government is taking the people's money and giving it to grocers and other retailers.¹⁵³

b. Proposition 67 Doesn't Allocate Money to Helping the Environment

Opponents argue that the money should go towards helping the environment, as that is the purpose of the plastic bag ban.¹⁵⁴ If the government is mandating a bag fee, it should go to a fund for the public, not to the grocers.¹⁵⁵

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *California Proposition 67, Plastic Bag Ban Veto Referendum (2016)*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_\(2016\)](https://ballotpedia.org/California_Proposition_67,_Plastic_Bag_Ban_Veto_Referendum_(2016)) (last visited Oct. 16, 2016).

¹⁴⁷ *Id.*

¹⁴⁸ NOVEMBER 2016 VOTER GUIDE, *supra* note 113, at 113.

¹⁴⁹ *Id.*

¹⁵⁰ Interview with Phil Rozenski, *supra* note 134.

¹⁵¹ NOVEMBER 2016 VOTER GUIDE, *supra* note 113, at 113.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Interview with Phil Rozenski, *supra* note 134

¹⁵⁵ *Id.*

c. *Proposition 67 Eliminates Jobs in the Plastic Industry*

Opponents have also pointed out that a ban on plastic bags essentially means a ban on manufacturing plastic bags, which ultimately leads to an impact on jobs.¹⁵⁶ A study looking at the economic effects of Los Angeles County's bag ban found that retail job losses occurred after the ban, and that a widespread ban would have a large effect as the plastics manufacturing industry employs more than 30,000 people.¹⁵⁷

2. *Counters to Arguments for Proposition 67*

As above, the three arguments that proponents of Proposition 67 have made are that it reduces litter and waste, it protects our ocean and wildlife, and it has already been successful locally in a large portion of the state.

a. *Proposition 67 Reduces Litter and Waste and Protects Our Ocean and Wildlife*

Opponents have responded to the argument that the proposition reduces litter and waste by noting that the amount of plastic used will not decrease.¹⁵⁸ Although single-use plastic bags will be banned, reusable plastic bags, which are about five times thicker, will be purchased by customers who were previously using the single-use bags, and overall there will end up being more plastic.¹⁵⁹

Additionally, opponents point to a study done in San Francisco which showed that only 2.39% of items categorized as "large litter" consisted of plastic bags.¹⁶⁰ They argue that such a small percentage is negligible.¹⁶¹

b. *Proposition 67 Has Already Been Successful in Cities*

Opponents agree that ordinances have been implemented, but not necessarily successfully given how negligible plastic bags can be when compared to total waste as shown in the San Francisco study.¹⁶²

C. Other Considerations

SB 270 requires that reusable bags meet a specific standard and CalRecycle is delegated the task of certifying the bags, which does mean that passing Proposition 67 will place some

¹⁵⁶ *Id.*

¹⁵⁷ Pamela Villarreal and Baruch Feigenbaum, *A Survey on the Economic Effects of Los Angeles County's Plastic Bag Ban*, NCPA, <http://www.ncpa.org/pub/st340?pg=3> (last visited Oct. 16, 2016).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Thomas, Michael, "Reducing Waste with Reusable Bag Ordinances and Plastic Bag Bans in the Bay Area: An Impact Analysis" (2015) at 46, http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1412&context=etd_projects (last visited Oct. 16, 2016).

¹⁶¹ Interview with Phil Rozenski, *supra* note 134

¹⁶² *Id.*

burden on the agency.¹⁶³ The department expects that it will cost less than \$300,000 per year for the first two years, and less than \$200,000 per year afterwards.¹⁶⁴ However, CalRecycle will charge for the certification of bags, and the charge will be based on the cost to run the program, so CalRecycle expects that the charges will pay for the program, or at the very least that the remaining cost will be minimal.¹⁶⁵

VI. CONCLUSION

Proposition 67, the California Plastic Bag Ban Veto Referendum, will either enact or prevent the enactment of a statewide single-use plastic bag ban. If enacted Proposition 67's ban will prohibit regulated stores from providing single-use plastic bags to customers at the point of sale. Additionally, it will set a standard for permissible reusable bags, and will require that all reusable bags be sold at these regulated stores for at least \$0.10. The law will also preempt any similar local ordinance adopted on or after September 1, 2014.

Proponents argue banning single-use plastic bags will reduce litter and waste, protect the ocean and wildlife, and reduces costs spent by communities on litter and trash pickup. They claim recycling systems for plastic bags have been ineffective and single-use plastic bags, even when disposed of properly, often get blown away, becoming litter once more. Additionally, proponents claim that this type of law has already been successful in a large number of cities and counties throughout California.

Opponents claim the proposition creates a hidden tax that takes money from the people and gives it to retailers. Additionally, they argue the single-use plastic bag is a 100% recyclable product and will have a negative impact on 30,000 people who are employed in the plastic industry. They contend that if the government is going to force customers to pay for bags the money should go towards the environment, not to retailers.

Vote "YES" if you are in favor of Proposition 67, the California Single-Use Plastic Bag Ban (formally SB 270), or vote "NO" if you are against it. Additionally, it is suggested that you if you vote "YES" on Proposition 67, you should vote "NO" on Proposition 65 in order to avoid conflicting provisions.

¹⁶³ Interview with Wendy Harmon, Senior Environmental Scientist, CalRecycle and Deake Marschall, Research Program Specialist I, CalRecycle, and Kathleen Nitta, Staff Counsel Attorney, CalRecycle (Sept. 6, 2016) (Notes on file with the *California Initiative Review*).

¹⁶⁴ *Id.*; Department of Resources Recycling and Recovery at 19, CALIFORNIA STATE BUDGET, <http://www.ebudget.ca.gov/2015-16/pdf/GovernorsBudget/3890/3970.pdf> (last visited Oct. 16, 2016).

¹⁶⁵ Interview with Wendy Harmon, *supra* note 163.