



December 24, 2019

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative (A.G. File No. 19-0028, Amendment #1) related to the disposal and recycling of single-use plastic packaging and foodware.

BACKGROUND

Plastic Waste

Plastic Waste in California. In California, plastics amount to roughly 10 percent of the total waste generated. Over time, the amount of plastic waste has increased due to greater prevalence of plastic packaging materials used by manufacturers and disposable plastic products purchased and used by consumers. Some of the most common types of plastic waste include durable plastic items, plastic wrapping, and plastic bags.

Recycling of Plastic Waste. Based on available data, it is estimated that a small portion of all the plastic waste generated in California is recycled into new products, while the majority is disposed of in landfills. The plastic items that are recycled generally are from certain types of plastic that are easier to cleanly sort out from other waste and have more readily established manufacturing processes to facilitate the use of recycled materials.

State and Local Government Responsibilities Related to Recycling

California Department of Resources Recycling and Recovery (CalRecycle). CalRecycle is the state department responsible for implementing statewide recycling policies and programs. For example, CalRecycle administers the program for recycling of beverage containers known as the Beverage Container Recycling Program. The department also oversees several extended producer responsibility programs for specific products—such as carpet and paint—in order to ensure that producers collect and recycle their used products.

Local Governments. Local governments, generally cities and counties, are responsible for the collection and disposal of solid waste. Local governments may provide these services directly

or by contracting with a private company (such as a waste hauler). After waste is collected, it is often processed through material recovery facilities to sort out recyclable materials before the remaining waste is disposed of in a landfill or incinerated. Local governments typically fund the cost of waste collection, sorting, and disposal by charging fees to the residences and businesses receiving waste collection services.

PROPOSAL

This measure establishes new requirements for the recycling and reduction of single-use plastic packaging and foodware with the intent of reducing the amount of plastic waste that is generated and that ends up in landfills or as litter. This measure also creates a new tax on all single-use plastic packaging and foodware sold in California.

Establishes Recycling, Reduction, and Reuse Requirements for Certain Plastic Waste

This measure requires CalRecycle, in consultation with other specified state agencies, to adopt regulations on the production and sale of all single-use plastic packaging and foodware sold in California. Among other requirements, these regulations must:

- Require all single-use plastic packaging and foodware to be recyclable, reusable, refillable, or compostable by 2030.
- Require producers to reduce or eliminate single-use plastic packaging or foodware that is unnecessary for the delivery of a product or food item.
- Require producers to reduce the total amount of single-use plastic packaging and foodware sold in California by 25 percent by 2030.
- Establish take-back and deposit programs to establish convenient ways for consumers to recycle.
- Prohibit food vendors from distributing expanded polystyrene food service containers (commonly known as “Styrofoam”).

In order to implement these regulations, the measure requires all producers of single-use plastic packaging and foodware to register with and submit data to CalRecycle. This measure also allows the department to grant exemptions to the regulations for single-use plastic items for health and safety reasons, if they are unsafe to recycle, or if there are unique challenges and no alternatives. This measure includes various other provisions, such as penalties on producers that do not comply with this measure.

Creates a New Tax on Plastic Packaging and Foodware

Creates New Tax Beginning in 2022. This measure creates a new tax on each individual item of single-use plastic packaging and foodware sold in California beginning in 2022. The measure specifies the tax rate at a maximum level of one cent for each item. Under the measure, the maximum level of the tax will be adjusted for inflation beginning in 2030. The measure

requires that the tax rate be based on the actual cost to recycle each type of material and also establishes other requirements for determining the tax rates as follows:

- Requires the maximum one cent tax on all single-use plastic packaging and foodware that CalRecycle determines is not recyclable or compostable.
- Requires a tax of up to one cent on all single-use plastic packaging and foodware that is recyclable, but is not produced with renewable materials, such as plant-based products.
- Requires a tax of up to three-quarters of one cent on all single-use plastic packaging and foodware that is produced using mostly renewable materials.
- Requires a tax of up to one-half of one cent on all single-use plastic packaging and foodware that is produced using only renewable materials.

Allocates Revenues for Various Purposes. This measure specifies the allocation and allowable uses of the revenue generated by the new tax. After funding for the collection and administration of the tax, the remaining revenue would be allocated as follows:

- 50 percent to CalRecycle for implementing and enforcing the requirements of the measure, as well as funding various programs intended to support statewide recycling, reduction, and composting efforts.
- 30 percent to the California Natural Resources Agency for grants to state and local agencies to mitigate the environmental impacts of plastic pollution, such as by restoring habitats and protecting wildlife.
- 20 percent to local governments for various purposes, such as supporting local recycling and composting programs and mitigating the impacts of plastic pollution.

Specifies Funding Levels for Certain Existing State Programs. This measure also requires that the budgets for certain state natural resources departments continue to receive at least the same level of General Fund support in future years as is included in the state's 2019-20 budget.

FISCAL EFFECTS

Increased State Revenue and Costs. The measure will result in increased state revenue from the new tax on single-use plastic packaging and foodware. The magnitude of the revenue generated is uncertain but possibly in the range of a few billion dollars annually in the near term. The actual amount of revenue will depend on the number of items of single-use plastic packaging and foodware sold in the state and the specific regulations developed by CalRecycle, for example, how it defines "recyclable" for determining tax rates. Revenue from the tax over the longer term could be higher or lower depending on several factors. On the one hand, revenues could be lower in the future to the extent that producers reduce the total amount of single-use plastic packaging they use, consumers purchase fewer single-use plastic foodware, or more packaging and foodwares switch to renewable sources. On the other hand, if historic trends of increasing production and use of plastic items continues, revenue in the longer term could be higher. In addition, the state will incur costs, funded from the new tax revenue, to administer the tax, develop regulations, and administer and implement new programs.

State Appropriations Limit Consideration. The California Constitution limits the total amount the state can spend from certain types of revenues. State spending is currently below, but close to, the limit. Depending on a variety of factors, including how much tax revenue is ultimately raised and how future expenditures are allocated, this measure could cause spending to exceed the limit. When the limit is exceeded, the Constitution requires the state to return 50 percent of any excess to taxpayers and spend the remaining 50 percent on schools and community colleges.

Unclear Net Effects on Local Governments. The fiscal effects on local governments are unclear but potentially significant. While this measure does not increase requirements specifically on local governments, it does require CalRecycle to implement a number of new regulations, which could affect different aspects of the waste collection, sorting, and recycling systems. For example, the regulations might result in the installation of new collection and sorting equipment to better enable recycling of certain plastic materials. Because local governments will continue to have a role in collecting and sorting waste, including single-use plastic packaging and foodware, the measure's requirements could result in additional costs to local governments. The magnitude of these costs would depend on the specific regulations enacted and how they actually would be implemented. However, these local government costs could be partially or fully offset by (1) a share of the new tax revenues provided to local governments under this measure, (2) possible future payments made by producers to support recycling, and (3) a reduction in costs to the extent that the amount of plastic waste that has to be collected and sorted declines.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- State revenue from new tax on single-use plastic packaging and foodware likely in the range of a few billion dollars annually. Revenues would be used to administer and implement programs intended to reduce waste, increase recycling, and restore habitats.
- Unknown net effect on local governments. There would likely be increased costs for waste collecting and sorting which might be partially or fully offset by new tax revenue, payments from producers to support recycling, or lower costs associated with a reduction in total plastic waste collected.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance