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**DATE:** October 26, 2016  
**TO:** Waste Management Authority Board  
**FROM:** Wendy Sommer, Executive Director  
**BY:** Debra Kaufman, Senior Program Manager  
**SUBJECT:** Final Legislative Update and Recommendation to Adopt a “No” Position on Prop 65

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**SUMMARY**

The Programs & Administration committee and the Planning & Organization committee/Recycling Board received an update on the status of legislation at their October 13 meetings. The memo containing the status of bills can be found here: [Legislative Update-10-13-16.pdf](#)

At their meeting the P&A Committee recommended that the Waste Management Authority take a “no” position on Proposition 65. Staff will return in November to obtain input from the Boards on priorities for the 2017 legislative year.

**DISCUSSION**

Oppose Position Recommended for Proposition 65

On September 28, the WMA Board took a support position on Proposition 67 to uphold the statewide single use plastic bag ban (SB 270). At that meeting, the WMA Board requested that staff return with a recommended position on Proposition 65. Staff is recommending an “oppose” or “no” position on Proposition 65 as this measure is sponsored by the plastics industry and widely recognized as an effort to confuse voters and dilute support for Proposition 67. Proposition 65 requires that the fees collected for paper and reusable plastic bags be directed to an environmental fund for unknown purposes. The text of Proposition 65 is included as Attachment A.

If 67 fails, there will be no statewide ban on single-use plastic bags. If 67 passes and 65 passes with a greater number of “yes” votes than 67, then the statewide ban will stand but fees collected at checkout counters for paper and reusable plastic bags will not be retained by retailers. This is contrary to existing local bag ordinances, which allow the retailers to retain these fees. If 67 fails and 65 passes, then revenue from any future statewide law similar to SB 270 would be directed to environmental programs. The State Legislative Analyst’s Office notes that a provision of 65 could be interpreted by the courts as preventing SB 270 from going into effect at all. Neither proposition will impact our Agency’s current

ordinance or planned expansion. The table below shows how passage of each proposition will affect implementation.

**How Implementation of Proposition 65 Would be Affected by Outcome of Referendum**

	<b>Proposition 67 (SB 270 Referendum) Passes</b>	<b>Proposition 67 (SB 270 Referendum) Fails</b>
<b>Proposition 65 (Initiative) Passes</b>	<p>Statewide carryout bag law in effect. Use of revenues from sale of carryout bags depends on which proposition gets more votes:</p> <p>If more <b>“yes”</b> votes for referendum, revenue is kept by stores.</p> <p>If more <b>“yes”</b> votes for initiative, revenue goes to state for environmental programs.*</p>	<p>No statewide carryout bag law. Revenue from any future statewide law similar to SB 270 would be used for environmental programs.</p>
<b>Proposition 65 (Initiative) Fails</b>	<p>Statewide carryout bag law in effect and revenue from the sale of carryout bags is kept by stores.</p>	<p>No statewide carryout bag law.</p>

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

**RECOMMENDATION**

Receive the 2016 legislative status update and adopt a “no” position on Proposition 65.

**Attachment A: Proposition 65 text**

PROPOSITION  
**65** CARRYOUT BAGS. CHARGES.  
INITIATIVE STATUTE.

## OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Redirects money collected by grocery and certain other retail stores through sale of carryout bags, whenever any state law bans free distribution of a particular kind of carryout bag and mandates the sale of any other kind of carryout bag.
- Requires stores to deposit bag sale proceeds into a special fund administered by the Wildlife Conservation Board to support specified categories of environmental projects.
- Provides for Board to develop regulations implementing law.

**SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:**

- Potential state revenue of several tens of millions of dollars annually under certain circumstances. Revenue would be used to support certain environmental programs.

## ANALYSIS BY THE LEGISLATIVE ANALYST

## BACKGROUND

**Carryout Bag Usage.** Stores typically provide their customers with bags to carry out the items they buy. One type of bag commonly provided is the “single-use plastic carryout bag,” which refers to a thin plastic bag used at checkout that is not intended for continued reuse. In contrast, “reusable plastic bags” are thicker and sturdier so that they can be reused many times. Many stores also provide single-use paper bags. Stores frequently provide single-use paper and plastic carryout bags to customers for free, and some stores offer reusable bags for sale. Each year, roughly 15 billion single-use plastic carryout bags are provided to customers in California (an average of about 400 bags per Californian).

**Many Local Governments Restrict Single-Use Carryout Bags.** Many cities and counties in California have adopted local laws in recent years restricting or banning single-use carryout bags. These local laws have been implemented due to concerns about how the use of such bags can impact the environment. For example, plastic bags can contribute to litter and can end up in waterways. In addition, plastic bags can be difficult to recycle because they can get tangled in recycling machines. Most of these local laws ban single-use plastic carryout bags at grocery stores, convenience stores, pharmacies, and liquor stores. They also usually require the store to charge at least 10 cents for the sale of any carryout bag. Stores are allowed to keep the resulting revenue. As of June 2016, there were local carryout bag laws in about 150 cities and counties—covering about 40 percent of California’s population—mostly in areas within coastal counties.

**Statewide Carryout Bag Law.** In 2014, the Legislature passed and the Governor signed a statewide carryout bag law, Senate Bill (SB) 270. Similar to many local laws, SB 270 prohibits most grocery stores, convenience stores, large pharmacies, and liquor stores in the state from providing single-use plastic

carryout bags. It also requires a store to charge customers at least 10 cents for any carryout bag that it provides at checkout. Certain low-income customers would not have to pay the charge. Under SB 270, stores would retain the revenue from the sale of the bags. They could use the proceeds to cover the costs of providing carryout bags, complying with the measure, and educational efforts to encourage the use of reusable bags. These requirements would apply only to cities and counties that did not already have their own carryout bag laws as of the fall of 2014.

**Referendum on SB 270.** Under the State Constitution, a new state law can be placed before voters as a referendum to determine whether the law can go into effect. A referendum on SB 270 qualified for this ballot (Proposition 67). If the referendum passes, SB 270 will go into effect. If it does not pass, SB 270 will be repealed.

## PROPOSAL

**Redirects Carryout Bag Revenue to New State Environmental Fund.** This measure specifies how revenue could be used that resulted from any state law that (1) prohibits giving certain carryout bags away for free and (2) requires a minimum charge for other types of carryout bags. Specifically, this measure requires that the resulting revenue be deposited in a new state fund—the Environmental Protection and Enhancement Fund—for various environmental purposes rather than be retained by stores. The fund would be used to support grants for programs and projects related to (1) drought mitigation; (2) recycling; (3) clean drinking water supplies; (4) state, regional, and local parks; (5) beach cleanup; (6) litter removal; and (7) wildlife habitat restoration. The measure allows a small portion of these funds to be used for grant administration and biennial audits of the programs receiving funds.

**ANALYSIS BY THE LEGISLATIVE ANALYST**

CONTINUED

**Other Provisions.** Additionally, the measure allows local governments to require that money collected from local carryout bag laws go to the new state fund rather than allowing that revenue to be kept by stores. It also includes a provision regarding the implementation of this measure and any other carryout bag measure on this ballot. This provision could be interpreted by the courts as preventing Proposition 67 (the referendum on SB 270) from going into effect. This provision would only have an effect if both measures pass and this measure (Proposition 65) gets more “yes” votes. However, this analysis assumes that in this situation the provisions of Proposition 67 not related to the use of revenues—such as the requirement to ban single-use plastic carryout bags and charge for other bags—would still be implemented.

**FISCAL EFFECTS**

If the requirements of this measure (that there is a state law prohibiting giving certain carryout bags away for free and requiring a minimum charge for other bags) are met, then there would be increased state revenue for certain environmental programs. This revenue could reach several tens of millions of dollars annually. The actual amount of revenue could be higher or lower based on several factors, particularly future sales and prices of carryout bags.

At the present time, there is no state law in effect that meets this measure’s requirements. As such, there would be no fiscal effect as long as that continued. As noted earlier, however, Proposition 67 on this ballot would enact such a state law. If both Proposition 67 and this measure (Proposition 65) pass, the impact on the state would depend on which one receives the most votes:

- **Proposition 67 (Referendum) Receives More Votes.** In this situation, revenue collected by the stores

would be kept by the stores and there would not be a fiscal impact on the state related to Proposition 65.

- **Proposition 65 (Initiative) Receives More Votes.** In this situation, any revenue collected by stores from the sale of carryout bags would be transferred to the new state fund, with the increased state revenue used to support certain environmental programs.

In addition, if only this measure passes and Proposition 67 fails (which means there would not currently be a statewide law to which this measure would apply), there could still be a fiscal impact if a state carryout bag law was enacted in the future. Figure 1 shows how this measure would be implemented differently depending on different voter decisions.

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee’s top 10 contributors.

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

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

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



★ ARGUMENT IN FAVOR OF PROPOSITION 65 ★

STOP THE SWEETHEART BAG TAX DEAL. HELP THE ENVIRONMENT

Proposition 65 is needed to STOP grocery stores from keeping all the money collected from carryout bag taxes as profit instead of helping the environment.

Grocery stores stand to gain up to \$300 million in added profits each and every year unless you vote yes on Prop. 65.

That money should be dedicated to the environment, not more profits for corporate grocery chains.

Proposition 65 will STOP THE SWEETHEART DEAL WITH GROCERY STORES and dedicate bag fees to worthy environmental causes.

A SWEETHEART DEAL IN SACRAMENTO

Who in their right mind would let grocery stores keep \$300 million in bag fees paid by hardworking California shoppers just trying to make ends meet? The State Legislature!

In a sweetheart deal put together by special interest lobbyists, the Legislature voted to let grocery stores keep bag fees as extra profit.

The grocery stores will get \$300 million richer while shoppers get \$300 million poorer.

SHAME ON THE LOBBYISTS AND LEGISLATORS

The big grocery store chains and retailers gave big campaign contributions to legislators over the past seven years.

And legislators rewarded them with \$300 million in new profits—all on the backs of shoppers.

Stop the sweetheart special interest deal . . . VOTE YES ON PROP. 65.

A BETTER WAY TO HELP THE ENVIRONMENT

You can do what the legislators should have done—dedicate these bag fees to real projects that protect the environment.

Proposition 65 dedicates the bag fees to environmental projects like drought relief, beach clean-up and litter removal.

It puts the California Wildlife Conservation Board in control of these funds, not grocery store executives, so Californians will benefit.

PROTECT THE ENVIRONMENT. STOP THE SWEETHEART DEAL AND HIDDEN BAG TAX.

VOTE YES ON PROP. 65.

THOMAS HUDSON, Executive Director California Taxpayer Protection Committee

DEBORAH HOWARD, Executive Director California Senior Advocates League

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 65 ★

65

The *San Jose Mercury News* calls Proposition 65 a “tricky strategy” and adds “Prop. 65 deserves consideration as one of the most disingenuous ballot measures in state history.”

The out-of-state plastic manufacturers behind Prop. 65 don’t care about protecting California’s environment. They want to confuse you. Don’t be fooled.

Bags aren’t free; they cost your local grocer up to 15 cents each. The out-of-state plastic bag industry figures are bogus. The state’s nonpartisan analysis projects that total revenue from Prop. 65 is in the range of “zero” to, at best, \$80 million.

Remember: there will be “zero” funding for the environment from Prop. 65 unless voters approve Prop. 67 to phase out plastic bags.

But the plastic manufacturers behind Prop. 65 are spending millions to persuade voters to oppose Prop. 67. Confused? That’s the plastic industry’s plan!

If you care about protecting wildlife and standing up to the out-of-state plastic bag industry, Vote Yes on Prop. 67, not this measure.

If you care about reducing plastic pollution, litter and waste, Vote Yes on Prop. 67, not this measure.

If you care about reducing taxpayer costs for cleaning up plastic litter, Vote Yes on Prop. 67, not this measure.

MARK MURRAY, Executive Director Californians Against Waste

★ ARGUMENT AGAINST PROPOSITION 65 ★

THE SOLE PURPOSE OF PROP. 65 IS TO CONFUSE VOTERS

Prop. 65 promises a lot but—in reality—will deliver little for the environment. It was placed on the ballot by four out-of-state plastic bag companies who keep interfering with California's efforts to reduce plastic pollution.

65 is without real significance, designed to distract from the issue at hand: phasing out plastic shopping bags. All 65 would do is direct funding from the sale of paper bags (an option under the plastic bag ban) to a new state fund. The money for this fund is a drop in the bucket and will shrink over time as people adjust to bringing reusable bags.

TO ACTUALLY PROTECT OUR ENVIRONMENT, VOTE YES ON 67

*The priority for California's environment this election is to reduce harmful plastic pollution by voting Yes on Prop. 67. This will continue efforts to keep wasteful plastic shopping bags out of our parks, trees, neighborhoods and treasured open spaces.*

Prop. 65 is not worth your vote. Make your voice heard on the more important issues and uphold California's vital plastic bag ban further down the ballot.

**MARK MURRAY**, Executive Director  
Californians Against Waste

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 65 ★

The opponents of Prop. 65 want to dismiss it as "of no real significance".

**YOU DECIDE: IS A \$300 MILLION MONEY GRAB BY GROCERY STORES NOT SIGNIFICANT?**

Without Prop. 65, not one penny of the \$300 million customers will be required to pay if California's ban on plastic bags goes into effect will help the environment.

All \$300 million will go to grocery store profits. **THAT'S \$300 MILLION EVERY YEAR!**

**VOTE YES ON 65—STOP THE SWEETHEART GIVEAWAY TO GROCERS.**

In a sweetheart deal put together by special interest lobbyists, the Legislature voted to **BAN** plastic bags and **REQUIRE** grocery stores keep bag fees as profit.

Their "plastic bag ban" **REQUIRES** grocery stores to charge every consumer given a bag at check-out no less than 10 cents per bag.

They could have banned plastic bags without a fee or dedicated fees to environmental projects.

They didn't.

Instead, they made grocery stores \$300 million richer and shoppers \$300 million poorer every year. **A BETTER WAY TO PROTECT THE ENVIRONMENT.**

You can do what the Legislature should have done—dedicate bag fees to projects that protect the environment.

Prop. 65 dedicates bag fees to environmental projects like drought relief, beach clean-up and litter removal.

It puts the California Wildlife Conservation Board in control of these funds, not grocery store executives.

**PROP. 65 WILL DEDICATE BAG FEES TO THE ENVIRONMENT.**

It's simple and significant.

Join us—vote YES.

**THOMAS HUDSON**, Executive Director  
California Taxpayer Protection Committee

**DEBORAH HOWARD**, Executive Director  
California Senior Advocates League