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# SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2021 - 2022 Regular

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**Bill No:** AB 1276  
**Author:** Carrillo  
**Version:** 7/1/21  
**Consultant:** Favorini-Csorba

**Hearing Date:** 7/8/21  
**Tax Levy:** No  
**Fiscal:** Yes

## *SINGLE-USE FOOD ACCESSORIES*

*Expands and revises the existing prohibition on distributing single-use plastic straws, except upon request, to apply to all single-use food accessories.*

### Background

**Police power.** The California Constitution allows a city or county to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws, known as the police power of cities." It is from this fundamental power that local governments derive their authority to regulate land uses through planning, zoning ordinances, and use permits. Local agencies also use this police power to abate nuisances and protect public health, safety and welfare.

**CalCode.** The California Retail Food Code (CalCode) provides for the regulation of retail food facilities. Health and sanitation standards are established at the state level through the CalCode, while local agencies enforce them, carried out by the 58 county environmental health departments, and four city environmental health departments (Berkeley, Long Beach, Pasadena, and Vernon).

**Plastics.** According to the California Coastal Commission, the primary source of marine debris is litter, and plastics are estimated to comprise 60 to 80 percent of all marine debris. Most plastic marine debris exists as small plastic particles that are easily ingestible by marine life and birds. These debris accumulate in large formations at various locations in oceans around the world, including in the North Pacific Central Gyre, also known as the Great Pacific Garbage Patch. The gyre is estimated to be twice the size of Texas and contains six times as much plastic as plankton by weight.

In an effort to reduce plastic litter, some cities and states have begun to ban the use of certain types of plastics. Approximately 42 percent of the plastic ever produced was single-use packaging that is then discarded, according to a 2017 study published in the journal *Science Advances*. Following the adoption of bans by 127 cities and counties in California, SB 270 (Padilla, 2014) established California as the first state in the nation to ban single-use plastic bags at most grocery stores, retail stores with a pharmacy, convenience stores, food marts, and liquor stores. Instead, these stores can provide a reusable grocery bag or recycled paper bag to a customer if they charge at least 10 cents for the bag. Subsequently, California also banned the use of plastic straws at full service restaurants, unless requested by the customer (AB 1884,

Calderon, 2018), and toiletries bottles of smaller than six ounces in hotels and motels (AB 1162, Kalra, 2019).

Several local governments have adopted ordinances prohibiting restaurants from distributing single-use or disposable foodware without a request by the customer, including the City of Los Angeles, the County of Los Angeles, the City of Berkeley, and the City of San Diego. The Clean Seas Lobbying Coalition wants to institute similar policies statewide.

### **Proposed Law**

Assembly Bill 1276 prohibits food facilities and third-party food delivery platforms from providing single-use food accessories to a consumer unless the consumer specifically requests. AB 1276 defines single-use food accessory” as any standard condiment in single-use packaging or single-use food service ware, as defined. The bill permits a food facility to ask a drive-through consumer if the consumer wants a single-use food accessory if that accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

AB 1276 requires food delivery platforms to provide each of its ready-to-eat food vendors with the option to customize the vendor’s menu on the online food-ordering platform, with a list of the single-use food accessories offered by the vendor. If a consumer does not select any single-use food accessories, no single-use food accessory can be provided. If a ready-to-eat food vendor chooses not to customize its menu, the platform shall post the following statement next to their menu: “This restaurant has not listed single-use food accessories on its menu.”

AB 1276 provides that the requirement to provide single-use food accessories only upon request does not do either of the following:

- Prohibit a food facility from making unwrapped single-use food accessories available to a consumer using refillable self-service dispensers to allow for single-use food accessories to be obtained upon the consumer’s request; or
- Prevent a local government from adopting or implementing an ordinance or rule that would further restrict a food facility or third-party platform from providing single-use food accessories to a consumer.

AB 1276 requires a city or county to authorize an enforcement agency to enforce the bill’s requirements by June 1, 2022. The bill also establishes penalties for violations of the bill’s requirements, specifically that the first and second violations of this chapter result in a notice of violation, and any subsequent violations constitute infractions punishable by a fine of \$25 for each day of violation, not to exceed \$300 annually.

AB 1276 exempts correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias. It also encourages food facilities to use bulk dispensers for the condiments rather than single-use condiments and to take actions in addition to the requirements in the bill that would support the goal of reducing the use of and waste generate by single-use food accessories.

AB 1276 defines its terms and includes findings and declarations to support its purposes.

## State Revenue Impact

No estimate.

## Comments

1. Purpose of the bill. According to the author, “The COVID-19 pandemic has increased takeout and food delivery, which restaurants are relying upon to stay afloat. However, the use of disposable food accessories like plastic forks, spoons, and knives has led to a rise in single-use plastics and waste. AB 1276 is an important step to significantly reduce plastic waste that pollutes our oceans, harms marine life, harms our environment, and hurts low income communities of color, while simultaneously providing financial savings to restaurants and local governments. This bill will build on California’s existing efforts to combat waste from single-use items by ensuring food and beverage accessories are provided only upon request to customers.”

2. If it ain’t broke. AB 1276 builds off the straw ban to prohibit food facilities or food delivery platforms from providing a single use food accessory to a customer unless they specifically request. One change from AB 1884 to this bill that impacts local governments is that AB 1276 requires both cities and counties to designate an enforcement agency on or before June 1, 2022, whereas AB 1884 tasked local health officers with enforcement responsibilities. There was some logic to this: local health officers enforce the California Retail Food Code and are already visiting restaurants and other food facilities. Therefore, these officers provide a cost-effective means to simultaneously check that establishments are not illegally providing straws. The sponsors of AB 1276 state that the bill provides local agencies with flexibility to choose their own enforcement agencies. However, this flexibility is not mutually exclusive with designating environmental health officers as the enforcement officers for the bill: the bill already provides that local ordinances can exceed the standards in the bill, in which case those jurisdictions would be empowered to enforce their own laws and identify an appropriate agency to do so. The Committee may wish to consider whether requiring environmental health officers to enforce AB 1276’s provisions would be more efficient than requiring all local agencies to designate an enforcement agency.

3. Mandate. The California Constitution generally requires the state to reimburse local agencies for their costs when the state imposes new programs or additional duties on them. Because AB 1276 increases the duties of local officials and creating a new crime, Legislative Counsel says it creates a new state mandate. But the bill disclaims the state's responsibility for reimbursing local governments for enforcing these new crimes. That's consistent with the California Constitution, which says that the state does not have to reimburse local governments for the costs of new crimes (Article XIII B, 6[a] [2]). AB 1276 provides that if the Commission on State Mandates determines that the bill imposes other reimbursable mandates, then reimbursement must be made pursuant to existing statutory provisions.

4. Incoming! The Senate Environmental Quality Committee approved AB 1276 at its July 1<sup>st</sup> hearing on a 5-2 vote. The Senate Governance and Finance Committee is hearing AB 1276 at the committee of second reference.

## Assembly Actions

Assembly Natural Resources Committee:	8-0
Assembly Appropriations Committee:	12-4
Assembly Floor:	58-14

**Support and Opposition** (7/5/21)

Support: Clean Seas Lobbying Coalition (SPONSOR); Councilmember Mitch O'Farrell, City of Los Angeles; Councilmember Paul Koretz, City of Los Angeles; Councilmember Paul Krekorian, City of Los Angeles; 350 Humboldt: Grass Roots Climate Action; 350 Silicon Valley; 350 South Bay Los Angeles; 350 Southland Legislative Alliance; Active San Gabriel Valley; Agromin; Audubon California; Azul; Ban Sup (single Use Plastic); Berkeley; City of Breast Cancer Prevention Partners; Cafe Aquatica; California Alliance of Nurses for Healthy Environments; California Association of Zoos & Aquariums; California Catholic Conference; California Coastkeeper Alliance; California Compost Coalition; California Interfaith Power & Light; California League of Conservation Voters; California Product Stewardship Council; California Reuse Collective; Californians Against Waste; Calpirg; Center for Biological Diversity; Center for Environmental Health; Chicoeco, Inc, Db a Chicobag Company; City of Arcata; City of Beverly Hills; City of Fremont; City of Half Moon Bay; City of San Francisco; City of Santa Cruz; City of Sunnyvale; City of Thousand Oaks; Clean Water Action; Climate Reality Project, Los Angeles Chapter; Community Environmental Council; Compost Manufacturing Alliance; County of Los Angeles Board of Supervisors; County of Marin; County of San Francisco; Courage California; Ecology Center; Elders Climate Action, NorCal/SoCal chapters; Facts: Families Advocating for Chemical & Toxins Safety; Friends Committee on Legislation of California; Goodwerks; Green Mary; Green Valley Community Farm; Greentown Los Altos; Grubhub; Habits of Waste; Heal the Bay; Joshua Tree Music Festival; Klean Kanteen; League to Save Lake Tahoe; Los Angeles City Councilmember Paul Koretz; Marin Sanitary Service; Maury's Bagels & Appetizing; Mint + Craft Cafe and Mercantile; Monterey Bay Aquarium Foundation; Muuse; Napa Climate Now; Napa Recycling and Waste Services; National Stewardship Action Council; Natural Resources Defense Council; Northern California Recycling Association; Ocean Conservancy; Oceana; Orange County Coastkeeper; Pier 23 Cafe Restaurant & Bar; Plastic Oceans International; Plastic Pollution Coalition; Ponce's Mexican Restaurant; Race to Zero Waste; Rainbow Grocery Cooperative, INC.; Raise High Road Restaurants; Real Good Fish; Recology; Republic Services INC.; Resource Renewal Institute; Rethinkwaste; Robin's Restaurant; Santa Barbara Channelkeeper; Save Our Shores; Sea Hugger; Seventh Generation Advisors; Shizen and Tataki Restaurants; Sierra Club California; Sierra Nevada Brewing Company; Sonoma County Waste Management Agency; Super Cocina; Surfrider Foundation; Sustain LA; Sustainable St. Helena; The 5 Gyres Institute; The Bay Foundation; The Center for Oceanic Awareness, Research, and Education; The Last Plastic Straw; The Nature Conservancy; The Nectary; The Refill Shoppe; The Story of Stuff Project; The Trust for Public Land; Town of San Anselmo; Uber Technologies, INC.; Upstream; Wisdom Supply Co.; Wishtoyo Chumash Foundation; Zanker Recycling; Zero Waste Sonoma; Zero Waste USA; 1 Individual

Opposition: American Forest & Paper Association

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