[First Reprint]

SENATE, No. 864

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 14, 2020

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

Prohibits provision or sale of single-use plastic carryout bags, single-use paper carryout bags, and polystyrene foam food service products; limits provision of single-use plastic straws; appropriates moneys from Clean Communities Program Fund for public education.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on January 30, 2020, with amendments.

AN ACT concerning single-use plastic carryout bags, single-use paper carryout bags, polystyrene foam food service products, and single-use plastic straws, supplementing Title 13 of the Revised Statutes, and amending P.L.2002, c.128.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) The Legislature finds and declares that, since 1950, global annual production of plastics has increased from two million tons to over 381 million tons; that approximately one third of all plastics produced are single-use plastics, which are plastics designed to be used only once and then thrown away; and that an estimated 100 billion single-use plastic carryout bags and 25 billion styrofoam plastic coffee cups are thrown away in the United States each year.

The Legislature further finds that, in 2017, only 8.4 percent of plastics in the United States were recycled; that most single-use plastics are disposed of in landfills, are incinerated, or become litter in waterways and oceans; that plastics released in the environment do not biodegrade, but instead break down into smaller pieces, known as microplastics, which accumulate in the natural environment and are eaten by fish and other marine life; and that microplastic pollution moves through natural food webs and accumulates in fish and shellfish tissues, which means microplastics and associated pollutants can move into the food chain.

The Legislature further finds that approximately eight million tons of plastic end up in the oceans annually; that, without action, scientists estimate that by 2050 the mass of plastic pollution in the ocean will exceed the mass of fish; that currently, there is a collection of litter in the North Atlantic Ocean, known as the Great Pacific Garbage Patch, that is 7.7 million square miles and is composed primarily of plastics; that one study found plastics in the gut of every sea turtle examined and in 90 percent of seabirds examined; and that plastics have been known to cause death or reproductive failure in sea turtles, birds, and other organisms that ingest plastic.

The Legislature further finds that, as plastics break down through photodegradation, they release harmful chemicals such as bisphenol A (BPA) into the environment that have been linked to health problems in humans; that these chemicals enter the food chain when consumed by marine life; and that single-use plastic waste creates visual pollution, degrades water quality, and impacts the tourism, fishing, and shipping industries, all of which are major contributors to the New Jersey economy.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SEN committee amendments adopted January 30, 2020.

The Legislature therefore determines that it is no longer conscionable to permit the unfettered use and disposal of single-use plastics in the State; that New Jersey must do its part to minimize plastic pollution in the ocean, and to ensure that future generations have a clean and healthy environment to live, work, and recreate in; that banning or limiting the use of single-use plastic carryout bags, polystyrene foam food service products, and single-use plastic straws is a significant step in this effort, as these items are among the most significant sources of beach and ocean pollution; that New Jersey joins several other states and hundreds of municipalities across the country in banning or limiting the use of single-use plastics; and that such bans and limitations have drastically lowered consumer consumption of single-use plastics.

The Legislature further finds that single-use paper carryout bags use as much or more energy and resources to manufacture and transport than single-use plastic carryout bags and contribute to harmful air emissions. Consequently, the Legislature further determines that it is in the public interest to prohibit grocery stores from providing single-use paper carryout bags.

2. (New section) As used in P.L. , c. (C.)(pending before the Legislature as this bill):

"Carryout bag" means a bag that is provided by a store or food service business to a customer for the purpose of transporting groceries, prepared foods, or retail goods. "Carryout bag" shall not include:

(1) a bag used solely to contain or wrap uncooked meat, fish, or poultry;

(2) a bag used solely to package loose items such as fruits, vegetables, nuts, coffee, grains, baked goods, candy, greeting cards, flowers, or small hardware items;

(3) a bag used solely to contain live animals, such as fish or insects sold in a pet store;

(4) a bag used solely to contain food sliced or prepared to order, including soup or hot food;

(5) a laundry, dry cleaning, or garment bag;

(6) a bag provided by a pharmacy to carry prescription drugs;

(7) a newspaper bag; and

(8) any similar bag, as determined by the department pursuant to rule, regulation, or guidance.

"Department" means the Department of Environmental Protection.

"Food service business" means a business that sells or provides food for consumption on or off the premises, and includes, but is not limited to, any restaurant, café, delicatessen, coffee shop, convenience store, grocery store, vending truck or cart, food truck, movie theater, or business or institutional cafeteria, including those operated by or on behalf of any governmental entity.

"Grocery store" means a self-service retail establishment that occupies at least 4,500 square feet and that primarily sells a full-line of household foodstuffs for off-site consumption, including, but not limited to, fresh produce, meat, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods.

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental entity.

"Plastic" means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during the life cycle and after disposal.

"Polystyrene foam" means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene).

"Polystyrene foam food service product" means a product made, in whole or in part, of polystyrene foam that is used for selling or providing a food or beverage, and includes, but is not limited to, a food container, plate, hot or cold beverage cup, meat or vegetable tray, cutlery, or egg carton.

"Reusable carryout bag" means a carryout bag that: (1) is made of polypropylene, PET nonwoven fabric, nylon, cloth, or other machine washable fabric; (2) has stitched handles; and (3) is designed and manufactured for multiple reuse.

"Single-use paper carryout bag" means a carryout bag made of paper that is not a reusable carryout bag.

"Single-use plastic carryout bag" means a carryout bag made of plastic that is not a reusable carryout bag.

"Store" means any grocery store, convenience store, liquor store, pharmacy, drug store, or other retail establishment.

3. (New section) a. Beginning [1]**[**two years**]** <u>18 months</u>[1] after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill):

(1) no store or food service business shall provide or sell a single-use plastic carryout bag to a customer; and

(2) no grocery store shall provide or sell a single-use paper carryout bag to a customer.

b. A municipality or county shall not adopt any rule, regulation, code, or ordinance concerning the regulation or prohibition of single-use plastic carryout bags or single-use paper carryout bags after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

c. Beginning [1][two years] 18 months[1] after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), this section shall supersede and preempt any municipal or county rule, regulation, code, or ordinance concerning the regulation or prohibition of single-use plastic carryout bags or single-use paper carryout bags that was enacted prior to the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

4. (New section) a. Beginning [1][two years] 18 months[1] after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), no person shall sell or offer for sale in the State any polystyrene foam food service product.

b. Beginning [1][two years] 18 months[1] after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), no food service business shall provide or sell any food in a polystyrene foam food service product.

c. The following products shall be exempt from the provisions of subsections a. and b. of this section for a period of two years beginning [1][two years] 18 months[1] after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill):

(1) disposable, long-handled polystyrene foam soda spoons when required and used for thick drinks;

(2) portion cups of two ounces or less, if used for hot foods or foods requiring lids;

(3) meat and fish trays for raw or butchered meat, including poultry, or fish that is sold from a refrigerator or similar retail appliance;

(4) any food product pre-packaged by the manufacturer with a polystyrene foam food service product; and

(5) any other polystyrene foam food service product as determined necessary by the department.

d. The department may extend any exemption provided for in subsection c. of this section for additional periods not to exceed one year upon a written determination that there is no cost-effective and readily available alternative for the item. An exemption shall expire after one year unless the department extends the exemption pursuant to this subsection.

e. The department may, upon written application by a person or food service business, waive the provisions of subsection a. or b. of this section for the person or food service business for a period not to exceed one year, if:

(1) there is no feasible and commercially available alternative for a specific polystyrene foam food service product; or

(2) the person or food service business has less than $500,000 in gross annual income and there is no reasonably affordable, commercially-available alternative to the polystyrene foam food service product.

The department shall prescribe the form and manner of the application for a waiver pursuant to this subsection. The department may, upon written application, extend any waiver granted pursuant to this section for additional periods not to exceed one year.

f. A municipality or county shall not adopt any rule, regulation, code, or ordinance concerning the regulation or prohibition of polystyrene foam food service products after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

g. Beginning [1][two years] 18 months[1] after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), this section shall supersede and preempt any municipal or county rule, regulation, code, or ordinance concerning the regulation or prohibition of polystyrene foam food service products that was enacted prior to the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

5. (New section) a. Beginning one year after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), a food service business shall only provide a single-use plastic straw to a customer upon the request of the customer.

b. A food service business shall maintain an adequate supply of single-use plastic straws to provide at the request of customers pursuant to subsection a. of this section.

c. Nothing in this section shall be construed to prohibit a store from selling packages of single-use plastic straws to customers, or from providing or selling a beverage pre-packaged by the manufacturer with a single-use plastic straw, including, but not limited to, a juice box.

d. Notwithstanding the provisions of subsection c. of section 6 of P.L. , c. (C.)(pending before the Legislature as this bill), the Department of Health shall enforce the provisions of this section. The Department of Health may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the provisions of this section.

e. No later than four years after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), the Department of Health shall prepare and submit to the Plastics Advisory Council a written report evaluating the compliance of food service businesses with the requirements of this section.

f. A municipality or county shall not adopt any rule, regulation, code, or ordinance concerning the regulation or prohibition of single-use plastic straws after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

g. Beginning one year after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), this section shall supersede and preempt any municipal or county rule, regulation, code, or ordinance concerning the regulation or

prohibition of single-use plastic straws that was enacted prior to the effective date of P.L. , c. (C.)(pending before the Legislature as this bill).

6. (New section) a. Any person or entity that violates a provision of P.L. , c. (C.)(pending before the Legislature as this bill), or any rule or regulation adopted pursuant thereto, shall be subject to a warning for a first offense, up to $1,000 for a second offense, and up to $5,000 for a third or subsequent offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L. , c. (C.)(pending before the Legislature as this bill).

b. Any penalty collected pursuant to this section shall be remitted to the State Treasurer for deposit in the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217), except that a municipality or entity certified pursuant to the "County Environmental Health Act," P.L.1977, c.443 (C.26:3a2-21 et seq.) may retain 30 percent of any penalty it collects pursuant to subsection a. of this section.

c. The Department of Environmental Protection, a municipality, and any entity certified pursuant to the "County Environmental Health Act," P.L.1977, c.443 (C.26:3a2-21 et seq.) shall have the authority to enforce the provisions of P.L. , c. (C.)(pending before the Legislature as this bill). Those entities may institute a civil action for injunctive relief to enforce P.L. , c. (C.)(pending before the Legislature as this bill) and to prohibit and prevent a violation thereof, and the court may proceed in the action in a summary manner.

7. (New section) a. There is established in the Department of Environmental Protection the Plastics Advisory Council. The council shall monitor the implementation of P.L. , c. (C.)(pending before the Legislature as this bill), and evaluate its effectiveness in reducing single-use plastics and plastic waste in the State.

b. The council shall consist of 15 members as follows:

(1) the Commissioner of Environmental Protection, who shall serve ex officio, or the commissioner's designee;

(2) the Commissioner of Health, who shall serve ex officio, or the commissioner's designee;

(3) the following members appointed by the Governor:

(a) two members of the academic community with expertise on the issues of single-use plastics and plastic waste;

(b) four members representing the environmental community;

(c) four members representing stores and food service businesses in the State;

(d) one member representing the polystyrene foam industry;

(e) one member representing the recycling industry; and

(f) one member representing local governments.

c. All appointments to the council shall be made no later than 90 days after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill). The term of office of each public member shall be three years. Each member shall serve until a successor has been appointed and qualified, and vacancies shall be filled in the same manner as the original appointments for the remainder of the unexpired term. A member is eligible for reappointment to the council. The members of the council shall serve without compensation, but shall be eligible for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available for the council's purposes.

d. The council shall organize as soon as practicable following the appointment of its members and shall select a chairperson and a vice-chairperson from among its members, as well as a secretary who need not be a member of the council. A majority of the membership of the council shall constitute a quorum for the transaction of council business. The council may meet and hold hearings at the place or places it designates.

e. No later than one year after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), and each year thereafter, the council shall prepare and submit a written report to the Governor, the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors, evaluating the implementation and effectiveness of P.L. , c. (C.)(pending before the Legislature as this bill), and making any recommendations for legislative or administrative action to improve the implementation or effectiveness of P.L. , c. (C.)(pending before the Legislature as this bill).

f. (1) The council shall also study the environmental and public health impacts of single-use plastics and micro-plastics; healthy and environmentally-friendly alternatives to single-use plastics; strategies and policies to increase the recyclability of plastics and reduce the amount of plastic entering the environment; the technological feasibility of increasing recycled content of consumer plastics and expanding the types of plastics that may be manufactured from recycled material; and ways to enhance the development and expansion of markets of post-consumer recycled

plastic, including State and local purchasing and procurement practices.

(2) No later than two years after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), the council shall submit a written report to the Governor, the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors. The written report shall summarize the analysis conducted pursuant to paragraph (1) of this subsection and recommend ways to reduce the use of plastics and the amount of plastic entering the environment, and increase the rate of recycling of plastics.

8. (New section) No later than six months after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill):

a. the Department of State, in consultation with the Department of Environmental Protection, shall establish a program to assist businesses in complying with the provisions of P.L. , c. (C.)(pending before the Legislature as this bill), including, but not limited to, developing and publishing on its Internet website guidance on compliance with the act, and establishing an online clearinghouse of vendors who provide environmentally sound alternatives to single-use plastic carryout bags, single-use paper carryout bags, polystyrene foam food service products, and single-use plastic straws; and

b. the organization under contract with the Department of Environmental Protection pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) shall, in cooperation with local governments and the business community, develop and implement a Statewide public information and education program concerning the provisions of P.L. , c. (C.)(pending before the Legislature as this bill). The program shall include, but need not be limited to, educational programs, public service announcements, and the distribution of free reusable carryout bags throughout the State.

9. (New section) The department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to effectuate the provisions of P.L. , c. (C.)(pending before the Legislature as this bill).

10. Section 5 of P.L.2002, c.128 (C.13:1E-217) is amended to read as follows:

5. The Clean Communities Program Fund is established as a nonlapsing, revolving fund in the Department of the Treasury. The Clean Communities Program Fund shall be administered by the

Department of Environmental Protection and credited, in addition to any appropriations made thereto, with all user fees imposed pursuant to section 4 of P.L.2002, c.128 (C.13:1E-216) or penalties imposed pursuant to section 10 of P.L.2002, c.128 (C.13:1E-222), and any sums received as voluntary contributions from private sources. Interest received on moneys in the Clean Communities Program Fund shall be credited to the fund. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, which shall take the form of a discrete legislative appropriations act and shall not be included within the annual appropriations act, all available moneys in the Clean Communities Program Fund shall be appropriated annually solely for the following purposes and no others:

a. 10 **[**%**]** percent of the estimated annual balance of the Clean Communities Program Fund shall be used for a State program of litter pickup and removal and of enforcement of litter-related laws and ordinances in State owned places and areas that are accessible to the public. Moneys in the fund may also be used by the State to abate graffiti;

b. 50 **[**%**]** percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the housing units of a qualifying municipality bear to the total housing units in the State. Total housing units shall be determined using the most recent federal decennial population estimates for New Jersey and its municipalities, filed in the office of the Secretary of State. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

c. 30 **[**%**]** percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the municipal road mileage of a qualifying municipality bears to the total municipal road mileage within the State. For the purposes of this subsection, "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

d. 10 [%] percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible counties for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each county shall be solely calculated based on the proportion which the county road mileage of an eligible county bears to the total county road mileage within the State. For the purposes of this subsection, "county road mileage" means that road mileage under the jurisdiction of counties, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible county to abate graffiti;

e. No eligible municipality shall receive less than $4,000 in State aid as apportioned pursuant to subsections b. and c. of this section. A municipality or county may use up to [5%] five percent of its State aid for administrative expenses;

f. Prior to the distribution of funds pursuant to subsections a. through d. of this section [,] :

(1) $375,000 of the estimated annual balance of the Clean Communities Program Fund shall be annually appropriated to the department and made available on July 1 of every year to the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior, of which up to $75,000 shall be used exclusively to finance an annual Statewide television, radio, newspaper and other media advertising campaign to promote antilittering and responsible solid waste handling behavior.

(2) in each of the first three years after the effective date of P.L. , c. (C.)(pending before the Legislature as this bill), $500,000 of the estimated annual balance of the Clean Communities Program Fund shall be appropriated to the department and made available on July 1 of each year to the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for the Statewide public information and education program developed pursuant to subsection b. of section of section 8 of P.L. , c. (C.)(pending before the Legislature as this bill).

The organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) shall, no later than the date on which the contract period concludes, submit a report to the Governor and the Legislature concerning its activities during the contract period and any recommendations concerning improving the program. Every eligible municipality and county shall cooperate with the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) in providing information concerning its program of litter pickup and removal.

No later than May 31, 2008, 25 [%] percent of the estimated annual balance of the Clean Communities Program Fund shall be appropriated to the State Recycling Fund established pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96). These moneys shall be used by the Department of Environmental Protection for direct recycling grants to counties and municipalities, up to a maximum appropriation of $4,000,000.

g. As used in this section, "graffiti" means any inscription drawn, painted or otherwise made on a bridge, building, public transportation vehicle, rock, wall, sidewalk, street or other exposed surface on public property.

The department may carry forward any unexpended balances in the Clean Communities Program Fund as of June 30 of each year.

(cf: P.L.2007, c.311, s.15)

11. This act shall take effect immediately.