



DEPARTMENT OF
PUBLIC WORKS

CITY OF SACRAMENTO
CALIFORNIA

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OFFICE OF THE DIRECTOR

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June 20, 1991

ADMINISTRATION
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Law and Legislation Committee
Sacramento, California

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HONORABLE MEMBERS IN SESSION:

SUBJECT: RECOMMENDATION TO SUPPORT SENATE BILL 235 (HART) RELATING TO PLASTIC AND PAPER RECYCLING

SUMMARY

Senate Bill 235 by Gary K. Hart (D-Santa Barbara) would require manufacturers of paperboard and rigid plastic packaging containers to use minimum recycled content in the production of new containers. It is recommended that the Law and Legislation Committee declare the City's support for SB 235.

BACKGROUND

Current law requires every city and county to recycle or reduce its waste stream by 25 percent by 1995 and 50 percent by the year 2000. Recycling is a loop, involving collection, processing, and remanufacturing using recycled materials. Collection of materials alone, without the accompanying creation of markets, accomplishes nothing. SB 235 would improve the market for recycled plastic and paper by establishing minimum percentages of post-consumer content in the manufacture of packaging containers.

Under SB 235, the following minimum standards would be established:

<u>EFFECTIVE DATE</u>	<u>1/1/93</u>	<u>1/1/95</u>
Paperboard Containers	50%	50%
Plastic Containers	10%	25%

This legislation will enhance the City's ability to find markets for recyclable materials, and, thus, to achieve its waste reduction goals. SB 235 is supported by the League of California Cities, Californians Against Waste, and the Solid Waste Association of North America.

FINANCIAL IMPACT

There is no direct financial impact on the City as a result of supporting SB 235.

POLICY CONSIDERATIONS

It is the policy of the City Council to support waste reduction and recycling legislation.

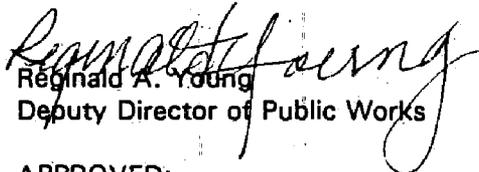
MBE/WBE

There are no goods or services being purchased in conjunction with this report.

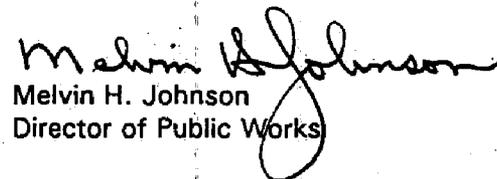
RECOMMENDATION

It is recommended that the Law and Legislation Committee declare the City's support for Senate Bill 235 (Hart) relating to plastic and paper recycling.

Respectfully submitted,


Reginald A. Young
Deputy Director of Public Works

APPROVED:


Melvin H. Johnson
Director of Public Works

RECOMMENDATION APPROVED:



Jack R. Crist
Deputy City Manager

Contact Person to Answer Questions
Roberta Larson, Administrative Services Officer
449-6281

June 20, 1991
ALL DISTRICTS

AMENDED IN SENATE MAY 23, 1991
AMENDED IN SENATE MAY 2, 1991
AMENDED IN SENATE APRIL 23, 1991
AMENDED IN SENATE APRIL 16, 1991
AMENDED IN SENATE APRIL 11, 1991

SENATE BILL

No. 235

Introduced by Senator Hart

January 28, 1991

An act to add ~~Division 12.8 (commencing with Section 19000) to Chapter 5.5 (commencing with Section 42300) to Part 3 of Division 30 of the Public Resources Code, relating to packaging.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as amended, Hart. Rigid plastic packaging containers.

(1) Existing law requires all rigid plastic bottles and containers to be labeled with a specified code which indicates the resin used to produce the bottles or containers.

This bill would make a statement of legislative intent and would require a manufacturer of rigid plastic packaging containers, as defined, sold or offered for sale in the state to meet specified criteria, commencing January 1, 1993, and January 1, 1995. The bill would authorize the ~~department~~ *California Integrated Waste Management Board* to exempt a manufacturer from specified requirements upon specified certifications and would authorize the ~~department~~ *board* to waive specified requirements for a manufacturer if the ~~department~~ *board* makes of specified findings. The bill would also require a manufacturer to submit an annual certification to the ~~department~~ *board* of compliance with the

requirements of the bill.

The bill would require the ~~department~~ board to refer to the Attorney General, for prosecution for fraud, the provider of any false or misleading certificate and would make any person who violates the bill's requirements guilty of a public offense and punishable by a fine of not more than \$100,000, thereby imposing a state-mandated local program by creating a new crime. The bill would also authorize the ~~department~~ board to assess civil penalties for a violation of the bill's requirements. The bill would require the ~~department~~ board to deposit all fines and penalties in the Rigid Container ~~Subaccount~~ Account, which this bill would create in the California Beverage Container Recycling Integrated Waste Management Fund in the State Treasury. The bill would require the funds in the ~~subaccount~~ account to be used for grants and loans for purposes of the bill.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 12.8 (commencing with Section
2 SECTION 1. Chapter 5.5 (commencing with Section
3 42300) is added to Part 3 of Division 30 of the Public
4 Resources Code, to read:

5
6 CHAPTER 5.5. PLASTIC PACKAGING CONTAINERS

7
8 Article 1. Legislative Findings and Definitions

9
10 42300. The Legislature finds and declares all of the
11 following:

12 (a) Recycling rigid plastic packaging containers saves
13 landfill space, reduces energy consumption, and

1 preserves natural resources.

2 (b) The California Integrated Waste Management Act
3 of 1989 requires cities and counties to cut their waste in
4 half by the end of the decade through source reduction,
5 recycling, and composting.

6 (c) Rigid plastic packaging containers represent a
7 significant component of material generated in the state.

8 (d) In order for recycling in the state to be successful,
9 it is critical that stable, in-state markets be developed for
10 material separately collected from the waste stream and
11 processed for recycling.

12 (e) As of the effective date of this chapter, curbside
13 collection of recyclables is available to nearly 20 percent
14 of the state's residents. In order to expand the variety of
15 materials collected in these programs, including all rigid
16 plastic packaging containers, it is essential that stable
17 markets exist for the plastic materials collected.

18 (f) The state has required several types of products to
19 use increasing levels of postconsumer recycled materials,
20 including newsprint, glass containers, and plastic trash
21 bags.

22 (g) Some of the nation's largest consumer product
23 manufacturers have announced plans to require, or are
24 currently requiring, their plastic packaging suppliers to
25 provide them with containers comprised of increasing
26 levels of postconsumer recycled materials,
27 demonstrating that the technology is already available to
28 use recycled material to make new plastic packaging
29 containers. However, many businesses continue to
30 purchase packaging materials made from 100 percent
31 virgin plastic and to sell them in the state.

32 (h) It is, therefore, the intent of the Legislature to spur
33 markets for plastic materials collected for recycling by
34 requiring manufacturers to utilize increasing amounts of
35 postconsumer recycled material in their rigid plastic
36 packaging containers and to achieve high recycling rates
37 for these plastic packaging containers.

38 42301. For purposes of this chapter, the following
39 definitions apply:

40 (a) "Refillable package" means a plastic package

which is routinely returned to and refilled by the manufacturer at least five times with the original product contained by the package. An example of a refillable package under this chapter is a plastic milk jug which is routinely returned to and refilled by the manufacturer with milk for resale to consumers at least five times.

(b) "Reusable package" means a plastic package which is routinely reused by consumers at least five times to store the original product contained by the package. An example of a reusable package under this chapter is a plastic bottle containing liquid detergent which is routinely refilled by consumers themselves with new concentrated detergent at least five times.

(c) "Manufacturer" means the producer or generator of a packaged plastic product which is sold or offered for sale in the state whose principal material is plastic and whose principal purpose is to hold, store, cover, or contain other products. For the purposes of determining compliance with the recycling rate requirements of Section 42310, "manufacturer" includes the principal industry trade association if the department finds the trade association maintains reliable data on this information.

(d) "Rigid packaging container" means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight ounces and a maximum capacity of five gallons, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(e) "Postconsumer material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(f) "Recycled" means a product or material which has been used in the production of another product and has been diverted from disposal in a landfill.

- (g) "Recycling rate" means one of the following:
 - (1) The proportion, as measured by weight, volume, or number, that all rigid plastic packaging containers, in the aggregate, sold, or offered for sale in the state are being recycled in a given calendar year.
 - (2) The proportion, as measured by weight, volume, or number, that a particular type of plastic packaging container sold or offered for sale in the state, such as a milk jug, soft drink container, or a detergent bottle, is being recycled in a given calendar year.
 - (3) The proportion, as measured by weight, volume, or number, that a product-associated plastic packaging container sold or offered for sale in the state is being recycled in a given calendar year.
 - (4) The proportion, as measured by weight, volume, or number, that a polyethylene terephthalate (PETE) plastic packaging container as specified in subdivision (a) of Section 18015 sold or offered for sale in the state is being recycled in a given calendar year.
- (h) "Source reduced container" means a rigid packaging container for which the ratio of package weight or package volume per unit of product has been reduced by 10 percent when compared with the packaging used for the same product by the same manufacturer on and after January 1, 1990, and in five-year increments thereafter. A rigid packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by (1) substituting a different material type for a material which previously constituted the principal material of the container, (2) increasing a container's weight or volume per unit of product after January 1, 1991, or (3) packaging changes that adversely affect the potential for the plastic packaging container to be recycled or to be made of postconsumer material.
- (i) "Product-associated plastic packaging container" means a brand-specific, rigid plastic packaging line which may have one or more sizes, shapes, or designs and which is used in conjunction with a particular generic product line. An example of a product-associated plastic

1 packaging container is a Tide detergent plastic packaging
2 container.

4 Article 2. Reporting and Manufacturing

6 42310. (a) Except as provided in subdivision (e), on
7 and after January 1, 1993, every manufacturer of rigid
8 plastic packaging containers sold or offered for sale in the
9 state shall demonstrate to the board that these containers
0 on average meet one of the following criteria:

1 (1) They are made from 10 percent postconsumer
2 material.

3 (2) They have a recycling rate of 10 percent, or, if
4 PETE material as specified in paragraph (4) of
5 subdivision (g) of Section 42301, they have a recycling
6 rate of 35 percent.

7 (3) They are reusable or refillable.

8 (4) They are a source reduced container.

9 (5) They are waived pursuant to subdivision (d).

10 (6) They are exempt pursuant to subdivision (c) or
11 (e).

12 (b) Except as provided in subdivision (e), on and after
13 January 1, 1995, every manufacturer of rigid plastic
14 packaging containers sold or offered for sale in the state
15 shall demonstrate to the board that these containers meet
16 one of the following criteria:

17 (1) They are made from 25 percent postconsumer
18 material.

19 (2) They have a recycling rate of 25 percent, or, if
20 PETE material as specified in paragraph (4) of
21 subdivision (g) of Section 42301, they have a recycling
22 rate of 55 percent.

23 (3) They are reusable or refillable.

24 (4) They are a source reduced container.

25 (5) They are waived pursuant to subdivision (d).

26 (6) They are exempt pursuant to subdivision (c) or
27 (e).

28 (c) The board shall exempt the following rigid plastic
29 packaging containers from the postconsumer material
30 content requirements of subdivisions (a) and (b) if a
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1 manufacturer certifies that the particular rigid packaging
2 containers are one of the following:

3 (1) Packages which cannot meet the postconsumer
4 material requirements of subdivisions (a) and (b)
5 because of applicable provisions of the United States
6 Food and Drug Administration regulations, the Federal
7 Insecticide, Fungicide, and Rodenticide Act, or any other
8 state or federal laws or regulations.

9 (2) Packages used to provide tamper-resistant or
10 tamper-evident seals on "over-the-counter" drugs or on
11 other medication not requiring a physician's
12 prescription.

13 (d) The board shall grant a waiver from the
14 requirements of subdivisions (a) and (b) to a
15 manufacturer if the manufacturer certifies to the
16 department and the department finds one or more of the
17 following:

18 (1) It is technologically infeasible for the
19 manufacturer to achieve the postconsumer material
20 requirements of subdivisions (a) and (b), or the
21 manufacturer demonstrates that at least 50 percent by
22 number of its rigid plastic packaging containers sold or
23 offered for sale in the state in the current calendar year
24 achieve the postconsumer material requirements of
25 subdivision (a) or (b) and that all of its rigid plastic
26 packaging containers will comply with the requirements
27 of subdivision (a) or (b) within one year.

28 (2) Adequate postconsumer material is not available
29 for use by the manufacturer to meet the postconsumer
30 material and the recycling requirements of subdivisions
31 (a) and (b) and less than 50 percent of the households in
32 the state on and after January 1, 1993, or less than 60
33 percent of the households in the state on and after
34 January 1, 1995, have curbside collection programs which
35 include beverage container recycling, and the
36 manufacturer has made reasonable efforts to locate and
37 purchase that material from a substantial number of
38 processors inside and outside the state.

39 (e) The board shall exempt from this chapter all rigid
40 packaging containers produced in or out of the state

1 which are destined for shipment to other destinations
2 outside the state and which remain with the products
3 upon that shipment.

4 Article 3. Certification and Penalties

5 42320. On or before March 1, 1994, and on or before
6 March 1 annually thereafter, each manufacturer shall
7 submit a certification to the board that it has complied
8 with the requirements of Section 42310 during the
9 preceding calendar year.

10 42321. Each manufacturer required to make a
11 certification pursuant to this chapter may be audited by
12 the board.

13 42322. (a) If any manufacturer provides the board
14 with a false or misleading certificate pursuant to Section
15 42320, the board, within 30 days of making this
16 determination, shall refer the provider of the false or
17 misleading certificate to the Attorney General for
18 prosecution for fraud.

19 (b) Any person who violates this chapter is guilty of a
20 public offense punishable by a fine of not more than one
21 hundred thousand dollars (\$100,000).

22 (c) In addition to the penalty specified under
23 subdivision (b), any person who violates this chapter may
24 be assessed a civil penalty by the board of not more than
25 fifty thousand dollars (\$50,000) for each violation,
26 pursuant to a notice and hearing procedure which
27 conforms with Chapter 5 (commencing with Section
28 11500) of Part 1 of Division 3 of Title 2 of the Government
29 Code.

30 (d) The total annual fines or penalties assessed upon a
31 manufacturer for failure to comply with subdivisions (a)
32 and (b) of Section 42310 shall not exceed one hundred
thousand dollars (\$100,000).

(e) On and after January 1, 1995, the board shall
annually publish a list setting forth any fines or penalties
that have been levied against a manufacturer in the
preceding calendar year for failure to comply with the
requirements of this chapter.

1 (f) The board shall deposit all penalties or fines paid
2 pursuant to this section into the Rigid Container Account,
3 which is hereby created in the Integrated Waste
4 Management Fund in the State Treasury. The moneys
5 deposited in the Rigid Container Account shall be used,
6 upon appropriation by the Legislature, to provide grants
7 and loans to local governmental agencies to develop and
8 implement collection and processing systems for the
9 recycling of materials covered under this chapter.

10 42323. Proprietary information included in part of a
11 report or certificate submitted to the board pursuant to
12 this chapter shall not be made available to the general
13 public.

14 SEC. 2. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs which may be
17 incurred by a local agency or school district will be
18 incurred because this act creates a new crime or
19 infraction, changes the definition of a crime or infraction,
20 changes the penalty for a crime or infraction, or
21 eliminates a crime or infraction. Notwithstanding Section
22 17580 of the Government Code, unless otherwise
23 specified in this act, the provisions of this act shall become
24 operative on the same date that the act takes effect
25 pursuant to the California Constitution.

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All matter omitted in this version of the
bill appears in the bill as amended in the
Senate, May 2, 1991 (J.R. 11).