

SB 1053 and AB 2236: Hypocrisy, Local Control, and Legal Chaos



An August 2024 legal analysis by the law firm Mayer Brown LLP examined preemption issues pertaining to existing local ordinances under SB 1053/AB 2236 requirements.

While SB 1053/AB 2236 will kill recycling jobs and ban sustainable and recyclable reusable bags, they will also be unfairly implemented in some communities and create a two-tiered local control system.

What's wrong with SB 1053 and AB 2236?

When passed by voters in 2016, California's bag law included a local control exemption. Cities and counties with a bag ordinance prior to September 1, 2014, are exempt from this section of the code.

As written, SB 1053/AB 2236 retains the local control exemption, so more than 40% of the state will be exempt from the bill's provisions, leading to serious legal and operational issues across California.

So, will my city have to comply?

It depends. CalRecycle¹ lists 13 counties and more than 125 cities with bag ban ordinances potentially exempt from the code being modified under SB 1053/AB 2236.

Key jurisdictions that have preexisting ordinances and would be exempted from SB 1053/AB 2236 include: Los Angeles, Los Angeles County, San Francisco, Marin County, Alameda County, San Jose, Santa Monica, Encinitas, Napa County, Sonoma County, Long Beach, and others.

The only amendment exempt municipalities can make is to increase the amount a store can charge for a plastic grocery bag.

Is this fair?

SB 1053/AB 2236 divides cities and counties into two groups: those with autonomy over their bag regulations and those subject to state rule.

Typically, the municipalities maintaining local control are wealthier and predominantly white, while those governed by state law are often rural minority-majority communities.

The kicker is that the authors of this legislation propose stricter regulations in areas other than where they live.

What's The Bottom Line?

SB 1053/AB 2236 are confusing at best. The bills maintain a grandfather clause, allowing municipalities with bag ban ordinances before September 1, 2014, to be excluded from statewide regulation.

Over 40% of the state's population is anticipated to reside in exempted localities. All other localities will lose the autonomy to legislate this issue for their residents and be subject to state rule.

By not addressing the preemption of existing local ordinances, this legislation will likely face serious questions about how it will be implemented and enforced if enacted, resulting in legal chaos.

Endnotes

¹ <https://calrecycle.ca.gov/Plastics/CarryOutBags/Ordinances/>