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FISCAL IMPACT REPORT

SPONSOR Sanchez, C. ORIGINAL DATE 02/17/15
LAST UPDATED _____ HB _____
SHORT TITLE Plastic Bulk Merchandise Container Records SB 252
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 252 enacts an Act regulating certain activities of any person who is in the business of recycling, shredding or destroying a "plastic bulk merchandise container", which means a plastic crate, pallet or shell used by a product producer, distributor or retailer for the bulk transportation or storage of retail containers of milk, eggs, bakery items or bottled beverage products. A purchaser of five or more containers must obtain proof of ownership from the seller and make or obtain a record containing other specified information regarding the seller, the sale and the containers. These requirements do not apply to containers collected by public or private recycling or refuse haulers as part of a municipal solid waste recycling or trash collection program.

Violation of SB 252's provisions carries a civil penalty not to exceed \$10,000 for each violation, recoverable in an action brought by AGO or a district attorney.

FISCAL IMPLICATIONS

AODA states this bill would impose new and financially onerous duties on prosecutors, who are rarely experienced in civil prosecutions. The bill makes no provision for investigation, which is

unlikely to be seen as a priority by law enforcement offices, which would in turn require district attorneys to use their own investigators, if available, to put a case together. This bill would require additional resources for properly trained investigators and prosecutors. In the absence of any costs estimates by AODA and the unknown nature of the number of civil actions that could be involved in enforcing this new Act, the operating budget table reflects the impact as unknown.

SIGNIFICANT ISSUES

At least three states passed legislation in 2012 and 2013—Illinois, Michigan and Ohio—regulating sales of bulk merchandise containers. At least three others—California, Kansas and Massachusetts—have considered legislation on this topic. Michigan’s Senate Fiscal Agency report on two bills being considered in 2012 indicated that, like scrap metal theft, a similar problem was developing with the theft of plastic bulk merchandise containers. California noted in proposed legislation in 2012 that higher scrap values paid recyclers of the plastic resins typically used in merchandise pallets had been a major factor in thefts of those pallets.

As to the role of district attorneys in enforcing this Act, AODA advises that requiring prosecutors to spend their limited time and resources prosecuting recycling case violations in civil court would be counter-productive to their primary duties as enforcers of the criminal law and public peace. In times of limited resources, these cases would not be given priority status over those involving crimes such as child abuse, sexual offenses, homicides and burglaries.

PERFORMANCE IMPLICATIONS

AODA expresses concern that criminal prosecutors do not have the time, training, or experience to adapt to the very different field of civil law, and that most district attorney offices do not have enough attorneys to handle these types of cases.

OTHER SUBSTANTIVE ISSUES

Ohio’s law requires dealers of scrap metal and bulk merchandise containers to register with its Department of Public Safety and report transactions through an electronic transaction reporting system, and a violation of that law results in criminal penalties. Illinois’ law contains no reporting requirement, but imposes criminal petty and felony penalties for violations. Michigan requires disclosure and record keeping for one year, and violations result in misdemeanor and felony convictions.

ALTERNATIVES

Expanding the scope of the existing Sale of Recycled Metals Act Section 57-30-1-14 NMSA 1978 (which requires registration of and imposes certain obligations on scrap metal processors, and requires civil enforcement by the Regulation & Licensing Department) to include persons and businesses that recycle bulk merchandise containers would take advantage of an already existing statutory and regulatory framework, without creating an entirely new means to control theft of these containers.

POSSIBLE QUESTIONS

How long must a purchaser maintain the records required under this Act?