

Plastic bags have lobbyists. They're winning.

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By DAVID GIAMBUSSO

Environment

Eight states ban the bag, but nearly twice as many have laws protecting them.



TRENTON, N.J. — The plastic shopping bag has long been hunted by state and local policymakers pushing for its extinction. But still it thrives, thanks to the deep-pocketed chemical industry that birthed it and the political influence of retailers and restaurants. Only eight states ban single-use plastic bags. Nearly twice as many have laws protecting them.

To take on a global and well-heeled industry, U.S. environmentalists have adopted a strategy of winning hyper-local grassroots victories to build momentum to ban the bag and other plastics. The approach helped California environmentalists win a referendum to uphold a bag ban in 2016, and, in 2019, legislation to phase out plastic hotel toiletry bottles.

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Other states are attempting to follow suit. New York is implementing a bag ban passed in 2019, and Gov. Andrew Cuomo wants to do away with plastic foam. In New Jersey, at least 46 municipalities already limit plastic bag use, and the Legislature last week was on the verge of passing a statewide ban on bags and polystyrene food containers.

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Single-use plastics have also become a target in Canada, where Prince Edward Island in July became the first province to prohibit businesses from providing plastic bags to customers. Newfoundland and Nova Scotia will follow suit this year. In Montreal, a ban on single-use plastic bags took effect two years ago, and Vancouver will ban the bag starting in January 2021.

Still, after years of environmental lobbying in the U.S., only eight states — California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon and Vermont — ban plastic bags. Fourteen others, including Florida, have moved in the opposite direction, adopting laws to tie the hands of local officials, according to the [National Conference of State Legislatures](#).

Last Monday, New Jersey's much-anticipated plastics bill died.

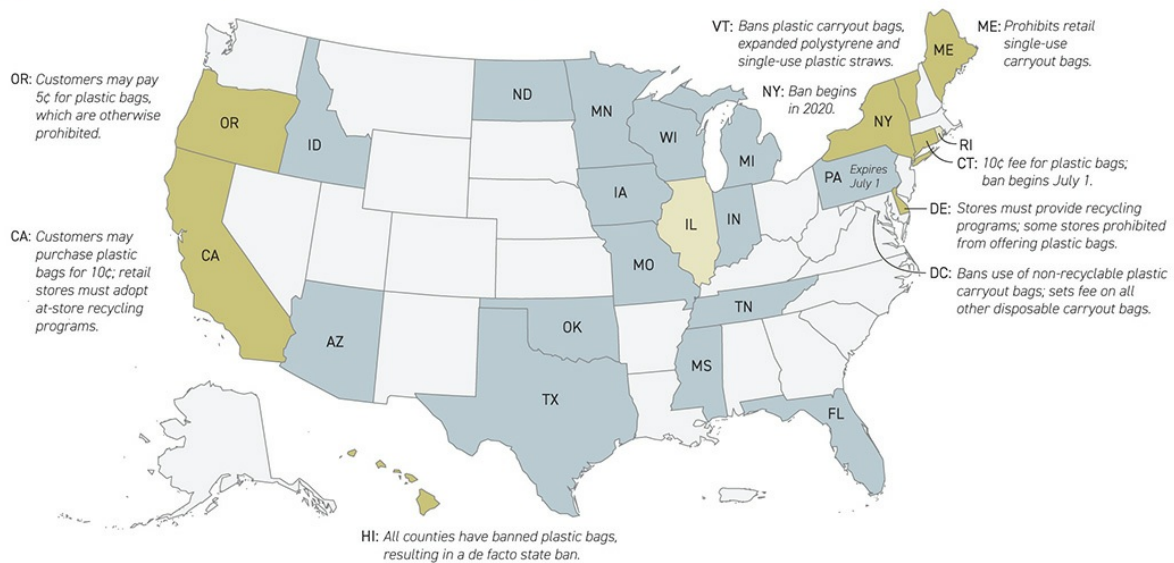
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Plastic bag bans prompt state laws forbidding local restrictions

Eight states have restricted or instated fees for single-use plastic bags, and hundreds of cities and counties across the U.S. have done the same. The Plastic Industry Association, however, argues that such bans increase costs for consumers and fail to reduce waste, and has lobbied for state legislation prohibiting municipalities from passing bag bans.

Enacted statewide laws

■ Restricts plastic bags
 ■ Establishes bag recycling program only
 ■ Prohibits local governments from enacting bag restrictions



Sources: National Conference of State Legislatures, American Progressive Bag Alliance, plasticbaglaws.org, Philadelphia Inquirer, Ballotpedia, POLITICO staff reports

By Patterson Clark, POLITICO Pro DataPoint

GRAPHIC: Plastic bag bans prompt state laws forbidding local restrictions | Patterson Clark, POLITICO Pro DataPoint

“Their failure to act will mean that our plastic waste problem will continue to get worse,” said Jeff Tittel, director of the New Jersey Sierra Club.

The recent rush of legislative activity is partly about rising public consciousness — and partly about money.

No one likes the sight of plastic bags snagged in storm drains, drifting from tree branches, or tangled around sea turtles. But beyond the bag, governments are feeling the financial pinch of plastic waste writ large.

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Drink bottles, food wrappers and the like account for nearly a fifth of U.S. municipal solid waste. Less than 10 percent of that is recycled, according to the Environmental Protection Agency.

As the plastic has piled up, so has the plastics legislation. Nationwide, state lawmakers introduced at least 95 bag-related bills in 2019, including bans, fees, and improved recycling measures, according to data from the National Conference of State Legislatures.

In the mix are industry-backed bills that handcuff localities that want to adopt their own restrictions. The Sierra Club tracked some 290 pieces of state legislation related to plastics last year.

Still, the bag and its cousin, the pouch, are a \$22.2 billion global business and growing, according to BCC Research. U.S. plastic bag sales are projected to reach \$1.4 billion this year.

Leading the charge against bag bans is the American Progressive Bag Alliance, which represents the plastic bag industry, which employs nearly 25,000 workers in 40 states.

The alliance, an independent division of the Plastics Industry Association, won't disclose the size or source of its funding. The industry association itself is a relatively small player in Washington, spending just \$320,000 on federal lobbying in the first nine months of 2019.

The alliance has held bag bans at bay by sticking to the scientific merits, Executive Director Matt Seaholm said. The group touts studies that show plastic bags are more environmentally sustainable than paper.

And Seaholm pointed to a 2017 Canadian study showing that 78 percent of plastic bags have a second life. People use them to pack school lunches or dispose of pet waste, for example.

"Unfortunately, so much of our time is drawn to the efforts to ban our products or tax them," Seaholm said. "That takes away from an opportunity that would be really fantastic if we could work together to promote recycling."

Environmentalists label the industry's recycling message "greenwashing."

The claim that plastic bags can be recycled "doesn't pass the laugh test," said Judith Enck, a senior adviser at Bennington College and former regional administrator of the U. S. Environmental Protection Agency under President Barack Obama.

Plastics bans have a long tradition of bubbling up from the grassroots. Democratic California state Sen. Nancy Skinner of Berkeley, as a City Council member there in 1988, authored one of the first, a ban on plastic foam, including Styrofoam.

"It's why McDonald's, across the country, does not use Styrofoam," Skinner said. "We start things."

By 2014, some 150 California cities and counties had banned plastics. In 2016, green groups built on those gains to win a statewide voter referendum banning single-use plastic bags, defeating a \$5.5 million campaign by the bag alliance, whose backers included Hilex Poly, Superbag Corp, Advance Polybag, Durabag and Formosa Plastics Corp.

A California ban on plastic drinking straws came in 2018, and in 2019 legislators outlawed plastic hotel toiletry bottles, passing a bill modeled on an ordinance adopted by Santa Cruz.

"Locals have to lead," said Heidi Sanborn, executive director of the Sacramento-based National Stewardship Action Council.

"We will always be able to get better bills at the local level than at the state, and state than at the federal."

"The big opponents have the most influence with their money at the federal level, next at the state level, and the least at the local level," Sanborn said. "We will always be able to get better bills at the local level than at the state, and state than at the federal."

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Until last week, New Jersey was poised to follow in California's footsteps. A bill from Sen. Bob Smith (D-Middlesex) would have phased out plastic and paper bags and polystyrene food containers. Straws would have been available at eateries only by request.

"It's gonna be the toughest plastic bag bill in the country," Smith boasted in October.

It wasn't the first time New Jersey environmentalists lost a bag fight. In 2018, Gov. Phil Murphy vetoed a measure that imposed a fee on plastic bags and preempted localities from passing their own bag bans — a tactic favored by industry. Murphy, under pressure from environmental advocates, said the bill didn't go far enough.

New Jersey leaders had promised to pass the Smith bill by the end of this year's session, but it stalled in the Assembly after clearing the Senate on a 21-14 vote.

Smith said the governor's office, Senate and Assembly couldn't agree on phase-out timelines for paper and plastic bags. There also was disagreement over whether thicker plastic bags should be considered reusable and not subject to the ban.

While green groups and their allies have made recent gains, progress is slow and industry groups have notched some creative victories.

One of those was in Florida, which preempted local bag laws as part of a wide-ranging energy bill in 2008.

Environmentalists had hailed the energy measure as a response to climate change, but the bill had a catch: The Florida Retail Federation had persuaded the Republican-led Legislature to require the Department of Environmental Protection to issue a study on plastic bags.

It seemed innocuous, but the language required the Legislature to adopt the department's recommendations before local governments or state agencies could limit the sale or use of the bags.

The Department of Environmental Protection delivered its recommendations in 2010. A decade later, the Legislature has failed to act on the report and the preemption remains in place.

In New York, bag makers got a win after they gave money to the Black Leadership Action Coalition led by Bertha Lewis. Lewis was an outspoken foe of bag fees in New York City, saying they would burden low-income residents. She denied at the time that she was acting in exchange for payment.



Bag lobby pays anti-fee advocate

Supporters of a bag fee eventually won their fight in New York City. Then state lawmakers began hearing from constituents complaining about the cost to consumers. And plastic bag makers seized on another wrinkle: The city's 5-cent fee would have gone into the pockets of retailers, not government coffers, because the city can't impose a tax without the state's OK.

With the bag fee poised to take effect, state Sen. Simcha Felder — an influential Democratic lawmaker who at the time caucused with Republicans — won a measure to block it, making his point by brandishing a loaf of Wonder bread and a carton of eggs. Assembly Democrats lined up behind him after the speaker assured them that an influential environmental group wouldn't penalize members who voted to override the city's bag fee.

Cuomo signed the bill in February 2017, promising a statewide solution. But he invested little political capital and Senate Republicans were loath to act. The effort languished until Senate Democrats took power in 2019 and adopted a plastic bag ban. The measure is now law and set to take effect in March.

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Back in California, lawmakers and plastics foes are emboldened. Last year, lawmakers introduced a measure that would require all single-use plastic packaging and commonly used single-use food service plastics to be recyclable or compostable by 2030. The measure also would require the volume of plastic waste to be reduced by 75 percent by 2030.

The pair of identical bills foundered on the final night of the legislative session in September after leadership failed to bring them up for a floor vote and after Novolex, a South Carolina-based packaging manufacturer formerly known as Hilex Poly, set up a group called Californians for Recycling and the Environment and spent \$959,000 lobbying against the measure.

Most players in Sacramento chalk up the bills' failure to a flurry of last-minute activity on other measures and legislators' sense that the issue could wait.

Micah Grant, spokesman for the industry-backed Californians for Recycling and the Environment, said his group wants a more comprehensive solution to plastic packaging, one that expands the state's recycling infrastructure.

The group is "open to practical solutions that begin to solve the problem effectively and allow consumers to have the things they need and want," Grant said.

California lawmakers will pass a broad-based plastic waste measure in 2020, Skinner predicted.

Environmentalists are taking no chances. In November, a San Francisco-based waste hauler, Recology, and two members of the California Coastal Commission filed a ballot initiative that would, like the bills, set a 2030 deadline for plastic packaging to be recyclable, reusable or compostable. Plastic packaging and products would be taxed up to a penny per item and polystyrene would be outlawed. The tax would fund the expansion of recycling facilities.

"If the Legislature fails to act, we have something on the ballot," said Sanborn of the National Stewardship Action Council. "It helps the Legislature hold the bar high when they know there's an alternative floating around out there."

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Recology has pledged \$1 million toward the effort, an outlay that has drawn guffaws from industry. The group needs \$5 million to \$6 million just to gather the 623,212 signatures required to get the measure on the ballot, CRE Executive Director Reed Galen said.

"Telling the California political set that you've got a million dollars is a little bit unserious when it comes to ballot measures," Galen said.

So while bag bans in states like California and New York command media attention, industry groups say they still have the upper hand. Most of the nation hasn't banned plastic bags, and likely won't.

"I'm happy to say a lot of cities and a lot of states have made the right decision," Seaholm said. "Unfortunately, some haven't."

Samantha Maldonado reported from Trenton, N.J., Bruce Ritchie reported from Tallahassee, Fla., and Debra Kahn reported from Sacramento, Calif. Marie J. French contributed to this report from Albany, N.Y.