

**CALENDAR ITEM**

**97**

A Statewide

06/29/15

S Statewide

S. Pemberton

**CONSIDER SUPPORTING AB 888 (BLOOM) THAT WOULD PROHIBIT THE SALE OF PERSONAL CARE PRODUCTS IN CALIFORNIA THAT CONTAIN PLASTIC MICROBEADS ON AND AFTER JANUARY 1, 2020**

**SUMMARY:**

AB 888 addresses the use of microplastic beads sold in many personal care consumer products, such as facial scrubs, soap and toothpastes. These microplastic beads are typically washed directly down drains and pass into the ocean and state waterways. The toxins leached from the plastic microbeads are harmful to aquatic life and the plastic is marine debris. AB 888 prohibits the sale or promotional offering of personal care products containing plastic microbeads on and after January 1, 2020. AB 888 exempts products containing less than 1 part per million (ppm) by weight of plastic microbeads. AB 888 also creates a civil penalty on sellers of the banned products of up to \$2,500 a day for each violation.

**BACKGROUND AND ANALYSIS:**

Plastic microbeads are small plastic pellets that are often used in personal care products as exfoliates and abrasives. The microbeads are washed down the drain. Wastewater treatment systems are generally unable to capture the small particles. The tiny pieces of plastic are thus discharged into rivers, lakes, and oceans by the trillions where they contaminate the marine environment and harm aquatic wildlife. These plastic microbeads are ubiquitous in state waterways. According to the author's office, plastic microbeads contribute 38 tons of plastic pollution to California's environment each year. The plastic microbeads create marine debris, are ingested by fish and other wildlife, disrupt the food chain, and when the plastic transfers to fish tissue, reduce quantities of edible fish.

Several large personal care product companies, such as Proctor & Gamble and Johnson & Johnson, have voluntarily pledged to phase microbeads out of their products and replace them with biodegradable alternatives that do not damage state waterways and the ocean. The proposed phaseout dates and levels vary, and phaseout remains optional. AB 888 establishes a firm end date that applies to every personal care product.

The sovereign tidelands and submerged lands under the State Lands Commission's (Commission) jurisdiction are negatively affected by the presence of plastic microbeads. The Commission has a history of supporting legislation that reduces marine debris and the presence of plastics in the marine environment. An example is recent legislation prohibiting single use plastic and

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paper bags. Similar to the discontinuation of single use bags, the discontinuation of plastic microbeads in personal care products benefits the sovereign public trust lands under the Commission's jurisdiction by reducing marine pollution and harm to aquatic life.

**STAFF RECOMMENDATION:**

Commission staff recommends that the Commission support AB 888 (Bloom), because it seeks to reduce marine debris that harms the public trust lands and resources under the Commission's jurisdiction. AB 888 is supported by a broad array of environmental organizations and water and wastewater agencies. It is intended to improve the marine environment and lessen marine debris.

**EXHIBIT:**

- A. Copy of AB 888 (Bloom)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

1. Support AB 888 (Bloom) that would prohibit the sale of personal care products in California that contain plastic microbeads on and after January 1, 2020.

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 888**

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**Introduced by Assembly Member Bloom**

February 26, 2015

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An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to waste management.

LEGISLATIVE COUNSEL'S DIGEST

AB 888, as amended, Bloom. Waste management: plastic microbeads.

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. Existing law prohibits the sale of expanded polystyrene packaging material by a wholesaler or manufacturer. Existing law prohibits a person from selling a plastic product in this state that is labeled with the term “compostable,” “home compostable,” or “marine degradable” unless, at the time of sale, the plastic product meets the applicable ASTM International standard specification.

This bill would prohibit, on and after January 1, 2020, a person, as defined, from selling or offering for promotional purposes in this state a personal care product containing ~~intentionally added~~ plastic microbeads *that are used to exfoliate or cleanse in a rinse-off product,*

as specified. The bill would exempt from those prohibitions the sale or promotional offer of a product containing less than 1 part per million (ppm) by weight of plastic microbeads, as provided.

The bill would make a violator liable for a civil penalty not to exceed \$2,500 per day for each violation. The bill would authorize the penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction by the Attorney General or local officials. The bill would require the civil penalties collected in an action brought pursuant to the act to be retained by the office that brought the action.

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

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

1 SECTION 1. Chapter 5.9 (commencing with Section 42360)  
2 is added to Part 3 of Division 30 of the Public Resources Code, to  
3 read:

4  
5 CHAPTER 5.9. PLASTIC MICROBEADS NUISANCE PREVENTION  
6 LAW  
7

8 42360. The Legislature finds and declares all of the following:

9 (a) Plastic does not biodegrade into elements or compounds  
10 commonly found in nature like other organic materials, but, instead,  
11 upon exposure to the elements photodegrades into smaller pieces  
12 of plastic causing land and water pollution that is virtually  
13 impossible to remediate.

14 (b) Plastic pollution is the dominant type of anthropogenic debris  
15 found throughout the marine environment.

16 (c) Plastic pollution is an environmental and human health  
17 hazard and a public nuisance.

18 (d) Microplastics that are five millimeters or less in diameter  
19 become bioavailable as soon as they enter the marine environment  
20 and are ingested by marine organisms.

21 (e) Microplastics are persistent organic compounds that attract  
22 other pollutants commonly present in the environment, many of  
23 which are recognized to have serious deleterious impacts on human  
24 health or the environment, including DDT, DDE, PCBs, and flame  
25 retardants.

1 (f) PAHs, PCBs, and PBDEs from plastic transfer to fish tissue  
2 when ingested and bioaccumulate.

3 (g) Fish that humans consume have been found to ingest  
4 microplastics, which are then ingested by the humans who consume  
5 these fish.

6 (h) Consumer personal care products such as facial scrubs,  
7 soaps, and toothpaste increasingly contain thousands of  
8 microplastics in the form of plastic microbeads that are flushed  
9 down drains or make their way into the environment by other  
10 means as part of their intended use.

11 (i) Plastic microbeads in personal care products are generally  
12 not recoverable through ordinary wastewater treatment and can  
13 be released into the environment.

14 (j) Plastic microbeads have been found in surface waters within  
15 the United States, as well as in fish, marine mammals, reptiles,  
16 mussels, and worms.

17 (k) There are economically feasible alternatives to plastic  
18 microbeads used in personal care products, as evidenced by the  
19 current use of biodegradable, natural, abrasive materials in personal  
20 care products such as beeswax, shells, nuts, seeds, and sand.

21 42361. As used in this chapter, the following terms have the  
22 following meanings:

23 (a) “~~Natural-Exfoliant~~ *exfoliant*” means a substance occurring  
24 in and generated by the natural environment and includes, but is  
25 not limited to, the following substances: walnut shells, apricot  
26 hulls, sand, clay, or beeswax.

27 (b) “Person” means an individual, business, or other entity.

28 (c) (1) “Personal care product” means an article intended to  
29 be rubbed, poured, sprinkled, or sprayed on, introduced to, or  
30 otherwise applied to, the human body or any part thereof for  
31 cleansing, beautifying, promoting attractiveness, or altering the  
32 appearance, and an article intended for use as a component of that  
33 type of article.

34 (2) “*Personal care product*” does not include a prescription  
35 drug, as defined in Section 110010.2 of the Health and Safety  
36 Code.

37 (d) “Plastic microbead” means an intentionally added *solid*  
38 plastic particle measuring five millimeters or less in every  
39 dimension.

1 42362. On and after January 1, 2020, a person shall not sell or  
2 offer for promotional purposes in this state any personal care  
3 products containing plastic microbeads *that are used to exfoliate*  
4 *or cleanse in a rinse-off product, including, but not limited to,*  
5 *toothpaste.*

6 42363. Section 42362 shall not apply to either of the following:

7 (a) A person that sells or offers for promotional purposes a  
8 personal care product containing plastic microbeads in less than  
9 1 part per million (ppm) by weight.

10 (b) A product containing natural exfoliants that does not contain  
11 plastic microbeads.

12 42364. (a) A person who violates or threatens to violate Section  
13 42362 may be enjoined in any court of competent jurisdiction.

14 (b) (1) A person who has violated Section 42362 is liable for  
15 a civil penalty not to exceed two thousand five hundred dollars  
16 (\$2,500) per day for each violation in addition to any other penalty  
17 established by law. That civil penalty may be assessed and  
18 recovered in a civil action brought in any court of competent  
19 jurisdiction.

20 (2) In assessing the amount of a civil penalty for a violation of  
21 this chapter, the court shall consider all of the following:

22 (A) The nature and extent of the violation.

23 (B) The number of, and severity of, the violations.

24 (C) The economic effect of the penalty on the violator.

25 (D) Whether the violator took good faith measures to comply  
26 with this chapter and when these measures were taken.

27 (E) The deterrent effect that the imposition of the penalty would  
28 have on both the violator and the regulated community as a whole.

29 (F) Any other factor that justice may require.

30 (c) Actions pursuant to this section may be brought by the  
31 Attorney General in the name of the people of the state, by a district  
32 attorney, by a city attorney, or by a city prosecutor in a city or city  
33 and county having a full-time city prosecutor.

34 (d) Civil penalties collected pursuant to this section shall be  
35 paid to the office of the city attorney, city prosecutor, district  
36 attorney, or Attorney General, whichever office brought the action.

37 42366. This chapter does not alter or diminish any legal  
38 obligation otherwise required in common law or by statute or  
39 regulation, and this chapter does not create or enlarge any defense  
40 in any action to enforce the legal obligation. Penalties and sanctions

- 1 imposed pursuant to this chapter shall be in addition to any
- 2 penalties or sanctions otherwise prescribed by law.

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