

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: SB 830

INTRODUCER: Senator Bullard

SUBJECT: Carryout Bags

DATE: March 24, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>CM</u>	_____

I. Summary:

SB 830 provides legislative findings that it is necessary to adopt uniform statewide standards prohibiting the use of plastic carryout bags. The bill removes provisions related to a study that was produced in 2010 and a provision preventing local governments from instituting local ordinances concerning containers, wrappers, and plastic bags. It provides definitions and standards. The bill prohibits certain businesses from providing plastic carryout bags. It provides for the distribution of fees. Lastly, it provides for quarterly reporting, penalties, and local government adoption of ordinances.

II. Present Situation:

Section 403.7033, F.S., was enacted in 2008, requiring the Department of Environmental Protection (DEP) to study “the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.”¹ The report was submitted on February 1, 2010. Until the DEP’s recommendations are adopted, no state agency or governmental entity may regulate containers, wrappers, or plastic bags.²

The report noted two major concerns regarding retail bags. First, improper disposal of retail bags can hinder recycling, waste management, stormwater management, and litter control. Second, improper disposal affects natural systems and wildlife.³ The report recommended four different options to address the problem of plastic bags:

- Bans;

¹ Chapter 2008-227, s. 96, Laws of Fla.

² Section 403.7033, F.S.

³ DEP, *Florida Department of Environmental Protection, Retail Bags Report*, 4 (Feb. 1, 2010), available at http://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/retailbags/Retail-Bag-Report_01Feb10.pdf (last accessed Mar. 23, 2014).

- Fees and taxes;
- Voluntary measures; and
- Phase-out.

The report concluded that while all methods of reducing plastic bags had merit, some were more effective than others. The fastest results in reducing plastic bag use came from bans, followed closely by fees or taxes. Many people and businesses prefer voluntary measures because they do not involve any new fees or costs.⁴

Banning plastic bags and placing fees and taxes on auxiliary containers, wrappings, or plastic bags have been contemplated in several places, but neither has been widely enacted.⁵ Phasing out retail bags typically involves progressively combining fees and bans. Voluntary measures, which are difficult to quantify, places the responsibility of recycling on the businesses that provide plastic bags and the consumers who use them.⁶ Voluntary measures include providing store recycling bins, using reusable bags, and providing benefits such as discounts for those who use recyclable bags.⁷

One of the most publicized bans was in San Francisco, California. The city passed its ordinance in 2007, requiring pharmacies and supermarkets with gross annual sales of \$2 million or more to provide only paper, compostable, or reusable bags.⁸ Currently, California, Massachusetts, and Washington are considering legislation that would ban single-use bags.⁹

A phase out approach was pursued in Australia in 2005, but an analysis of the program in 2008 concluded the economic costs of a regulatory phase out would significantly outweigh the environmental benefits.¹⁰

Several states have enacted legislation to address compostable plastic bags. For example, California has passed statewide laws, including labeling requirements for compostable or marine degradable plastic bags, and a prohibition of the sale of plastic products labeled as compostable, home compostable, or marine degradable unless they meet certain standards.¹¹

One widely used standard for compostable bags promulgated by the American Society for Testing & Materials is the ASTM D6400 standard. It was developed to establish standards for identifying products and materials that will compost satisfactorily in commercial and municipal aerobic composting facilities.¹²

⁴ *Id.* at 18.

⁵ *Id.* at 15.

⁶ *Id.* at 17.

⁷ *Id.* at 17.

⁸ *Id.* at 15.

⁹ National Conference of State Legislatures, *State Plastic and Paper Bag Legislation: Fees, Taxes and Bans; Recycling and Reuse* (Feb. 2014), <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> (last visited Mar. 23, 2014).

¹⁰ *Supra* note 3, at 17.

¹¹ *Supra* note 9.

¹² Buygreen.com, *ASTM D6400 certified*, <http://www.buygreen.com/astmd6400certified.aspx#.UzA3rPk7uG4>, (last visited Mar. 24, 2014).

Currently, eight states are considering legislation that would impose a fee or tax on single-use bags.¹³ The fees under consideration range from \$0.01 to \$0.15.¹⁴

Other states that have enacted legislation to address plastic bags are Delaware, Maine, and North Carolina, among others. Delaware requires stores to establish an at-store recycling program. Similarly, Maine also requires recycling receptacles to be available in affected stores. North Carolina enacted a law designed to reduce plastic bag usage in the Outer Banks. The law requires affected retailers to display a sign that reads: "[county name] County discourages the use of single-use plastic and paper bags to protect our environment from excess litter and greenhouse gases. We would appreciate our customers using reusable bags, but if you are not able to, a 100% recycled paper bag will be furnished for your use."¹⁵

Recyclable bags are often marked with a symbol such as this:¹⁶



Labeling may include the percentage of total recycled fiber or plastic as well.

III. Effect of Proposed Changes:

The bill amends s. 403.7033, F.S., removing the ban on laws concerning any regulation of containers, wrappings, or plastic bags. It provides legislative findings, stating that it is necessary and appropriate to adopt uniform statewide standards prohibiting the use of plastic carryout bags. It allows local governments to adopt regulations concerning plastic bags by ordinance. The bill prohibits affected stores from providing plastic carryout bags.

The bill defines:

- “Affected store” to mean stores that are within the jurisdiction of a local government that adopts standards relating to carryout bags and is:
 - A full-line, self-service retail store that has gross annual sales of \$2 million or more and sells canned goods, dry grocery, nonfood, or perishable items; or
 - A drugstore, pharmacy, supermarket, grocery store, convenience store, or other entity of at least 10,000 square feet, which sells a limited line of goods.
- “Carryout bag” to mean a bag provided for the purpose of carrying away goods;
- “Local government” to mean a county or municipality;
- “Plastic carryout bag” to mean a carryout bag made predominantly of plastic;
- “Postconsumer recycled material” to mean material that has completed its use cycle and would normally be disposed of as solid waste;
- “Produce bag” to mean a plastic bag without handles designed to carry produce, meats, or other items from inside the store to the point of sale, or to separate those items from others;

¹³ California, Hawaii, Massachusetts, New York, Pennsylvania, Vermont, Virginia, and Washington are all considering fees or taxes on single-use bags.

¹⁴ *Supra* note 9.

¹⁵ *Supra* note 9.

¹⁶ American Forest and Paper Association, *Recycling Symbol Guidelines*, available at <http://www.afandpa.org/docs/default-source/default-document-library/recycling-symbol-guidelines.pdf?sfvrsn=0> (last visited Mar. 24, 2014).

- “Recyclable paper bag” to mean a bag that:
 - Contains no old-growth fiber;
 - Is 100 percent recyclable and contains at least 40 percent postconsumer recycled material;
 - Is capable of composting, consistent with ASTM D6400 standard;
 - Has printing on it that identifies the manufacturer, its country of origin, and the percentage of postconsumer recycled material used; and
 - Visibly displays the word “recyclable”;
- “Reusable bag” to mean a bag with handles that is designed for multiple reuse and which meets the following requirements:
 - Can carry a minimum of 22 pounds 125 times over a distance of at least 175 feet;
 - Has a minimum volume of 15 liters;
 - Is machine washable or can be cleaned or disinfected;
 - Does not contain certain heavy metals in toxic amounts;
 - Has printing or a tag that identifies the manufacturer and the country of origin, a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, and the percentage of postconsumer recycled material used; and
 - If it is plastic, it has to be at least 2.25 mils thick.

The bill requires any store affected by a local ordinance to provide reusable bags at either no cost or for a fee to a customer. Affected stores may also provide recyclable bags for a fee of \$0.10 per bag with no rebate or discount to offset the costs. The number of bags supplied must be indicated on the store receipt. The store may not provide a plastic carryout bag. The bill allows customers to bring whatever type of bag with them to the store for carrying out goods.

The bill provides that 50 percent of the fees collected must be distributed to the school district the store is located in for educational purposes only, and up to 50 percent of the fees may be retained by the store to offset costs associated with complying with s. 403.7033, F.S.

The bill requires quarterly reporting to the local government by any affected store, including:

- The total number of recyclable paper bags provided;
- The fees collected for providing recyclable paper bags; and
- A summary of any effort by the store in the prior quarter to promote customer use of reusable bags.

The bill authorizes local governments to impose a penalty for violations of provisions of the bill.

Lastly, the bill provides that any ordinances relating to carryout bags may only be enacted pursuant to the provisions of the bill, in order to provide uniform statewide standards. The bill will go into effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Depending on the cost to provide recyclable paper bags to customers, the fiscal impact of the provision allowing up to 50 percent of the revenue generated from fees to be used by affected stores to offset the costs of compliance is indeterminate. There will be no effect if the store's portion of the \$0.10 fee charged to consumers for recyclable paper bags fully pays for the cost of the bags. If it is not enough pay for the recyclable paper bags, then it will result in an indeterminate negative fiscal effect on affected stores.

Requiring labeling on bags used in Florida could impose a cost on bag manufactures. Bags that are produced for sale nationally will require different labeling depending on the destination of the bags. The cost cannot be calculated at this time.

Depending on the type of ordinance implemented by a local government, there could be significant fees imposed on consumers if the costs of compliance are passed on via higher costs for the products sold at affected businesses. While cumulatively these costs might be large, on an individual basis, they will be minimal.

C. Government Sector Impact:

The provision of the bill directing 50 percent of fees collected under the provisions of the bill be distributed to the local school district will provide a significant positive financial effect on those school districts if recyclable paper bag use increases substantially.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 119-120: "An affected store may not provide a customer with a plastic carryout bag or other type of bag." This language is not clear. A strict interpretation is that an affected store may not provide any bags, whatsoever. "[O]ther type of bag," likely means another type non-recyclable plastic bag, but it needs clarification.

VIII. Statutes Affected:

This bill substantially amends section 403.7033 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
