

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: CS/SB 966

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Bullard and others

SUBJECT: Disposable Plastic Bags

DATE: April 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 provides coastal municipalities with populations under 100,000 with the authority to establish a pilot program to regulate or ban disposable plastic bags. It directs municipalities that choose to establish a pilot program to enact an ordinance by December 31, 2015. The bill provides reporting requirements.

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 to the Legislature on February 1, 2010. Until the DEP’s recommendations are adopted by the Legislature, no state agency or governmental entity may regulate containers, wrappers, or plastic bags.² To date, the Legislature has not adopted the recommendations contained in the report.

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,

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

² Section 403.7033, F.S.

improper disposal affects natural systems and wildlife.³ The report recommended four options to address the problem of plastic bags:

- Bans;
- Fees and taxes;
- Voluntary measures; and
- Phase-out.⁴

The report concluded that while all methods of reducing plastic bags had merit, some were more effective than others. Reducing plastic bag use was most effective through bans, followed closely by fees or taxes. Many people and businesses prefer voluntary measures because they do not involve any new fees or costs.⁵

Phasing out retail disposable bags typically involves progressively combining fees and bans. Voluntary measures, which are difficult to quantify, place 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

Laws and local ordinances banning and placing fees and taxes on plastic bags, auxiliary containers, and wrappings have been enacted in a small number of locations in the United States.⁸ One of the most publicized bans on plastic bags was in San Francisco, California. The city passed an ordinance in 2007, requiring pharmacies and supermarkets with gross annual sales of \$2 million or more to provide only paper, compostable, or reusable bags.⁹ More recently, the state of California enacted a bill on September 30, 2014, to ban single-use plastic bags at large retail stores. The ban takes effect July 1, 2015.

Other states that have enacted legislation to address plastic bags include Delaware, Maine, and North Carolina. Delaware requires stores to establish an at-store recycling program. 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.¹⁰ 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.”¹¹

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).

⁴ *Id.* at 15-18.

⁵ *Id.* at 18.

⁶ *Id.* at 17.

⁷ *Id.* at 17.

⁸ *Id.* at 15.

⁹ *Id.* at 15.

¹⁰ National Conference of State Legislatures, *State Plastic and Paper Bag Legislation: Fees, Taxes and Bans; Recycling and Reuse* (Jan. 22, 2015), <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> (last visited Apr. 3, 2015).

¹¹ N.C. Gen. Stat. s. 130A-309.124.

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.¹²

Recently, New Jersey has considered bills that require stores to:

- Impose fees for disposable carryout bags;
- Establish in-store recycling programs; and
- Restrict the use of plastic bags by 50 percent by November 30, 2014, and ban all plastic bags from use in the state by December 31, 2016.

Puerto Rico also considered a bill that prohibits the use, manufacture, importation, distribution, and sale of plastic bags unless they are manufactured to be biodegradable.¹³

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.¹⁴

Recyclable bags are often marked with a symbol such as this:¹⁵



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

III. Effect of Proposed Changes:

The bill creates s. 403.70325, F.S., to allow coastal municipalities with populations fewer than 100,000 to establish a pilot program to regulate or ban disposable plastic bags. This would exclude approximately 20 municipalities with populations of 100,000 or greater.¹⁶

The bill provides that a municipality establishing a pilot program must enact an ordinance for the regulation or ban of disposable plastic bags by December 31, 2015, to begin on January 1, 2016, and end on June 30, 2018. The bill restricts such ordinances from including any new taxes or fees on the use or distribution of disposable plastic bags.

The bill provides requirements for a municipality's pilot program, including:

- Data collection pertaining to the impact of such regulation or ban;
- By April 1, 2018, submittal of a report on the impact of such regulation or ban to the governing body of the municipality at a public hearing that is open to comment from the public; and

¹² *Supra* note 3, at 17.

¹³ *Supra* note 10.

¹⁴ Buygreen.com, *ASTM D6400 certified*, available at <http://www.buygreen.com/astmd6400certified.aspx#UzA3rPk7uG4> (last visited Apr. 6, 2015).

¹⁵ 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 Apr. 6, 2015).

¹⁶ University of Florida, Bureau of Economic and Business Research, *Florida Estimates of Population 2014*, 8-21 (Apr. 1, 2014), available at <http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf> (last visited Apr. 3, 2015).

- Providing a copy of the report to the DEP.

The bill will take 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:

A ban or restriction on the use of disposable plastic bags will result in an indeterminate negative fiscal impact on businesses, consumers, or both, depending on the costs of alternatives.

C. Government Sector Impact:

Municipalities incur costs to clean up disposable plastic bags that are discarded and become litter or that wind up in stormwater drainage systems. Ordinances that have the effect of limiting the number of plastic bags may provide a positive, but indeterminate, fiscal impact on these local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

“Coastal community” is not defined in statute or rule. This may lead to confusion about which municipalities are eligible to participate in the pilot program.

VIII. Statutes Affected:

This bill creates section 403.70325 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on April 8, 2015:

- Specifies that the pilot program may only be established by coastal communities with a population of 100,000 or less; and
- Deletes the provision that allows participants in the pilot program to continue enforcing an ordinance regulating or banning plastic bags past the sunset date of June 30, 2018.

- B. **Amendments:**

None.