

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 162

INTRODUCER: Senator Rodriguez and others

SUBJECT: Disposable Plastic Bags

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Favorable
2.			CA	
3.			CM	
4.			RC	

I. Summary:

SB 162 authorizes a coastal community with a population of fewer than 100,000 people to establish a pilot program to regulate or ban disposable plastic bags. A municipality that establishes a pilot program must enact an ordinance for the regulation or ban of disposable bags, which may not take effect earlier than January 1, 2018, and must expire no later than June 30, 2020. The enacted ordinance may not include new taxes or fees on the use or distribution of disposable plastic bags. Additionally, a municipality that establishes a pilot program is required to collect data pertaining to the impact of its regulation or ban and submit a report on the impact of such regulation or ban to the governing body of the municipality at a public hearing. A copy of the report must also be provided to the Department of Environmental Protection (DEP).

II. Present Situation:

Plastic Bag Regulation in the United States

Americans use approximately 100 billion plastic bags every year, each typically discarded after a single use.¹ While plastic bags are more durable and considerably lighter in comparison to other carryout bags, single-use plastic bags harm the environment in several ways.² First, as plastic bags are comprised of high-density polyethylene, their production requires both petroleum and natural gas. It takes an estimated twelve million barrels of oil to produce the 100 billion plastic bags that are estimated to be used annually in the United States.³ Second, these types of plastic bags are non-biodegradable. As litter, a plastic bag's life expectancy is more than 1,000 years.⁴

¹ Bridget M. Warner, *Sacking the Culture of Convenience: Regulating Plastic Shopping Bags to Prevent Further Environmental Harm*, 40 U. MEM L. REV. 645, 646 (Spring, 2010).

² *Id.* at 648.

³ *Id.*

⁴ *Id.* at 649.

Ultraviolet rays weaken the bags and eventually break them down into smaller and smaller particles until they are invisible to the naked eye.⁵ Third, because of the plastic bag's lightweight nature, the bags are especially susceptible to being inadvertently transported by wind.⁶ Currents of air easily pick up plastic bags from garbage trucks, the tops of landfills, and trash receptacles, resulting in the littering of streets and landscapes.⁷ Additionally, the bags end up in the ocean where marine animals, such as sea birds and turtles, mistake them for food or become entangled in them.⁸

States for the past decade have been considering strategies to reduce the number of plastic bags to mitigate harmful impacts to oceans, rivers, lakes, and wildlife and to relieve pressure on landfills and waste management programs.⁹ There are a variety of types of plastic bag regulations that have been enacted to reduce the negative impacts of plastic bags such as bans, consumer-paid fees, in-store recycling programs, and other voluntary measures.

Bans

In August 2014, California became the first state to enact legislation imposing a statewide ban on single-use plastic bags at large retail stores.¹⁰ The ban took effect on July 1, 2015.¹¹ Additionally, many cities and counties throughout the country have banned the use of plastic bags.¹² The city of Austin, Texas implemented a Single Use Bag Ordinance in March of 2013.¹³ The Austin Resource Recovery office conducted a study on the impact of the ordinance and found that the ordinance effectively reduced the amount of single use plastic bags in the city, but it had the unintended consequence of increasing the use of reusable plastic bags.¹⁴ Not all reusable bags are environmentally friendly; some reusable bags are made out of plastic and require a great deal of energy to produce and ship.¹⁵ Compostable bags, another alternative to plastic bags, pose additional problems. They are not recyclable and, while they will eventually biodegrade, they still end up making their way into the environment.¹⁶ A plastic bag ban alone without any secondary measures enacted to address all single-use carryout bags may be replacing one environmental problem with another.¹⁷

⁵ *Id.*

⁶ *Id.* at 650.

⁷ *Id.*

⁸ *Id.*

⁹ National Conference of State Legislatures (NCSL), *State Plastic and Paper Bag Legislation* (Jan. 22, 2015), <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> (last visited March 13, 2017).

¹⁰ *Id.*

¹¹ *Id.*

¹² Bag the Ban provides an interactive map for researching state and local legislation *available at* <http://www.bagtheban.com/in-your-state>. Additionally, Surfrider provides a partial list of checkout bag legislation, *available at* <http://www.surfrider.org/pages/plastic-bag-bans-fees>.

¹³ City of Austin, *Carryout Bags*, Ord. 20120301-078 (March 2, 2012) *available at* <https://www.austintexas.gov/department/single-use-carryout-bag-ordinance-documents>.

¹⁴ Aaron Waters, Austin Resource Recovery & The Zero Waste Advisory Commission, *Environmental Effects of the Single Use Bag Ordinance in Austin, Texas*, pg. 28 (June 10, 2015) *available at* <http://www.austintexas.gov/edims/document.cfm?id=232679>.

¹⁵ Bridget M. Warner, *Sacking the Culture of Convenience: Regulating Plastic Shopping Bags to Prevent Further Environmental Harm*, 40 U. MEM L. REV. 645, 669 (Spring, 2010).

¹⁶ *Id.* at 658, 659.

¹⁷ *Id.* at 662.

Consumer-paid Fees

Charging a consumer-paid fee on a per-bag basis is an increasingly popular method to regulate plastic bag consumption.¹⁸ In 2009, the City Council of the District of Columbia passed legislation imposing a 5 cent fee for every carryout paper or plastic disposable bag at all businesses that sell food or alcohol.¹⁹ This type of measure is aimed at changing consumer behavior.²⁰ The business retains 1 cent (or 2 cents if the business offers a rebate when customers bring their own bag), and the remaining 3 or 4 cents goes to the Anacostia River Clean Up and Protection Fund.²¹ The revenue from the bag fee generated 2.1 million dollars in the 2014 fiscal year.²² Not only do consumer-paid fees help reduce plastic bag use, they generate revenue to support pollution cleanups and other types of waste management programs.²³

In-store Recycling Programs

Plastic bags are usually recycled into products such as railroad ties, parking lot curbs, signs, and composite lumber.²⁴ Some states have mandated in-store plastic bag recycling programs. For example, Delaware requires certain retail stores to set up a plastic carry-out bag recycling program for customers.²⁵ The program aims to encourage Delaware citizens to increase their recycling of plastic carryout bags obtained at retail stores.²⁶ Additionally, affected stores are required to maintain records describing the collection and recycling of plastic bags and to offer reusable bags to their customers for purchase.²⁷ While overall regulations that mandate the recycling of plastic carryout bags help reduce the negative environmental effects of the bags, they are unlikely to change consumer behavior.²⁸

Voluntary Measures

A trend has been for large retailers to give consumers incentives to bring their own bags, usually in the form of a small rebate.²⁹ Whole Foods Market has a company-wide plastic bag ban.³⁰ Most Whole Foods stores offer customers a refund of up to 10 cents for bringing their own bags.³¹ Additionally, after witnessing the success of its “Bag the Plastic Bag” program, IKEA, in 2008, banned all single-use carryout bags.³²

¹⁸ *Id.* 662.

¹⁹ D.C. Code Ann. § 8-102.02.

²⁰ District of Columbia, Department of Energy & the Environment, *Bag Law FAQs*, <http://doee.dc.gov/page/bag-law-faqs> (last visited March 14, 2017).

²¹ D.C. Code Ann. § 8-102.02.

²² Washington Post https://www.washingtonpost.com/investigations/nickel-by-nickel-is-the-dc-bag-fee-actually-saving-the-anacostia-river/2015/05/09/d63868d2-8a18-11e4-8ff4-fb93129c9c8b_story.html.

²³ Warner at 663.

²⁴ Warner at 653.

²⁵ State of Delaware, Division of Waste and Hazards, *Delaware’s Plastic Carryout Bag Recycling Act*, http://www.dnrec.delaware.gov/dwhs/recycling/Pages/Plastic_Bag_Recycling.aspx (last visited March 16, 2017).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Bridget M. Warner, *Sacking the Culture of Convenience: Regulating Plastic Shopping Bags to Prevent Further Environmental Harm*, 40 U. MEM L. REV. 645, 653, 656 (Spring, 2010).

²⁹ *Id.* 670.

³⁰ *Id.*

³¹ Whole Foods Market, *Green Mission Report* (2012), available at <http://www.wholefoodsmarket.com/sites/default/files/media/Global/PDFs/2012GreenMissionReport.pdf>.

³² Warner at 671.

Plastic Bag Regulation in Florida

In response to growing concerns regarding the impact of retail plastic bags on the environment, the Legislature enacted s. 403.7033, F.S., in 2008 to require the Department of Environmental Protection (DEP) to analyze “the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.” Section 403.7033, F.S., required DEP to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010.³³

Additionally, s. 403.7033, F.S. includes a prohibition on local governments, local governmental agencies, and state government agencies from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP’s recommendations.³⁴ To date, the Legislature has not adopted any recommendations contained in the report and the prohibition on any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags remains in effect.

In its *Retail Bags Report*, the DEP found that improperly discarded plastic bags, besides being unsightly litter, can harm land and marine life, interfere with landfill operations, clog flood control systems, and breed mosquitos.³⁵ The DEP provided options, ranging from educational campaigns to complete bans, for discouraging and reducing the use of single-use paper and plastic retail bags and the pros and cons associated with each option.³⁶ The report concluded that some strategies were more effective than others, with bans, closely followed by user fees and taxes, producing the fastest results.³⁷ Voluntary efforts were found to be helpful in changing consumer behavior patterns, but their effectiveness was found to be dependent upon the number of retailers participating.³⁸ Finally, the report concluded that public education, by bringing awareness to the damages caused by single-use bags and the costs of undoing such damage, is crucial to any approach.³⁹

Recent Litigation

The City of Coral Gables enacted an ordinance on February 9, 2016, banning the sale or use of containers made of polystyrene, also known as Styrofoam, by different entities and in different places within the City. The ordinance set forth exemptions from the ban for certain products or uses of polystyrene and provided code enforcement procedures for issuing tickets and fines for violations and for appealing violations. On March 9, 2016, the Legislature passed House Bill 7007 which, among other provisions, created s. 500.90, F.S. The new statutory section

³³ Section 403.7033, F.S.

³⁴ *Id.*

³⁵ DEP, *Florida Department of Environmental Protection, Retail Bags Report*, pg. 1 (Feb. 1, 2010), available at https://www.dep.state.fl.us/waste/quick_topics/publications/shw/recycling/retailbags/Retail-Bag-Report_01Feb10.pdf (last visited March 16, 2017).

³⁶ *Id.* at 19.

³⁷ *Id.* at 1.

³⁸ *Id.* at 2.

³⁹ *Id.*

preempted to the Department of Agriculture and Consumer Services the regulation of the use or sale of polystyrene products by entities regulated under ch. 500. Chapter 500, F.S., is related to the regulation of food products. Section 500.90, F.S., provided exceptions to the preemption including local ordinances enacted before January 1, 2016. House Bill 7007 became effective July 1, 2016. On July 18, 2016, the City was sued by the Florida Retail Federation, Inc. and Super Progreso Inc., who alleged that the City's ordinance was preempted by state statute.⁴⁰ The plaintiffs sought a declaratory judgment to that effect and injunctive relief to prevent the enforcement of the ordinance. The State of Florida was granted permission to intervene by the court and filed a response in opposition to the City's motion for summary judgment.⁴¹

In an order dated February 27, 2017, the court granted the City's Motion for Summary Judgment, holding that the statutory sections relied on by the plaintiffs in asserting preemption lack the necessary standards and guidelines for implementation and are unconstitutionally vague. Final judgment in the case was rendered on March 8, 2017. The court ruled in favor of the City of Coral Gables and held that the statutes preempting the regulation by local governments of polystyrene,⁴² plastic bags,⁴³ and the packaging of products manufactured or sold in the state⁴⁴ are unconstitutional and that the City's ordinance is valid and enforceable.⁴⁵ The time period to appeal the court's decision has not yet run. On March 14, 2017, the City of Coral Gables City Commission heard on first reading a proposed City ordinance banning the use of single-use carry out plastic bags by retailers.⁴⁶

III. Effect of Proposed Changes:

Notwithstanding the prohibition on local governments and state agencies, SB 162 would authorize coastal communities with populations of fewer than 100,000 people to establish pilot programs to regulate or ban disposable plastic bags within their boundaries. The bill defines the term "coastal community" as a "municipality that abuts or borders the Gulf of Mexico or Atlantic Ocean, or a saltwater bay, sound, straight (sic), inlet, lagoon, salt marsh, coastal wetland, or other saltwater body immediately adjacent to the Gulf of Mexico or Atlantic Ocean."

A municipality that establishes a pilot program is required to enact an ordinance for the regulation or ban of disposable plastic bags. Such ordinance may not take effect earlier than January 1, 2018, and must expire no later than June 30, 2020. Under the pilot program, a municipality may not enact an ordinance that includes new taxes or fees on the use or distribution of disposable plastic bags.

⁴⁰ Plaintiffs asserted that the City of Coral Gables ordinance was preempted by ss. 500.90, 403.708(9), and 403.7033, F.S.

⁴¹ *Florida Retail Federation, Inc. and Super Progreso Inc. v. The City of Coral Gables*, Case no. 2016-018370-CA-01 (Fla. 11th Jud. Cir. 2017).

⁴² Section 500.90, F.S.

⁴³ Section 403.7033, F.S.

⁴⁴ Section 403.708(9), F.S.

⁴⁵ *Florida Retail Federation, Inc. and Super Progreso Inc. v. The City of Coral Gables*, Case no. 2016-018370-CA-01 (Fla. 11th Jud. Cir. 2017).

⁴⁶ File #17-5900, City of Coral Gables City Commission Meeting, March 14, 2017, available at <https://coralgables.legistar.com/MeetingDetail.aspx?ID=517005&GUID=3EB94990-A8BA-4AF0-9795-BB9045104DF6&Options=info&Search=>.

A municipality that establishes a pilot program is required to:

- Collect data pertaining to the impact of its regulation or ban;
- Submit a report on the impact of its regulation or ban to the governing body of the municipality at a public hearing that is open to comments from the public by April 1, 2020; and
- Provide a copy of the report to DEP.

The bill takes 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:

Any ban or restriction on the use of disposable bags will result in an indeterminate negative fiscal impact on businesses, consumers, or both, depending on the structure of the ordinance enacted under the pilot program.

C. Government Sector Impact:

Local governments incur costs to clean up disposable plastic bans that are discarded and become litter or end up in stormwater drainage systems. Ordinances that have the effect of limiting the number of plastic bags that are improperly discarded may provide an indeterminate positive fiscal impact to a local government that enacts any such ordinance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 403.70325 of the Florida Statutes.

This bill republishes 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.
