

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 Community Affairs

BILL: SB 1822

INTRODUCER: Senator Martin

SUBJECT: Regulation of Auxiliary Containers

DATE: March 28, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Barriero</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Hackett</u>	<u>Fleming</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1822 provides that the regulation of auxiliary containers is expressly preempted to the state. The bill defines “auxiliary containers” as a reusable or single-use bag, cup, bottle, can, or other packaging that is:

- Made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates; and
- Designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a public food service establishment, a food establishment, or a retailer, as defined by Florida law.

The bill removes a provision requiring the Department of Environmental Protection (DEP) to review and update its 2010 retail bags report that analyzed the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags. The bill also removes a provision that prohibits a local government, local government agency, or state government agency from enacting any rule, regulation, or ordinance regarding the use, disposition, sale, prohibition, restriction, or tax of auxiliary containers until the Legislature adopts DEP’s recommendations in the updated retail bags report.

The bill takes effect July 1, 2025.

II. Present Situation:

Auxiliary Containers

Plastics are found in a variety of nondurable products, such as disposable diapers, trash bags, cups, utensils, medical devices, and household items.¹ Plastic food service items are generally made of clear or foamed polystyrene, while trash bags are made of high-density polyethylene or low-density polyethylene.²

Plastics are a rapidly growing segment of municipal solid waste.³ The United Nations has estimated that the world consumes between 1 trillion and 5 trillion plastic bags per year.⁴ In the United States, fewer than 10 percent of plastic bags are recycled per year.⁵ In Florida, about 5-6 million tons of collected municipal solid waste per year are single-use carryout packaging (SUCP).⁶

Improperly managed SUCP can end up in Florida's environment, littering roads, clogging stormwater systems, polluting freshwater sources, and harming the state's marine ecosystems.⁷ One estimate places the amount of all plastics entering Florida's marine environment in 2020 at roughly 7,000 tons.⁸ Based on citizen science data, the total number of large litter items collected in 2020 from Florida shorelines was 542,544 units (reported as 102 tons), of which SUCP comprised approximately 10 percent (on a unit basis).⁹

The environmental damage caused by auxiliary containers and single-use plastics has prompted a global effort to limit their use.¹⁰

¹ U.S. Environmental Protection Agency (EPA), *Plastics: Material-Specific Data*, <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/plastics-material-specific-data> (last visited Mar. 26, 2025).

² *Id.*

³ *Id.*

⁴ United Nations Environment Programme, *Single-Use Plastics: A Roadmap for Sustainability*, viii (2018), available at <https://www.unep.org/resources/report/single-use-plastics-roadmap-sustainability> (last visited Mar. 26, 2025)

⁵ EPA, *Advancing Sustainable Materials Management: 2016 and 2017 Tables and Figures*, 40 (2019), available at https://www.epa.gov/sites/default/files/2019-11/documents/2016_and_2017_facts_and_figures_data_tables_0.pdf (last visited Mar. 26, 2025)

⁶ Florida Dep't of Environmental Protection (DEP), *Update of the 2010 Retail Bags Report*, 3 (2021), available at <https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf>. In its report, DEP defines SUCP as including (1) auxiliary containers (a secondary container into which a product is placed for transport by a consumer. It includes, but is not limited to, reusable bags, paper bags, gift bags, gift boxes, hat boxes, cloth bags, and food takeout boxes and clamshells. Disposable plastic bags have been intentionally excluded from this definition); (2) wrappings (plastic films that are used to protect and transport the items within them; including, but not limited to, dry-cleaning, meats, fruits, bulk products, sandwiches, and newspaper. The focus for wrappings is on the external wrappings and not materials such as bubble wrap and tissue paper); and (3) disposable plastic bags (disposable plastic film bags used by the consumer to carry products from restaurants and retail establishments in the sale of products and goods. These bags are not necessarily meant to be reused multiple times but may have beneficial secondary uses and may be recycled at certain retail establishments). *Id.* at 2.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ See United Nations Environment Programme, *Resolution adopted by the United Nations Assembly on 15 March 2019: Resolution 4/9: Addressing single-use products pollution*, 1-2 (2019), available at <https://wedocs.unep.org/bitstream/handle/20.500.11822/28473/English.pdf?sequence=3&isAllowed=y> (last visited Mar. 26, 2025)

State Regulation of Auxiliary Containers

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, which required DEP to analyze the need for new or different regulations on auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments.¹¹ DEP's initial report was submitted in 2010, and in 2021, the Legislature directed DEP to review and update its 2010 report by December 31, 2021.¹² DEP submitted the updated report with its conclusions and recommendations on December 27, 2021.¹³

Section 403.7033, F.S., also prohibits 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 auxiliary containers, wrappings, or disposable plastic bags until the Legislature adopts DEP's recommendations.¹⁴ To date, the Legislature has not adopted any recommendations contained in the report and the prohibition remains in effect.¹⁵

Further, s. 500.90, F.S., provides that the regulation of the use or sale of polystyrene products by entities regulated under the Florida Food Safety Act (chapter 500, F.S.) is preempted to the Department of Agriculture and Consumer Services.¹⁶ In addition, s. 403.708(9), F.S., provides that the packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974, other than as expressly provided by law.

Some cities in Florida have passed ordinances that regulate single-use plastics or polystyrene on city property.¹⁷ In 2016, the City of Coral Gables enacted an ordinance prohibiting food service providers and stores from selling or using expanded polystyrene (i.e. Styrofoam) containers.¹⁸ In 2019, the Third District Court of Appeal held that ss. 500.90, 403.7033, and 403.708(9), F.S., expressly preempted the city's ordinance regulating polystyrene.¹⁹

¹¹ Ch. 2008-227, s. 96, Laws of Fla.; Section 403.7033, F.S.

¹² See ch. 2021-125, s. 1, Laws of Fla.

¹³ DEP, *Update of the 2010 Retail Bags Report* (2021), available at <https://floridadep.gov/sites/default/files/FDEP%20Plastic%20Bag%20Report%20Final%20v4.pdf> (last visited Mar. 26, 2025)

¹⁴ Section 403.7033, F.S.

¹⁵ *Id.*

¹⁶ This preemption does not apply to local ordinances enacted before January 1, 2016, and does not limit the authority of a local government to restrict the use of polystyrene by individuals on public property, temporary vendors on public property, or entities engaged in a contractual relationship with the local government for the provision of goods or services, unless such use is otherwise preempted by law. Section 500.90, F.S.

¹⁷ See, e.g., City of Atlantic Beach, Fla., Code of Ordinances, § 5-5 (prohibiting the use, sale, or distribution of polystyrene foam products on city properties and the beach); City of Boca Raton, Fla., Code of Ordinances, § 9-110 (prohibiting the sale or distribution of polystyrene foam products); City of Deerfield Beach, Fla., Code of Ordinances, § 34-170 (prohibiting the sale or use of Styrofoam/expanded polystyrene food service articles by city contractors and special event permittees); City of Fort Lauderdale, Fla., Code of Ordinances, §§ 16-153 and 16-154 (prohibiting the use of polystyrene products by individuals, temporary vendors, city contractors, and special event permittees while located or operating on city property or city facilities); City of Gainesville, Fla., Code of Ordinances, §§ 27-90 and 27-92 (prohibiting the use of single-use plastic straws and the use of expanded polystyrene containers on city property).

¹⁸ *Fla. Retail Federation v. City of Coral Gables*, 282 So. 3d 889, 891 (Fla. 3d DCA 2019).

¹⁹ *Id.* at 896.

State Preemption

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law.²⁰ In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.²¹

Home Rule Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.²² Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.²³ Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.²⁴

County governments have authority to provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.²⁵ Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitution, county charter, or statute.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 403.703, F.S., which provides definitions for part IV of chapter 403, F.S. The bill defines “auxiliary container” as a reusable or single-use bag, cup, bottle, can, or other packaging that is:

- Made of cloth; paper; plastic, including, but not limited to, foamed plastic, expanded plastic, or polystyrene; cardboard; corrugated material; molded fiber; aluminum; glass; postconsumer recycled material; or similar material or substrates, including coated, laminated, or multilayer substrates; and

²⁰ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

²¹ *Sarasota Alliance for Fair Elections v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (quoting *Phantom of Clearwater v. Pinellas County*, 894 So. 2d 1011, 1019 (Fla. 2d DCA 2005)).

²² FLA. CONST., art. VIII, s. 1.(f).

²³ FLA. CONST., art. VIII, s. 1.(g).

²⁴ FLA. CONST., art. VIII, s. 2.(b); *see also* s. 166.021(1), F.S.

²⁵ Sections 125.01(1)(d)(e)(f) and (k)1., F.S.

²⁶ Section 166.021(3), F.S.

- Designed for transporting, consuming, or protecting merchandise, food, or beverages from or at a public food service establishment,²⁷ a food establishment,²⁸ or a retailer.²⁹

Section 2 amends s. 403.7033, F.S., which regulates the analysis of certain recyclable materials by the Department of Environmental Protection (DEP). The bill provides that the regulation of auxiliary containers is expressly preempted to the state. In addition, the bill removes the language that:

- Emphasized legislative intent that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida’s ecology and economy;
- Required DEP to review and update their 2010 report on retail bags that included input from stakeholders analyzing the need for new or different regulation of auxiliary containers;
- Prohibited local or state government agencies from enacting any rule, regulation, or ordinance, until the Legislature adopts DEP’s recommendations.

Section 3 makes conforming changes.

Section 4 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²⁷ “Public food service establishment” means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. Section 509.013(5)(a), F.S. The definition excludes several types of entities, such as places maintained and operated by churches and public or private schools, colleges, or universities, or any theater or place of business where the food available for consumption is limited to beverages, popcorn, or prepackaged items. Section 509.013(5)(b), F.S.

²⁸ “Food establishment” means a factory, food outlet, or other facility manufacturing, processing, packing, holding, storing, or preparing food or selling food at wholesale or retail. Certain exceptions apply. Section 500.03(1)(p), F.S.

²⁹ “Retailer” means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state. Section 212.02(13), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may preempt certain local regulations outside the scope of its legislative intent, such as health and safety regulations related to the use of glassware on public beaches.³⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.703, 403.7033, and 403.707.

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.

³⁰ For example, the Jacksonville Code of Ordinances s. 28-720(a) provides "It shall be unlawful for any person to bring, or to have in his or her possession, any glass bottle or glass container, in any park, beach, dock, marina or other recreational facility."