

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 Commerce and Tourism

BILL: SB 588

INTRODUCER: Senators Hutson and Bradley

SUBJECT: Single-use Plastic Straws

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 588 provides that a food service establishment may only distribute a single-use plastic straw upon the request of a customer. The bill does not apply to an order for take-out, an off-premises delivery, an order placed by a digital or mobile application, or when the establishment distributes food or beverage items that are filled, sealed, or packaged before the establishment receives such items. The bill also prohibits a municipality, county, or other local governmental entity from adopting, enforcing, or implementing any regulation that further restricts a food service establishment from distributing single-use plastic straws.

The bill takes effect July 1, 2019.

II. Present Situation:

Single-use Plastic Straws

In recent years, the United States has seen an upsurge of initiatives aimed at increasing the rate at which individuals recycle and reuse materials that may be harmful to the environment. As a result, several states have enacted legislation addressing the use of single-use products, such as Styrofoam, paper bags, and plastic bags.¹

In 2018, California became the first state to pass legislation regulating the use of plastic straws. Under the law, full-service restaurants are prohibited from providing a single-use plastic straw unless the straw is requested by a customer.² Many businesses have also taken measures to

¹ National Conference of State Legislatures (NCSL), *State Plastic and Paper Bag Legislation* (Jan. 17, 2019), available at <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx> (last visited March 1, 2019).

² The law became effective January 1, 2019. *See* Cal. Civ. Code. PUB. RES. s. 42271 (added by Stats, 2018, Ch. 576, S.1 (AB1884)).

reduce the use of plastic straws, including Sea World Entertainment, Royal Caribbean Cruises, Bon Appétit, and Alaska Airlines.³

Plastic Straws in Florida

In response to growing concerns regarding the impact of single-use plastic products on the environment, the Florida Department of Environmental Protection (DEP) initiated a “Skip the Straw” campaign. The campaign encourages individuals, schools, and businesses to reduce pollution caused by plastic in Florida. The DEP also suggests that participants help the cause by picking up litter and participating in beach and river cleanups. Participants of “Skip the Straw” pledge to eliminate their use of plastic straws and other single-use products.⁴

The following Florida cities have passed regulations relating to the use of plastic straws: St. Petersburg,⁵ Town of Fort Myers Beach,⁶ City of Coral Gables,⁷ Village of Pinecrest,⁸ Town of Surfside,⁹ Miami Beach,¹⁰ City of Delray Beach,¹¹ Fort Lauderdale,¹² Deerfield Beach,¹³ and the City of Hallandale Beach.¹⁴

Similar Legislation

In 2008, the Legislature enacted s. 403.7033, F.S., to require the 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.”¹⁵ Under the law, the DEP was required to submit a report with its conclusions and recommendations to the Legislature by February 1, 2010. The law also prohibited 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 the DEP’s recommendations.¹⁶

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

³ Darryl Fears, *A Campaign to Eliminate Plastic Straws is Sucking in Thousands of Converts* (June 24, 2017), Washington Post, available at https://www.washingtonpost.com/national/health-science/a-campaign-to-eliminate-plastic-straws-is-sucking-in-thousands-of-converts/2017/06/24/d53f70cc-4c5a-11e7-9669-250d0b15f83b_story.html?utm_term=.bad6e5bf10e7 (last visited March 1, 2019).

⁴ Florida Dep’t of Environmental Protection, *Skip the Straw*, available at <https://floridadep.gov/waste/waste/campaign/skip-straw> (last visited March 1, 2019).

⁵ City of St. Petersburg, Fla., Ord. No. 356-H, s. 1 (2018).

⁶ Town of Fort Myers Beach, Fla., Ord. No. 17-13 (2017).

⁷ City of Coral Gables, Fla., Ord. No. 2019-01, s. 2 (2019).

⁸ Village of Pinecrest, Fla., Ord. No. 2018-14, s. 2 (2018).

⁹ Town of Surfside, Fla., Ord. No. 18-1676, s.2 (2018).

¹⁰ Miami Beach, Fla., Ord. No. 2018-4208, s.2 (2018).

¹¹ City of Delray Beach, Fla., Ord. No. 10-19 (2019).

¹² Fort Lauderdale, Fla., Ord. No. 19-0102 (2019).

¹³ Deerfield Beach, Fla., Ord. No. 2018-028, s.2 (2018) (Editor's note— Ord. No. 2018/028, s. 2, adopted September 17, 2018, amended the Code by the addition of a new Art. IX, § 34-170; however, said provision has been redesignated as Art. X, § 34-180, at the editor's discretion, for purposes of maintaining Code format and preventing the duplication of section numbers.)

¹⁴ City of Hallandale Beach, Fla., Ord. No. 18-027 (2018).

¹⁵ Ch. 2008-227, s. 96, Laws of Fla.

¹⁶ See s. 403.7033, F.S.

control systems, and breed mosquitos.¹⁷ The DEP provided the Legislature with 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.¹⁸ The report concluded that some strategies were more effective than others, with bans, closely followed by user fees and taxes, producing the fastest results.¹⁹ 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.²⁰ Finally, the report concluded that public education, by bringing awareness to the damages caused by single-use bags and the costs associated with undoing such damage, is crucial to any approach.²¹

To date, the Legislature has not yet 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.

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general²² or special law, and may enact county ordinances not inconsistent with general law.²³ Counties operating under county charters shall have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.²⁴ General law authorizes counties “the power to carry on county government”²⁵ and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”²⁶

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,²⁷ acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.²⁸ Chapter 166, F.S.,

¹⁷ 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 1, 2019).

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.

²¹ *Id.*

²² Chapter 125, Part I, F.S.

²³ FLA. CONST. art. VIII, s. 1(f).

²⁴ FLA. CONST. art. VIII, s. 1(g).

²⁵ Section 125.01(1), F.S.

²⁶ Section 125.01(1)(w), F.S.

²⁷ Section 166.011, F.S.

²⁸ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited March 1, 2019).

provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.²⁹

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.³⁰ Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.³¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.³³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.³⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.³⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.³⁷

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 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

²⁹ Section 166.021(4), F.S.

³⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

³¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

³² *Mulligan*, 934 So.2d at 1243.

³³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

³⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

³⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

³⁶ *Id.*

³⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

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.³⁸ 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.³⁹

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,⁴⁰ plastic bags,⁴¹ and the packaging of products manufactured or sold in the state⁴² are unconstitutional and that the City's ordinance is valid and enforceable.⁴³ The time period to appeal the court's decision has not yet run.

On January 8, 2019, the City of Coral Gables City Commission voted to ban plastic straws and stirrers from city facilities, parks and permitted events. The ban also applies to city vendors and contractors.⁴⁴

III. Effect of Proposed Changes:

The bill prohibits a food service establishment⁴⁵ from distributing⁴⁶ a single-use plastic straw,⁴⁷ unless the straw is requested by a customer. The prohibition does not apply:

- To an order for take-out, an off-premises delivery, or an order placed by a digital or mobile application;
- To hospitals or nursing, rehabilitation, or other healthcare facilities; or
- When the establishment distributes food or beverage items that are filled, sealed, or packaged before the establishment receives such items.

³⁸ The plaintiffs asserted that ss. 500.90, 403.708(9), and 403.7033, F.S., preempted the ordinance.

³⁹ *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).

⁴⁰ Section 500.90, F.S.

⁴¹ Section 403.7033, F.S.

⁴² Section 403.708(9), F.S.

⁴³ *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).

⁴⁴ File #18-8138, City of Coral Gables City Commission Meeting, available at <https://coralgables.legistar.com/LegislationDetail.aspx?ID=3823521&GUID=2F753430-AD58-49FB-B9DE-EE6780BFED&Options=ID|Text|&Search=> (last visited March 1, 2019).

⁴⁵ The bill defines "food service establishment" as "a restaurant, convenience store, grocery store, or vendor that sells food or beverages for the customer to consume on, near, or off the establishment's premises."

⁴⁶ Under the bill, "distribute" means "to sell, use, or offer or to provide for sale or use."

⁴⁷ The bill defines "single-use" as "a product that is designed to be used only once in its original form and then be disposed of or destroyed." The bill also defines "single-use plastic straw" as "a single-use, disposable straw made predominately of plastic derived from petroleum or a biologically based polymer, such as corn or other plant sources, which is used to transfer a beverage from a container to the mouth of the person drinking the beverage. The term does not include a straw made from nonplastic materials, including, but not limited to, paper, wood, or bamboo."

The bill specifies that a food service establishment is not prohibited from making single-use plastic straws available to customers through a self-serve straw dispenser.

The bill also prohibits a municipality, county, or other local governmental entity from adopting, enforcing, or implementing any regulation that would further restrict a food service establishment from distributing single-use plastic straws.

The bill takes effect July 1, 2019.

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.

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:

Several local regulations apply to the distribution of both single-use plastic straws and plastic stirrers. It is unclear whether a plastic stirrer falls within the definition of “single-use plastic straw” provided by the bill. Additionally, it is unclear why the bill defines both “single-use” and “single-use plastic straw,” as only the term “single-use plastic straw” is used throughout the bill.

VIII. Statutes Affected:

This bill creates section 403.7034 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.