

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 603 Single-Use Plastic Straws
SPONSOR(S): Business & Professions Subcommittee; Sabatini, and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	10 Y, 4 N, As CS	Thompson	Anstead
2) Local, Federal & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

According to the United States Environmental Protection Agency (EPA), trash, packaging, and improperly disposed waste from sources on land accounts for 80 percent of the marine debris found on beaches during cleanups and surveys. Up to two-thirds of the debris comes from single-use, disposable plastic packaging from food and beverage-related goods and services (things like plastic cups, bottles, straws, utensils, and stirrers). However, the total number of plastic straws that end up in the ocean each year is unclear. To gain an accurate and meaningful assessment of plastics and their influence, the EPA indicates that large-scale and long-term monitoring is needed.

Food distributors and healthcare facilities looking for alternatives have started to use products such as reusable straws and paper straws. Recently, anti-plastic straw campaigns around the world have led to regulations on plastic straws. In Florida, several cities have enacted plastic straw regulations. The scope of each regulation and strength of penalties varies among the respective ordinances.

The bill makes the following changes:

- Establishes a moratorium on the local regulation of single-use plastic straws;
- Requires the Department of Environmental Protection (DEP), or an entity designated by DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws and to report the study to the Legislature by July 1, 2024;
- Provides that the moratorium is lifted, effective July 1, 2024, if the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws;
- Provides that it is a violation if a local government attempts to adopt or enforce single-use plastic straw regulations before July 1, 2024;
- Makes violations punishable by a fine to the offending local government entity in the amount of \$25,000; and
- Makes offending local government entities provide attorney fees and court costs to prevailing parties in related civil actions.

The bill will have an indeterminate fiscal impact on state and local government.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

According to the EPA, trash, packaging, and improperly disposed waste from sources on land accounts for 80 percent of the marine debris found on beaches during cleanups and surveys. Up to two-thirds of the debris comes from single-use, disposable plastic packaging from food and beverage-related goods and services (things like plastic cups, bottles, straws, utensils, and stirrers). However, analysis of plastic debris in the environment from beach-cleaning surveys typically provides data that is limited to overall trends and larger items. To gain an accurate and meaningful assessment of plastics and their influence, large-scale and long-term monitoring is needed across countries and environments, including the sea floor, and across a range of debris sizes.¹

Plastic Straws

Recently, anti-plastic straw campaigns around the world have led to regulations on plastic straws. The American Chemistry Council (ACC), a trade organization that represents plastics manufacturers, among other industries, provides that regulation that focuses just on straws, or any one specific product, misses the point. Environmental groups, provide that plastic straw bans are an important step toward ending the circulation of single-use plastic.²

California was the first state to regulate plastic straws at restaurants. The law prohibits a full-service restaurant from providing single-use plastic straws to consumers unless requested. First and second violations result in a notice of violation and any subsequent violation are an infraction punishable by a fine of \$25 for each day the full-service restaurant is in violation, but not to exceed an annual total of \$300. The ban is enforced by local food code officers.

In addition, effective July 1, 2018, Seattle, Washington prohibited its restaurants from using plastic utensils, plastic straws, and plastic cocktail picks.³ In Florida, several cities have enacted their own plastic straw regulations.⁴ The scope of each regulation and strength of penalties varies among the respective ordinances.

The city of St. Petersburg recently passed an ordinance requiring food service establishments to distribute single-use plastic drinking straws to a customer only upon the customer's specific request, with the exception of drive-through food orders. After January 1, 2020, the St. Petersburg law will become an outright ban with no exceptions.⁵ Punishments for violations of the ban will include the following:

- First violation - written warning;
- Second violation within one year after the first violation - \$40.00 fine;
- Third and subsequent violations within one year after the first violation - \$80.00 fine;
- Violators will have 30 calendar days to correct the violation;

¹ United States Environmental Protection Agency, *Sources of Aquatic Trash*, <https://www.epa.gov/trash-free-waters/sources-aquatic-trash> (last visited Mar. 20, 2019).

² Sarah Gibbens, *A brief history of how plastic straws took over the world* (Mar. 20, 2019), <https://www.nationalgeographic.com/environment/2018/07/news-plastic-drinking-straw-history-ban/> (last visited Feb. 9, 2019).

³ Seattle Municipal Code Sec. 21.36.084 and 21.36.086.

⁴ These cities include Deerfield Beach, Dania Beach, Fort Lauderdale, Fort Myers, Hollywood, Hallandale, Marco Island, Miami Beach, Sanibel, St. Petersburg and Surfside.

⁵ Ord. No. 356-H, § 1, 12-13-2018.

- Each day a person continues to violate will be considered a separate violation.⁶

The Florida Department of Environmental Protection (DEP) “Skip the Straw” campaign encourages individuals, schools, and businesses to reduce pollution caused by plastic in Florida. DEP 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.⁷

Alternatives

Food distributors looking for environmentally friendly alternatives to plastic straws have started to use products such as reusable straws and paper straws. The benefit of using paper straws is that they are biodegradable. However, paper straws cost about 2.5 cents to make, compared with a half-cent cost to make a plastic straw.⁸ In addition, it has been found that paper can also have negative environmental impacts.⁹ Other alternatives to plastic straws include recyclable lids, stainless steel straws, bamboo straws, glass straws, and ice straws.

Preemption

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.¹⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹² In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.¹³ 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.¹⁴

Effect of the Bill

The bill creates a moratorium prohibiting a county, municipality, or another local entity of local government from adopting or enforcing an ordinance or other local regulation relating to single-use plastic straws before July 1, 2024.

⁶ *Id.*

⁷ Florida Department of Environmental Protection, *Skip the Straw*, <https://floridadep.gov/waste/waste/campaign/skip-straw> (last visited Mar. 21, 2019).

⁸ Kellie Ell, *Paper straws cost 'maybe 10 times' more than plastic straws, says paper straw distributor*, YAHOO FINANCE (Jul. 9, 2018), <https://finance.yahoo.com/news/paper-straws-cost-apos-maybe-024500832.html> (last visited Mar. 21, 2019).

⁹ Suzie Cave, *Carrier bags – Environmental Impact*, Northern Ireland Assembly Research and Information Service Briefing Paper, (Apr. 7, 2014), <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/environment/8314.pdf> (last visited Feb. 9, 2019).

¹⁰ Wolf, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited March 8, 2019).

¹¹ 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).

¹² *Mulligan*, 934 So. 2d at 1243.

¹³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

¹⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

The bill requires the Department of Environmental Protection (DEP), or an entity designated by DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws. An entity designated by DEP to conduct the study is required to be competent, knowledgeable, and unbiased regarding environmental impact studies. The environmental impact study must:

- Focus on the scientific data regarding the environmental impact of single-use plastic straws and the potential impact on the environment of this state if a reduction in the number of, or a prohibition on the use of, single-use plastic straws; and
- Consider the usefulness and environmental impact of potential alternatives to single-use plastic straws on the quality of life of persons with disabilities who may rely on single-use plastic straws for feeding and hydration.

The environmental impact study may consider single-use plastic straw regulations adopted in other jurisdictions in the United States and the actual effectiveness of such regulations in those jurisdictions in terms of environmental impact.

The bill requires DEP to report the results of the environmental impact study to the Legislature by January 1, 2024. If, upon evaluating the results of the study, the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws or a law preempting local regulation of single-use plastic straws, the moratorium ends on July 1, 2024.

Attempts by a county, municipality, or another entity of local government to adopt or enforce single-use plastic straw regulations before July 1, 2024, constitutes a violation, resulting in a \$25,000 fine to the offending local governmental entity. In addition, the offending local government is responsible for the attorney fees and costs of any party filing and prevailing in a civil action to enforce the terms of the moratorium.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1 Creates s. 403.7034, F.S., relating to local regulation of single-use plastic straws; creating moratorium; requiring DEP perform an environmental impact study; providing penalties.

Section 2 Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill requires DEP to conduct a study beginning July 1, 2019 and ending January 1, 2014. This will likely have a negative fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill prohibits local governments from regulating single-use plastic straws before July 1, 2024. Violations are punishable by a \$25,000 fine, attorney fees and court costs. The bill will have a

negative fiscal impact on local governments to the extent the local governments are imposing fines, and to the extent there will be violations.

The moratorium is on the adoption of new ordinances and enforcement of any ordinance, including ordinances currently in effect. As a result, any local regulation of single-use plastic straws adopted before, on, or after the effective date of the bill, will be void and unenforceable.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Food service establishments may experience a reduced level of costs associated with a moratorium on local regulations regarding the provision of single-use plastic straws.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Establishes a moratorium on the local regulation of single-use plastic straws;
- Requires the Department of Environmental Protection (DEP) to conduct a study to evaluate the environmental impact of single-use plastic straws and report to the Legislature by January 1, 2024;
- Repeals the moratorium, effective July 1, 2024, if the Legislature does not enact a statewide policy or preemption regarding single-use plastic straws; and
- Makes violations of local governments that attempt to adopt or enforce single-use plastic straw regulations during the moratorium, punishable as a \$25,000 fine, and includes attorney fees and court costs.

The staff analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.