

State Laws Preempting Local Single-Use Plastic Bag Bans or Exactions

Cynthia R. Harris, Environmental Law Institute, April 2019

State	Local Authority	Bill and Statute (year)	Extent of Preemption	Waste Diversion & Recycling Goals	Tribal Action
Arizona	<p>Home Rule</p> <ul style="list-style-type: none"> Available to cities with 3,500+ population. <p>Dillon's Rule</p> <ul style="list-style-type: none"> 3,500 or lower population and any county or township. 	<p>Enacted 2015</p> <ul style="list-style-type: none"> Bill: S.B. 1241 Statutes: § 9-500.38 (<i>cities and towns</i>) and § 11-269.16 (<i>counties</i>) 	<ul style="list-style-type: none"> Exactions (tax, fee, assessment, charge, or return deposit). Regulating sale, use, or disposition. Parties: Consumers or owners, operators, or tenants of a business, commercial building or multifamily housing property. 	No formal goal	<ul style="list-style-type: none"> 21 federally-recognized tribes Navajo Nation 2015 bill to ban single-use plastic carry-out bags withdrawn. NNEPA currently developing Single Use Plastic Ban and Styrofoam Use Ban.
Florida	<p>Home Rule</p>	<ul style="list-style-type: none"> Enacted 2008 Statute: 7033.403 S.B. 306 (2015/2016) proposed authorizing small coastal municipalities to regulate or ban disposable plastic bags and died in committee. S.B. 588 would require a study on the environmental impacts of plastic straws and prohibit bans on such straws until 2024. 	<ul style="list-style-type: none"> Directs DEP to submit report analyzing the need for regulating plastic bags used in retail establishments, by February 1, 2010. Local governments and state agencies in the meantime prohibited from any form of bans, restrictions, or taxes on them. Report issued. 	<ul style="list-style-type: none"> Statewide weight-based recycling goal of 75% by 2020 Achieved interim 2012 and 2014 goals, but the 2016 recycling rate was 56%, falling short of the 60% interim goal. 	<ul style="list-style-type: none"> 2 federally-recognized tribes Seminole Gaming banned plastic straws at its casinos, and replaced plastic bags in favor of paper ones.

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Idaho	Dillon's Rule <ul style="list-style-type: none"> Counties may adopt a charter; one charter city. Allows a charter adoption for counties, but not cities. Authority over city affairs. 	Enacted 2016 <ul style="list-style-type: none"> Bill: H.B. 372 Statute: 67-2340 	<ul style="list-style-type: none"> Regulating use, disposition or sale. No prohibition, restriction, fee imposition, or taxation. Parties/points: Retail, manufacturer, or distributor setting. 	No mandated waste diversion goal.	4 federally-recognized tribes.
Indiana	Home Rule	Enacted 2016 <ul style="list-style-type: none"> Bill: H.B. 1053 Statute: 36-1-3-8.6 	Regulating manufacture, distribution, sale, provision, use, or disposition, or the manufacturer, distributor, or food/retail facility. Any prohibition restriction, fee, or tax.	<ul style="list-style-type: none"> 50% recycling goal. 2016 recycling rate was 16.7%, from 5% the prior year. 2017 recycling rate increased slightly to 16.8% 	<ul style="list-style-type: none"> 1 federally-recognized tribe. Pokagon Band of Potawatomi Indians enacted a single-use plastics ban within tribal departments or at tribal events; intends to phase out at casinos as part of tribe's green initiative, Skëbgyak Zhetthkën (Do it green!).
Iowa	Home Rule	Enacted 2017 <ul style="list-style-type: none"> Bill: House File 295 Statutes: 331.301(6) & 364.3(3) 	Regulating sale or marketing of containers for consuming, carrying, or transporting consumer merchandise.	<ul style="list-style-type: none"> 50% solid waste reduction from 1988. Statewide average of 36% as of last estimate in 2000. 	1 federally-recognized tribe.

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Michigan	Home Rule Charter <ul style="list-style-type: none"> • Cities and counties may adopt. 	Enacted 2016, effective 2017. <ul style="list-style-type: none"> • Bill: S.B. 853 • Statute: 445.592 	<ul style="list-style-type: none"> • Regulating use, disposition or sale. • Prohibiting or restriction. • Imposing a fee, charge or tax. 	<ul style="list-style-type: none"> • 2018 recycling rate at 15%. • State has set a goal to double that rate by 2025. 	<ul style="list-style-type: none"> • 12 federally-recognized tribes. • Match-e-be-nash-she-wish Band of Pottawatomí Indians of Michigan (formerly Gun Lake Indian Tribe) tribal elders supported ban on plastic straws at a casino, which banned all plastic straws.
Minnesota	Home Rule <ul style="list-style-type: none"> • Cities may adopt Home Rule charter. 	Enacted 2017 <ul style="list-style-type: none"> • Bill: S.F. 1456 • Statute: 471.9998 • H.F. 511 proposes repealing the prohibition 	<ul style="list-style-type: none"> • Any ban upon the use. • Parties: Merchants, itinerant vendors, or peddlers. 	<ul style="list-style-type: none"> • Recycling goal of 75% for metropolitan counties, 35% for outstate counties by December 2030. • Recycling rate at 42.3% in 2016—32% of municipal solid waste collected was landfilled. 	<ul style="list-style-type: none"> • 8 federally-recognized tribes. • Lower Sioux Indian Community is discussing enacting a ban on single-use plastics. • Mille Lacs Band of Ojibwe is developing statutes to ban single-use polystyrene products and eventually single-use plastics, both for sale and use in tribal facilities. • Leech Lake enacted a Styrofoam ban resolution.

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Mississippi	Home Rule	Effective 2018 <ul style="list-style-type: none"> • Bill: S.B. 2570 • Statute: §§ 17-1-71 to 73 	<ul style="list-style-type: none"> • Regulating the use, disposition or sale. • Prohibiting or restricting auxiliary containers. • Imposing a fee, charge, or tax on auxiliary containers, or additional sales tax to consumers. • Parties: Food service, including manufacturing, distribution or further processing, retail facility. 	<ul style="list-style-type: none"> • 25% waste reduction goal by 1996. • Does not currently track the amount of material recycled, but is beginning to measure and report recycling from local governments. 	1 federally-recognized tribe.
Missouri	Home Rule <ul style="list-style-type: none"> • Available to cities and counties with population of at least 85,000. 	Enacted 2015 <ul style="list-style-type: none"> • Bill: H.B. 722 • Statute: § 260.283, 285.05 	<ul style="list-style-type: none"> • Ensures merchants, itinerant vendors, and peddlers have the option of providing customers either a plastic or paper bag. • Prohibits any ban, fee, or tax. 	<ul style="list-style-type: none"> • 40% waste diversion goal by 1998. • Plastics comprise 15.3% MSW by weight. 	No federally-recognized tribes.
Texas	Home Rule <ul style="list-style-type: none"> • Cities with population of at least 5,000 may adopt Home Rule charter. 	Effective 2016 <ul style="list-style-type: none"> • Texas Supreme Court interprets TEX. HEALTH & SAFETY CODE § 361.0961(a)(1) as applying to single-use paper and plastic bags. 	Forbids prohibiting or restricting the sale or use of a container or package.	40% MSW reduction goal by 1994.	3 federally-recognized tribes.

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Utah	Home Rule	H.B. 320 under consideration.	<ul style="list-style-type: none"> • Forbids regulating, prohibiting, or restricting use, disposition, or sale. • May not impose a fee. • Parties: Food service and retail facilities. 	No goal set.	7 federally-recognized tribes.
Wisconsin	Home Rule <ul style="list-style-type: none"> • Granted. 	Enacted 2016 <ul style="list-style-type: none"> • Bill: A.B. 730 • Statute: § 1.66.0419 	<ul style="list-style-type: none"> • Forbids regulating use, disposition, or sale, prohibiting or restricting. • May not impose a fee, charge, or surcharge. • Parties: Food service and retail facilities. 	No waste diversion goal.	12 federally-recognized tribes.