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FISCAL AND POLICY NOTE
Revised

Senate Bill 164

(Senator Conway)

Education, Health, and Environmental Affairs

Environmental Matters

Maryland Plastic Bag Recycling Act

This bill requires the Maryland Department of the Environment (MDE) to establish a registration program for plastic carryout bag manufacturers in order to promote the recycling of plastic carryout bags.

The bill terminates September 30, 2020.

Fiscal Summary

State Effect: Special fund administrative expenditures increase by \$59,500 in FY 2013 for MDE to initiate the registration program. Future year general/special fund expenditures reflect program operations and compliance enforcement. Special fund revenues could increase by \$125,000 annually beginning in FY 2013 from the collection of registration fees.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000
GF/SF Exp.	\$59,500	\$349,000	\$314,300	\$327,800	\$341,900
Net Effect	\$65,500	(\$224,000)	(\$189,300)	(\$202,800)	(\$216,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not anticipated to materially affect local government finances assuming that the bill is enforced by MDE at the State level. However, expenditures and revenues increase, potentially significantly, to the extent MDE delegates enforcement to local governments. Also, to the extent the additional State revenue generated by the bill is allocated to local governments for recycling programs, local grant revenues increase.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “distributor or wholesaler” is a person who buys or otherwise acquires plastic carryout bags from another source and provides, sells, or offers to sell the bags to a retailer doing business in the State. A “plastic carryout bag” is a plastic carryout bag provided by a retailer to a customer at the point of sale. A “plastic carryout bag manufacturer” is the producer of a plastic carryout bag that is provided, sold, or offered for sale to a retailer doing business in the State. A “retailer” is a person engaged in the business of making sales at retail that generate sales and use tax revenue.

Plastic carryout bag manufacturers must register with MDE and mark bags in a specified manner prior to providing, selling, or offering for sale a plastic carryout bag for use or distribution in the State.

By January 1, 2013, and every two years thereafter, plastic carryout bag manufacturers must register with MDE by submitting (1) a completed registration form as prescribed by MDE; (2) a \$250 registration fee, at specified times; and (3) a plastic carryout bag collection and recycling plan that includes specified information. Plastic carryout bag manufacturers are responsible for all costs associated with the development and implementation of the plastic carryout bag collection and recycling plan. MDE must (1) deposit registration fee revenue into the State Recycling Trust Fund; (2) post on the MDE website, within 30 days after receipt of a plan, the draft plan and notice of a 30-day period for submitting written comments on the plan; (3) review each draft plan a manufacturer submits; and (4) approve the draft plan or require revision of the draft plan.

A manufacturer that has submitted a plan must:

- accept written comments on its draft plan during the 30-day comment period; and
- within 30 days of receiving a comment, (1) respond in writing to each person who submits comments; (2) revise the plan, if required by MDE, after receiving the comments; and (3) submit the revised plan to MDE for review.

A manufacturer’s plan is considered final at either (1) the end of the 30-day comment period if no comments are submitted; or (2) after the manufacturer responds in writing to all comments received within the comment period and, if applicable, submits a revised draft plan to MDE. In addition, MDE must approve the draft plan before it is considered final. MDE must post the final plan on the MDE website within 30 days after approving the plan.

By January 1, 2014, each plastic carryout bag manufacturer must establish a specified educational program for residents and develop specified educational materials and make them available to retailers.

Beginning January 1, 2014, each plastic carryout bag manufacturer must establish goals to include at least 30% total recycled content in the plastic carryout bags it manufactures for use or distribution in the State by 2020.

Beginning January 1, 2014, retailers, distributors, and wholesalers may not purchase plastic carryout bags directly from a manufacturer for use or distribution in the State unless the manufacturer (1) is registered with MDE; (2) has a final plan posted on the MDE website; and (3) marks its bags in a specified manner.

By January 1, 2015, and annually thereafter, each manufacturer must submit a report to MDE on implementation of its plastic carryout bag collection and recycling plan during the preceding calendar year that includes specified information.

Beginning October 1, 2013, MDE is required to maintain and post on its website (1) a list of all collection locations identified in manufacturers' plans and annual reports; and (2) a list of registered manufacturers.

By January 1, 2017, the Secretary of the Environment must submit a report to the General Assembly on the statewide results of the plastic carryout bag collection and recycling program and provide specified findings and recommendations.

With some exceptions, plastic carryout bag manufacturers may implement the bill individually or in participation with other plastic carryout bag manufacturers or subcontractors. Also, the bill does not prohibit local jurisdictions from adopting, implementing, or enforcing local ordinances, resolutions, regulations, or rules governing specified curbside or drop-off recycling programs, including any action relating to fees for these programs. Retailers are authorized to recycle plastic carryout bags in the same manner that they did prior to the bill taking effect. MDE may adopt implementing regulations.

A person who violates any of the bill's provisions is liable for a civil penalty not exceeding (1) \$500 for a first violation; (2) \$1,000 for a second violation; and (3) \$1,500 for a third or subsequent violation. The penalty is to be collected by the local jurisdiction that initiates the civil action. If the State initiates the civil action, any penalty revenue must be allocated to the State Recycling Trust Fund.

Current Law: MDE promotes and encourages waste diversion across the State. Waste diversion combines both recycling and source-reduction activities. The Maryland Recycling Act requires all counties and Baltimore City to recycle 15% or 20% of their waste generated, depending on population. Additionally, in 2000, Maryland established a voluntary statewide waste diversion goal of 40% by 2005. The waste diversion goal comprises the recycling rate plus source-reduction credits (maximum 5%) that Maryland

counties and Baltimore City earn through activities designed to reduce the amount of waste going to the waste stream. Counties have flexibility to determine the best way to reach the required recycling rates. State law does not specifically address the disposal or recycling of plastic carryout bags.

The State Recycling Trust Fund is used to provide grants to counties and municipalities to support local recycling activities and now comprises primarily computer manufacturer registration fees under the State's electronic waste recycling law.

Local jurisdictions with general taxing powers (*e.g.*, Baltimore City, Baltimore County, and Montgomery County) have the authority to levy a bag fee.

Background: The use of disposable carryout bags has been the center of much media attention. According to American Plastic Manufacturing, the average American uses approximately 500 plastic bags annually. Proponents of disposable bag restrictions emphasize that plastic bags clog waterways, harm wildlife, consume valuable landfill space, and lead to greater fossil fuel consumption. Proponents of paper bag restrictions argue paper bag manufacturing results in a significant loss of trees and generates substantial air and water pollution. Due to concerns associated with both plastic and paper bags, reusable bags are gaining popularity, despite their additional cost.

Dozens of jurisdictions have adopted fees, bans, or other programs to discourage the use of disposable bags or to promote bag recycling. In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies. North Carolina enacted a ban on plastic bags in the Outer Banks region, and Delaware requires stores to establish at-store recycling programs. The National Conference of State Legislatures reported that 61 bills relating to plastic bags were introduced in 20 states in 2011.

On January 1, 2010, a new law took effect in the District of Columbia banning the use of disposable, nonrecyclable plastic carryout bags and requiring specified stores to charge a fee of 5 cents for each disposable bag a shopper is given. During the first 10 months of program implementation, approximately \$2.0 million in revenue had been raised and distributed for city efforts to protect the Anacostia River and other impaired waterways. In addition, the program is estimated to have reduced the number of bags consumed in the city by at least 50%.

Local Disposable Bag Requirements in Maryland

In response to a 2010 city ordinance (No. 08-0205), Baltimore City is implementing a plastic bag reduction program focused on encouraging consumers to use reusable bags and to recycle disposable plastic bags. Among other requirements, stores with food

service licenses (1) may not distribute plastic bags to customers unless the customer specifically requests one; (2) must provide at least one collection bin for recycling single-use plastic bags and make reusable bags available for purchase by customers; and (3) must maintain and submit records and reports concerning bag use.

Montgomery County passed legislation (No. 8-11) on May 3, 2011, that places a five-cent charge on each paper or plastic carryout bag provided by retail establishments at the point of sale, pickup, or delivery. The law took effect January 1, 2012. Revenues from this charge will be deposited into the county's Water Quality Protection Charge Fund, which is used for structural maintenance of stormwater management facilities and water quality improvements. Montgomery County revenues are estimated to increase by \$561,641 during the second half of fiscal 2012, \$1.1 million in fiscal 2013, \$833,648 in fiscal 2014, \$694,706 in fiscal 2015, and \$564,060 in fiscal 2016.

Solid Waste Management – Recycling and Source Reduction Study Group

Chapter 719 of 2010 required MDE to conduct a study to evaluate solid waste management processes that reduce the solid waste stream through recycling and source reduction. MDE created a study group and consulted with local government officials, waste haulers, recyclers, environmental groups, academia, State elected officials, and other affected parties including material resource facilities to study these issues. In December 2011, the study group submitted its final report and recommendations which included, among other things, a discussion of bag recycling legislation and programs. The report contains several conclusions about bag recycling, including that:

- while plastic bags are small contributors to waste, they are larger contributors to litter and they create problems for conventional recycling programs;
- mandatory bag take-back programs are largely ineffective at producing substantial increases in the recycling of bags; and
- bag taxes appear to be successfully reducing the number of bags distributed in the District of Columbia and providing some revenue for litter clean-up and distribution of reusable bags to low-income individuals.

State Revenues: The number of plastic carryout bag manufacturers impacted by the bill is unknown but potentially significant. The U.S. Census Bureau estimates that in 2009 there were 359 plastic bag and pouch manufacturing establishments in the United States. While the universe of potential registrants is unknown, MDE estimates that there could be 2,000 plastic carryout bag manufacturers worldwide; however, that number could vary significantly. The number of manufacturers that distribute plastic carryout bags to Maryland is unknown.

MDE's State Recycling Trust Fund special fund revenues could increase by \$125,000 in fiscal 2013 due to plastic carryout bag manufacturers' registration fees. This estimate assumes that (1) 1,000 manufacturers, half of the total estimated number of manufacturers worldwide, distribute plastic carryout bags to Maryland and are impacted by the bill; and (2) MDE identifies and registers 500 manufacturers in fiscal 2013 and the remaining 500 manufacturers in fiscal 2014. While the bill requires manufacturers to register by January 1, 2013, Legislative Services advises that it is highly unlikely that MDE could identify and process all registrations within such a limited time period. Future year estimates assume that the total number of manufacturers does not change and that 500 manufacturers submit the \$250 registration fee annually (reflecting half of the registrants paying the registration fee every two years, as required by the bill).

Actual fee revenue could be significantly higher or lower depending on the number of manufacturers that ultimately register with MDE.

To the extent MDE initiates civil actions against violators, State Recycling Trust Fund special fund revenues increase further due to the collection of penalties; however, any such increase cannot be reliably estimated at this time.

State Expenditures: In addition to establishing a series of requirements for plastic carryout bag manufacturers, the bill requires retailers, distributors, and wholesalers to purchase bags from sources that are registered with MDE. The U.S. Census Bureau estimates that in 2009 there were 18,540 retail establishments in the State. Reliable information about the number of plastic carryout bag distributors and wholesalers is not available; however, the number is potentially significant.

Special/general fund administrative and enforcement expenditures increase by \$59,536 in fiscal 2013 and by \$349,003 in fiscal 2014, which accounts for the bill's October 1, 2012 effective date. While not required by the bill, this analysis assumes MDE actively enforces the bill's requirements. These estimates reflect the cost of hiring (1) a natural resources planner in fiscal 2013 to draft regulations and oversee the creation and implementation of the program; and (2) six contractual environmental compliance specialists in mid-fiscal 2014 to enforce the bill statewide. It includes salaries, fringe benefits, one-time start-up costs, travel, six vehicles and related operational costs, and ongoing operating expenses. The information and assumptions used in calculating the estimates are stated below:

- a new natural resources planner establishes the program, develops regulations, researches the industry to identify affected manufacturers, registers manufacturers, reviews and comments on plans, and reviews annual reports;

- an existing MDE environmental program manager absorbs new program coordination and oversight responsibilities, requiring 20% of the manager's time, and does not address other requirements;
- an existing MDE budget specialist supervisor absorbs program financing responsibilities, requiring 10% of the supervisor's time, and does not address other requirements;
- an estimated 1,000 manufacturers are subject to the bill's requirements;
- an estimated 18,540 retailers as well as distributors and wholesalers are subject to the bill's requirements; and
- MDE develops enforcement actions and conducts inspections statewide starting in mid-fiscal 2014 and does not delegate enforcement to local governments.

	<u>FY 2013</u>	<u>FY 2014</u>
New Regular Position	1	
New Contractual Positions		6
Salaries and Fringe Benefits	\$45,968	\$170,277
New Vehicles		136,836
Start-up Costs and Operating Expenses	<u>13,568</u>	<u>41,890</u>
Total State Expenditures	\$59,536	\$349,003

Future year expenditures reflect full salaries with annual increases, employee turnover, as well as annual increases in ongoing operating expenses.

Legislative Services advises that actual MDE expenditures in all years may be less to the extent that MDE delegates enforcement to local governments or takes a less aggressive enforcement approach. In addition, to the extent that anticipated compliance and the actual number of affected retailers, distributors, wholesalers, and manufacturers differs significantly from the anticipated level, the number of MDE personnel needed to administer and enforce the bill will also vary. However, this estimate assumes that one planner and six compliance specialists will be needed at least through fiscal 2017 to implement the bill.

The fiscal 2011 closing balance for the State Recycling Trust Fund was \$686,722, and it is assumed that the fund can handle the additional expenditures necessary to implement the bill in fiscal 2013. It is unclear whether this fund can handle the additional expenditures to implement the bill in future years. Thus, general fund expenditures may increase in fiscal 2014 and future years to the extent that sufficient special funds are not available.

Although not required by the bill, special fund expenditures could increase further to the extent MDE uses any portion of the additional fee revenue remaining after administrative expenses, if any, to provide grants to local governments, as authorized under current law.

Small Business Effect: Small retailers and plastic bag manufacturers, distributors, and wholesalers may be meaningfully impacted by the bill. Among other things, the bill requires plastic carryout bag manufacturers to register with MDE, develop a plan, implement educational efforts, develop goals, and submit a report. The bill requires retailers, distributors, and wholesalers to purchase plastic carryout bags that meet specified requirements. The additional cost to comply with these requirements is unknown but may be meaningful for some small businesses.

The number of small businesses affected by the bill is unknown, but it could be significant. *For illustrative purposes*, the U.S. Census Bureau estimates there were:

- 18,540 retail trade establishments in Maryland in 2009, and 17,381 of these establishments had fewer than 50 employees; and
- four plastic carryout bag manufacturers in Maryland in 2009, and three of these manufacturers had fewer than 50 employees.

Additional Comments: It may be difficult to compel compliance with this bill since so many plastic carryout bag manufacturers are located outside of the United States. MDE advises that it has been difficult to get overseas electronics manufacturers that sell covered electronic devices in Maryland to comply with existing registration requirements associated with its electronics recycling program.

Additional Information

Prior Introductions: None.

Cross File: HB 229 (Delegate Lafferty, *et al.*) - Environmental Matters.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; District of Columbia; American Plastic Manufacturing; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); U.S. Census Bureau; National Conference of State Legislatures; Department of Legislative Services

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