

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 169 (Delegate Lafferty)
 Environmental Matters

Environment - At-Store Recycling - Plastic Carryout Bags

This bill requires “store” operators to establish specified at-store recycling programs that provide an opportunity for customers to return clean plastic carryout bags to the stores. Manufacturers of plastic carryout bags must develop educational materials to encourage the reuse, recycling, and reduction of plastic carryout bags and must make those materials available to stores. Finally, the bill requires the Maryland Department of the Environment (MDE) to adopt implementing regulations and establishes civil penalty provisions.

Fiscal Summary

State Effect: Special/general fund expenditures increase by \$398,500 in FY 2013 for MDE to implement and enforce the at-store recycling program. Out-year expenditures reflect only the personnel and operating costs necessary to enforce the program. Special fund revenues may increase from the collection of penalties established by the bill.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
GF/SF Exp.	\$398,500	\$238,400	\$254,000	\$264,400	\$275,300
Net Effect	(\$398,500)	(\$238,400)	(\$254,000)	(\$264,400)	(\$275,300)

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.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An at-store recycling program must include the following requirements:

- plastic carryout bags provided by the store must have printed or displayed on the bag a specified phrase encouraging customers to return the bags to a participating store for recycling;
- a plastic carryout bag collection bin must be (1) placed at each store; (2) visible and easily accessible; and (3) marked in a specified manner; and
- the store operator must make reusable bags available for purchase by customers.

“Store” means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and has over 1,000 square feet of retail space. An “operator” is a person in control of, or having daily responsibility for, the daily operation of a store and may include the store owner. A “plastic carryout bag” is a plastic carryout bag provided by a store to a customer at the point of sale. A “reusable bag” means (1) a bag with handles made of cloth or any other fabric; or (2) a durable plastic bag with handles that is at least 2.25 millimeters thick and is specifically designed and manufactured for reuse.

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.

A person who violates any of the bill’s provisions is liable for a civil penalty not exceeding (1) \$250 for a first violation; (2) \$500 for a second violation; and (3) \$1,000 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 deposited in 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 bags 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 includes 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: To the extent MDE initiates civil actions against violators, State Recycling Trust Fund special fund revenues increase due to the collection of penalties.

State Expenditures: Special/general fund expenditures increase by \$398,492 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring a contractual natural resources planner to draft regulations and oversee the creation of the program, and six contractual environmental compliance specialists to enforce the bill statewide, including the purchase of six vehicles for inspection and enforcement. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE enforces the bill and does not delegate enforcement to local governments; and
- an estimated 12,000 to 14,000 stores are subject to the bill's requirements.

	<u>FY 2013</u>	<u>FY 2014</u>
New Contractual Positions	6.5	(0.5)
Salaries and Fringe Benefits	\$214,229	\$216,287
Start-up Costs and Operating Expenses	<u>184,263</u>	<u>22,149</u>
Total State Expenditures	\$398,492	\$238,436

Future year expenditures reflect full salaries with annual increases, employee turnover, as well as annual increases in ongoing operating expenses. This analysis assumes that the contractual natural resources planner is not needed beyond fiscal 2013.

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

If compliance with the at-store plastic bag recycling program becomes widespread, potentially all of the contractual inspectors may no longer be needed and thus could be eliminated at some point. However, this estimate assumes that all six inspectors will be needed at least through fiscal 2017 to ensure that the affected stores are in compliance with the bill.

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 stores differ significantly from the anticipated level, the number of MDE personnel needed to enforce the bill will also vary.

Small Business Effect: Small business owners of stores that are 1,000 square feet in area or greater may be meaningfully impacted by the bill. The bill specifies that the at-store recycling program must include the provision of plastic carryout bags designed with specified printing as well as collection bins and reusable bags for purchase by customers. The additional cost to comply with these requirements is unknown but may be meaningful for at least 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.

The bill also requires carryout bag manufacturers to develop specified educational materials and make them available. Thus, this bill impacts carryout bag manufacturers to the extent they are small businesses. *For illustrative purposes*, the U.S. Census Bureau estimates there were four plastic carryout bag manufacturers in Maryland in 2009, and three of these manufacturers had fewer than 50 employees.

Additional Comments: While it may be assumed, MDE advises that the bill does not (1) require stores to recycle any bags that are collected; or (2) specifically authorize the State or local governments to inspect stores.

Additional Information

Prior Introductions: HB 341 of 2011 received a hearing in the House Environmental Matters Committee, but no further action was taken. HB 1418 of 2010, a similar bill, received a hearing in the House Environmental Matters Committee but was subsequently withdrawn.

Cross File: None.

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

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