

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 551 (Delegate Lierman, *et al.*)

Environment and Transportation and
Economic Matters

Community Cleanup and Greening Act of 2015

This bill prohibits a “store” from distributing plastic disposable carryout bags. A store may provide customers with disposable *paper* bags, but must charge a fee of 10 cents per paper bag. A store may retain 5 cents of every 10-cent fee collected, or 7 cents if the store has a “customer bag credit program.” A store must remit any fee revenue not retained to the Comptroller. Fee revenues remitted to the Comptroller must be used for specified purposes. The bill establishes penalty provisions for violations. The bill requires the Department of Labor, Licensing, and Regulation (DLLR) to adopt regulations to implement and enforce the bill.

Fiscal Summary

State Effect: Special fund revenues increase significantly – likely by greater than \$10 million annually – beginning in FY 2016 from the collection of fees remitted to the Comptroller. Special fund administrative expenditures increase by about \$562,300 in FY 2016 for the Comptroller and by about \$317,900 in FY 2016 for DLLR, which accounts for the bill’s effective date; future years reflect annualization and inflation. Special fund expenditures increase significantly further for the Comptroller to distribute the remainder of fee revenues to local jurisdictions. General fund revenues may increase from the collection of penalties.

Local Effect: Local government revenues increase, potentially significantly, for each county and Baltimore City, as fee revenues remitted to the Comptroller are distributed to local governments. Local expenditures related to litter control may decrease and other local environmental improvement or remediation expenditures may also decrease to the extent that fee revenues distributed under the bill supplant existing or planned expenditures.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “disposable carryout bag” is a paper or plastic bag provided by a store to a customer at the point of sale. A “disposable carryout bag” is not (1) a durable plastic bag with handles that is designed and manufactured for multiple reuse; (2) a bag provided by a pharmacist to contain prescription drugs; (3) plastic bags sold in packages containing multiple plastic bags intended for use as garbage, pet waste, or yard waste bags; (4) a paper bag that a restaurant provides to a customer for food or drink; or (5) a bag used to:

- package bulk items, including fruit, vegetables, nuts, grains, candy, or small hardware items;
- contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- contain or wrap flowers, potted plants, or other damp items;
- contain unwrapped prepared foods or bakery goods; or
- contain a newspaper or dry cleaning.

A “store” is a retail establishment that provides disposable carryout bags to its customers as a result of the sale of a product. The term does not include a roadside stand or farmers market.

A “customer bag credit program” is a program implemented in a store that (1) requires the store to pay a customer a credit of at least 5 cents for each bag provided by the customer for packaging the customer’s purchases; (2) requires the total amount of the credit paid to a customer to be displayed on the customer transaction receipt; and (3) is prominently advertised at each checkout register in the store.

Fee revenues remitted to the Comptroller must first be retained by the Comptroller for administrative cost recovery and distributed to DLLR for recovery of its costs in implementing and enforcing the bill. The remainder of fee revenues must then be distributed to counties, in proportion to each county’s population. Fee revenues distributed to the counties may only be used for (1) community greening; (2) stormwater control; (3) trash or litter cleanup; (4) Total Maximum Daily Load (TMDL) and watershed implementation projects; (5) recycling programs and projects; (6) “fresh food financing;” or (7) any other project related to water quality improvement or solid waste source reduction.

A store may not communicate that the reimbursement of the fee or any part of the fee collected will be assumed or absorbed by the store or refunded to the customer. Also, store receipts must indicate the number of bags provided by the store and the total fee amount charged.

The fee is not subject to the sales and use tax.

The bill establishes penalty provisions for violations. The bill establishes an administrative fine of up to \$100 for each violation of the bill; the distribution of one or more plastic bags at a point of sale constitutes a single violation, but a penalty may not be imposed on a store more than once within a seven-day period.

Current Law: State law does not address carryout bags provided by retail establishments.

Local jurisdictions with general taxing powers (*e.g.*, Baltimore City, Baltimore County, and Montgomery County) have the authority to levy a bag fee, while other jurisdictions with home rule legislative authority may have the authority to ban certain disposable bags.

Background: The use of disposable carryout bags has been the center of significant attention in recent years. Proponents of disposable bag restrictions emphasize that plastic bags litter waterways, gather in vast arrays in parts of the oceans, 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 in popularity, despite their additional cost.

In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies, and in 2014 California became the first State to enact a ban on the issuance of single-use plastic bags in large retail stores; the California law also established a 10-cent fee on the issuance of disposable paper bags and is set to take effect on July 1, 2015. The National Conference of State Legislatures notes that Hawaii also has a *de facto* statewide ban on the issuance of disposable plastic bags, as all four counties in the state ban nonbiodegradable plastic bags at checkout and paper bags that are less than 40% recycled.

Beginning January 1, 2010, a 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. Fee revenues are paid to the Anacostia River Clean-up Fund and used to protect the Anacostia River and other impaired waterways. Revenues have increased each year between fiscal 2012 and 2014.

A recent study conducted as part of a doctoral dissertation filed with the Department of Economics at Princeton University in September 2013 examined the effect of carryout bag taxes on consumer use and focused on Montgomery County's 5-cent tax. The dissertation concluded that a bag tax does substantially reduce disposable bag use and also that a policy based on providing bonus payments for not using disposal bags was comparatively ineffective.

Local Disposable Bag Requirements in Maryland

Montgomery County passed legislation (No. 8-11) on May 3, 2011, that places a 5-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 are deposited into the county's Water Quality Protection Charge Fund, which is used for structural maintenance of stormwater management facilities and water quality improvements. The county originally projected that revenues from the charge would peak at about \$1.1 million in fiscal 2013, the first full year of implementation. However, the county collected nearly \$900,000 during only half of a year in fiscal 2012, followed by revenues of \$2.39 million and \$2.41 million in fiscal 2013 and 2014, respectively.

The Baltimore City Council passed a ban on the issuance of plastic bags in November 2014, but the bill was subsequently vetoed by the Mayor. The City Council reintroduced the legislation in January 2015. Currently, Baltimore City implements 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.

Finally, the Town of Chestertown banned the use of plastic, but not paper, bags in retail establishments in April 2011.

Solid Waste Management – Recycling and Source Reduction Study Group

Chapter 719 of 2010 required the Maryland Department of the Environment (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 made 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 and providing revenue to remove litter and distribute reusable bags to low-income individuals.

State Fiscal Effect:

Fee/Penalty Revenues

Special fund revenues collected by the Comptroller increase significantly beginning in fiscal 2016 from fees collected upon the provision of disposable carryout bags to customers by stores, as required by the bill. A reliable estimate of the increase in fee revenues cannot be made due to substantial uncertainty regarding the number of paper and plastic bags currently provided to customers in Maryland, the number of paper bags needed to replace each plastic bag, the reduction in the number of bags following the establishment of the bill's ban and fee, the number of stores that establish a customer bag credit program, and compliance rates with the bill, among several other factors. However, *for illustrative purposes only*, special fund revenues may increase by about \$12.8 million in fiscal 2016 (which accounts for the bill's October 1, 2015 effective date), by about \$15.3 million in fiscal 2017, and by about \$11.2 million by fiscal 2020 based on several likely conservative assumptions, as follows:

- 175 paper and plastic disposable carryout bags of the type subject to the bill's fee are currently used per person each year in Maryland;
- about 115 disposable paper bags are used per person, per year, to replace the plastic bags banned by the bill;
- one-third fewer disposable carryout bags are requested (replaced by reusable bags) in fiscal 2016 following the effective date of the bill;
- 75% of stores establish a customer bag credit program and remit 3 cents to the Comptroller and the remaining 25% do not establish a program and remit 5 cents;
- future annual population growth of 1%; and
- reductions in disposable paper bag use of 10% annually.

The Department of Legislative Services cautions that this estimate is based on a number of assumptions, which may be conservative, and that the actual special fund increase could greatly exceed this estimate to the extent that any of the assumptions described above

understate actual experience. In particular, it should be noted that estimates of current plastic bag use vary substantially (generally from as few as 50 per person, per year, to more than 600), and that little data exists regarding annual per capita paper bag use. Thus, special fund revenues may exceed the above estimate significantly, perhaps by several multiples. However, as disposable bag use declines and reusable bag use increases, special fund fee revenues ultimately decline; the cost to implement the bill may eventually exceed the receipt of fee revenues by the Comptroller, although this is unlikely within the next decade.

Nevertheless, under the likely conservative estimate described above, special fund revenues collected by the Comptroller significantly exceed the costs of implementing and enforcing the bill by the Comptroller’s Office and DLLR beginning in fiscal 2016, as discussed below.

General fund revenues may also increase, potentially significantly, from the collection of penalties established for violations of the bill.

Comptroller Administrative Expenses

As noted above, the bill requires the fee revenues remitted to the Comptroller to first be retained for administrative cost recovery. The Comptroller’s Office advises that administering a new program of this type requires extensive computer programming and several new positions. To establish a new tax type within its current SMART data system requires nearly 2,000 hours of programming by an external vendor at an estimated cost of \$250,390 in fiscal 2016. The Comptroller further advises that administration of the bill requires hiring one new information technology programmer analyst (to maintain the new system), one accountant, one revenue examiner, and one field auditor. Finally, the Comptroller estimates postage costs of \$81,250 in fiscal 2016 to communicate with stores regarding the bill’s new requirements. This estimate also includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2016</u>	<u>FY 2017</u>
Positions	4	
Salaries and Fringe Benefits	\$211,595	\$263,161
Contractual Programming	250,390	0
Start-up and Operating Expenses	<u>100,291</u>	<u>2,363</u>
Comptroller Admin. Expenditures	\$562,276	\$265,524

The bill’s effective date is October 1, 2015, and it is assumed that the additional staff are hired on this date, with the exception of the programmer analyst, who is hired on July 1, 2015 to coordinate with the vendor hired to initiate the new program. Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. In fiscal 2016 only, the extensive

contractual programming costs and additional personnel costs may necessitate additional general fund support; however, ongoing costs are covered by special fund fee revenues.

DLLR Administrative Expenses

After recovery of the Comptroller’s costs to administer the bill, bag fee revenues remitted to the Comptroller must then be distributed to DLLR to cover the cost of its administration and enforcement of the bill. DLLR advises that it does not currently administer programs of this nature and must establish a wholly new program. Thus, special fund expenditures increase by \$317,879 in fiscal 2016 to hire one program administrator, three staff (one clerk to handle administrative tasks and communications, and two field auditors to conduct outreach and enforcement) and one Assistant Attorney General to assist in the development of the regulations required by the bill, establish a citation procedure, and represent DLLR in enforcement actions. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2016</u>	<u>FY 2017</u>
Positions	5	
Salaries and Fringe Benefits	\$294,848	\$358,177
Start-up and Operating Expenses	<u>23,031</u>	<u>2,954</u>
DLLR Admin. Expenditures	\$317,879	\$361,131

The bill’s effective date is October 1, 2015, and it is assumed that the additional staff are hired on this date, with the exception of the program administrator and clerk, who are hired on July 1, 2015, to initiate the new program within DLLR and begin outreach with affected businesses. Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. In fiscal 2016 only, the significant additional personnel costs may necessitate additional general fund support; however, ongoing costs are covered by fee revenues.

The Department of Legislative Services advises that the Comptroller’s Office and DLLR may seek to coordinate in the hiring of personnel to implement the bill, particularly in the hiring of auditors and enforcement personnel. Nevertheless, the estimated three additional field auditors hired by the two agencies to enforce the bill are likely needed, and any coordination is not likely to result in the hiring of fewer enforcement personnel. In fact, it may be prudent to consider hiring additional enforcement personnel given the large number of affected retail establishments and the significant potential for noncompliance. Nevertheless, the bill establishes a substantial penalty for noncompliance that may deter violations of the bill, even in the absence of a large enforcement presence hired for enforcement.

Distribution of Remaining Fee Revenues

Special fund expenditures increase significantly further to distribute the remainder of fee revenues to local jurisdictions, as discussed below.

Local Fiscal Effect: As noted above, after administrative cost recovery by the Comptroller's Office and DLLR, the bill requires all remaining bag fee revenues to be distributed to the counties (and, presumably Baltimore City) in proportion to each jurisdiction's population. Thus, under the illustrative example described above, local revenues increase by between about \$40,000 (in Kent County, the least populous county) and \$2 million (in Montgomery County, the most populous county) in fiscal 2016, which accounts for the bill's effective date, and by between \$50,000 and \$2.5 million for jurisdictions in fiscal 2017, the first full fiscal year of implementation under the bill. As noted above, this is likely to be a conservative estimate and the actual increase in local revenues may significantly exceed these amounts. The bill requires these additional revenues to be used for specified purposes, generally related to environmental improvements; thus local expenditures for those activities increase commensurately, unless the new revenues supplant existing or planned spending.

Additionally, the bill may reduce local litter control or remediation costs, which may be significant in some jurisdictions.

Finally, it should be noted that the bill likely preempts the Montgomery County bag fee program. Montgomery County currently requires a 5-cent charge on each paper or plastic carryout bag provided by retail establishments, with revenues distributed to the county's Water Quality Protection Charge Fund for stormwater management water quality improvements. The county program has generated about \$2.4 million annually for the last several years. Thus, Montgomery County revenues decrease significantly unless fully offset by the distribution of bag fees collected statewide under the new program. Under the conservative estimate described above, the decrease in fee revenues under the county program are fully offset by the distribution of fee revenues under the State program.

Small Business Effect: Because the bill impacts most retail trade establishments, a significant number of small businesses may be affected. The bill results in potentially significant additional operational responsibilities for small retailers, as they are required to (1) replace the procurement of plastic bags with paper bags; (2) account for the number of bags provided to customers; (3) ensure customer transaction receipts include specified information; and (4) submit fee revenue to the Comptroller. However, small businesses may benefit from additional bag fee revenues authorized to be retained under the bill. Small businesses with a customer bag credit program are required to implement the program in accordance with the requirements set forth in the bill, but they retain a greater portion of the fees collected.

While the number of small businesses affected by the bill is unknown, *for illustrative purposes*, the U.S. Census Bureau estimates there were 18,186 retail trade establishments in Maryland in 2012, and 16,979 of these establishments had fewer than 50 employees.

Additional Information

Prior Introductions: None.

Cross File: SB 620 (Senators Montgomery and Lee) - Education, Health, and Environmental Affairs and Finance.

Information Source(s): Kent, Montgomery, and Worcester counties; Baltimore City; Town of Chestertown; Department of Labor, Licensing, and Regulation; Comptroller's Office; Maryland Department of the Environment; District of Columbia; City of New York; *Baltimore Sun*; *Washington Post*; *Los Angeles Times*; *Reuseit.org*; American Plastic Manufacturing; American Forest and Paper Association; Michigan Technological University; Department of Legislative Services

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