SB 684

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 684 (Senator Ferguson, *et al.*)
Education, Health, and Environmental Affairs

Maryland Redeemable Beverage Container and Litter Reduction Program

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This bill establishes a 5-cent beverage container deposit beginning January 1, 2017, and a Maryland Redeemable Beverage Container and Litter Reduction Program to be operated by a private organization of bottlers and distributors. The bill provides for the accounting and use of unredeemed container deposits and other program revenues. Finally, the bill establishes a Maryland Recycling Advisory Committee and provides for legislative audits and oversight of the program.

Fiscal Summary

State Effect: Special fund revenues increase significantly – and likely by several million dollars − between FY 2017 and 2019, from the collection of unredeemed container deposit revenues to be held in the Reserve Recycling Fund established by the bill. Special fund expenditures increase by about $35,100 in FY 2017 and more than $64,500 annually thereafter for the Maryland Department of the Environment (MDE) to staff the Maryland Recycling Advisory Committee. General fund expenditures increase by more than $89,700 annually beginning in FY 2018 for the Office of Legislative Audits (OLA) to hire one auditor to conduct audits. The Comptroller's Office and State Treasurer can implement the bill with existing resources.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	$0	-	-	-	$0
GF/SF Rev.	$0	-	-	-	-
GF Expenditure	$0	$0	$89,700	$89,400	$93,600
SF Expenditure	$0	$35,100	$64,500	$67,600	$70,800
Net Effect	$0	($35,100)	($154,200)	($157,000)	($164,400)

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

Local Effect: Local government revenues from recyclable materials sales decrease beginning in FY 2017 under the bill, but are partially or fully offset through FY 2022 by required grants from program revenues. Local waste disposal and recycling costs may increase for some jurisdictions that are required to alter local waste disposal and recycling programs; expenditures may also decrease from a reduction in recyclable hauling costs.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

The Maryland Beverage Recycling Organization

The bill establishes the Maryland Beverage Recycling Organization (MBRO), a private for-profit entity that is required to develop and operate the Maryland Redeemable Beverage Container and Litter Reduction Program. The bill specifies numerous additional functions and duties of MBRO, including, among other things: obtaining initial funding for program operations; establishing procedures for the marketing, tracking, and sales of redeemable beverage containers; collecting fees and managing revenues, including the payment of processing costs of 3 cents per container; planning for the construction and operation of redemption centers and reverse vending machines; establishing the Reserve Recycling Fund and managing required distributions of fund revenues; coordinating logistics for container collections; and offsetting initial losses to local curbside recycling programs.

MBRO consists of distributors, bottlers, and private label distributors and the board of directors consists of three distributors, two bottlers, and two private label distributors elected by MBRO membership. The bill provides for the duration and staggering of board member terms and the election of a chair. The bill also defines “bottler,” “distributor,” and “private-label distributor.”

The program goal is to achieve a redeemable beverage container collection rate of at least 70% by 2022, and the stated purpose of the program is to (1) hold the industries that produce and profit from the sale and distribution of beverage containers responsible for end-of-life management of the beverage containers; (2) support the reuse of beverage containers; (3) increase beverage container recycling from 25% to at least 70% of all redeemable beverage containers sold in the State; (4) reduce the volume of beverage container litter; and (5) reduce litter collection costs incurred by counties and municipalities. The bill specifies that “reuse” does not include using a product in the maintenance of a landfill or as landfill cover.

Deposit Created

Beginning January 1, 2017, every redeemable beverage container sold in Maryland must indicate a refund value of 5 cents and the word "Maryland" or the letters "MD" on the container. The wholesale and retail price of a full redeemable beverage container must include a refund value of 5 cents. A person may return an empty container to a redemption center or a participating retailer for a full refund of the deposit. The deposit may not be included in the retail price of containers sold by an "on-premises seller," which is defined as a person that sells a beverage in a redeemable beverage container for on-premises consumption, including a bar, restaurant, hotel, or sporting, entertainment, or gaming venue.

The bill defines a "redeemable beverage container" as an individual, separate, and sealed glass, aluminum, or plastic jar, can, or bottle of between 8 and 101 fluid ounces of a beverage for human consumption in Maryland that bares a Maryland-specific refund security mark or bar code for the purpose of deterring fraud. The bill also defines a "beverage" as a drink in a redeemable beverage container, including beer and other malt beverages, liquor, wine, soft drinks, flavored and unflavored bottled water, fruit juice, sports drinks, and tea and coffee drinks regardless of dairy-derived content; milk, milk substitutes, and growlers are specifically excluded.

Retailers and Redemption Centers

MBRO must establish and operate redemption centers throughout the State. A county or municipality may apply to MBRO to operate a center within the local government's jurisdiction, and a person may apply to operate a center anywhere in Maryland.

Beginning January 1, 2017, a redemption center must accept an empty container and pay to the redeemer the full refund value in either cash or a redeemable credit slip. Additionally, unless exempt (by payment of the approved exemption fee, as discussed below) a retailer *with a retail building of at least 5,000 square feet* must accept an empty container and pay to the redeemer the refund value in either cash or a redeemable credit slip. A participating retailer or redemption center must count each container individually when calculating the refund value. The bill defines a "retailer" as a person that sells a beverage in a redeemable beverage container to a consumer for off-premises consumption.

MBRO must establish and collect an exemption fee from any retailer with a premises of 5,000 square feet or larger that pays the fee in lieu of participation. The amount of the exemption fee must be determined on an individual basis and based on a retailer's volume of sales. The money collected from an exemption fee must be used to establish a redemption center at a location that MBRO determines appropriate based on population density and consumer convenience. The bill also authorizes casinos, stadiums with more than 30,000 seats, and other approved large venues to apply to MBRO for a bulk refund rate.

Use of Program Revenues

Program revenues primarily consist of unredeemed deposits and exemption fees. Unredeemed deposit revenues must be used to (1) pay off any loan taken to assist with initiating the program; (2) fund the Redeemable Beverage Container Environmental Grant Program established by the bill; (3) provide essential staffing for MBRO and its redemption centers; (4) establish and operate new redemption centers; (5) and track deposits and grants. Any loan taken to assist with establishing the program must be paid off using unredeemed deposits within 18 months of obtaining the loan.

The bill directs $2 million annually in unredeemed deposit revenues to a Redeemable Beverage Container Environmental Grant Program administered by the Chesapeake Bay Trust. The bill provides the Chesapeake Bay Trust with the discretion to determine appropriate grant recipients, but, for a three-year period, the trust must award an additional $4 million annually to Baltimore City to address the Baltimore Harbor trash Total Maximum Daily Load (TMDL).

The bill establishes a Reserve Recycling Fund administered by the State Treasurer and accounted for by the Comptroller to be used to maintain a reserve to ensure the viability of the Redeemable Beverage Container Environmental Grant Program. The fund primarily consists of up to $30 million from unredeemed deposits collected during the program's first two years of operation. Any investment earnings must be paid into the fund until the fund balance reaches $30 million, with the excess paid as part of the grant. The bill prohibits interest earnings in the fund from being deposited in the general fund.

Maryland Recycling Advisory Committee, Audits, and Oversight

The bill establishes a Maryland Recycling Advisory Committee to advise MBRO on the impact of the program at the county and municipal level and on other issues and concerns, consult with MBRO on best practices for program operation, and educate State and local governments about the program. MDE must staff the committee.

The legislative auditor must audit the accounts and transactions of the program. Additionally, beginning on December 31, 2022, and every five years thereafter, MBRO must submit a report to the Legislative Policy Committee on, among other things, program governance and finances. The bill provides the Legislative Policy Committee with 45 days after receiving a report to initiate a review of the program.

Current Law/Background: 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 the Maryland Solid Waste Management, Recycling, and Source Reduction 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 beverage container deposit programs.

In discussing the nature of the problem, the study group found that beverage containers generally constitute a disproportionately large share of litter as compared with their share of the solid waste stream. Beverage containers are also larger than other prevalent types of litter, such as cigarette butts, and may be more visible. The study group speculated that this may be part of the reason for the prevalence of beverage container deposit programs. According to the Container Recycling Institute, 10 states have enacted and currently implement beverage container deposit programs: California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, and Vermont. Delaware enacted legislation in 2010 that repealed its container deposit law, but established a statewide universal recycling requirement instead.

In its research of existing and proposed beverage recycling programs, the study group found that there are two main types of container deposit programs: (1) traditional programs where payments are made by consumers to the private sector, such as retailers; and (2) programs where the State funds redemption centers and recycling processors purchase the collected materials from the redemption centers. The study group found that, while it is difficult to compare the cost of programs between states, the second type of program is generally cheaper. The study group also found that reverse vending machines may be an efficient tool, avoiding the need for personnel to count or weigh containers.

The study group also found that recycling rates of beverage containers are significantly higher in states that have established beverage container deposits. However, the study group also noted that, while these programs are generally regarded as successful in reducing beverage container litter, the reductions cannot be definitively traced to the container deposit programs. For example, data from a U.S. Environmental Protection Agency national survey showed that beverage container litter has decreased by 74% across the nation as a whole since 1969. Nevertheless, jurisdictions with container deposit programs generally have significantly higher rates of recovery for beverage containers than jurisdictions with curbside programs alone.

The study group report cited a 2002 report that found that the capture and participation rate for curbside programs is generally around 50%. According to MDE, Maryland recycled about 40.4% of beverage containers (including wine and beer bottles) in 2013 through a combination of curbside and drop-off recycling (down from 42.8% in 2012), while states with deposit programs generally have an average recovery rate between 70% and 85%; it should be noted that recycling rates may be measured differently by different states or organizations, with differences in the definition of recycling dependent on the ultimate disposition of the collected materials. The study group concluded that a container deposit law in Maryland could roughly double the recycling rate of beverage containers. While that would be a significant increase in the percentage of beverage containers recycled, it would only represent a 1% to 2% increase in the State's overall recycling rate for all materials.

Finally, the study group examined the environmental effects of beverage container recycling more broadly, noting that, as a potential benefit of implementing a deposit program, Maryland could avoid between 164,000 and 241,000 million tons of carbon dioxide equivalent annually. Thus, a deposit program would not only assist in achieving the State goal of increasing the statewide recycling rate to 55% and the waste diversion rate to 60% by 2020 established by Chapter 629 of 2012, but it could also support the State's goal of reducing greenhouse gas (GHG) emissions by 25% by 2020 (established by Chapters 171 and 172 of 2009). The State's Greenhouse Gas Reduction Act Plan includes a beverage container recycling rate goal of 80% by 2020 and 90% by 2030, which is one component of the plan's "zero waste" goal of reducing GHG emissions by 4.8 million tons of carbon dioxide equivalent annually; this reduction comprises 8.7% of the plan's overall GHG reductions and represents the fourth largest source of emissions reductions (behind energy, transportation, and agriculture/forestry).

In December 2014, MDE released its zero waste plan to eliminate the need for disposal of solid waste and to maximize the amount of treated wastewater that is beneficially reused. Specific actions listed in the plan include adopting a beverage container law, among several other actions. Executive Order 01.01.2015.01 states that "Maryland shall endeavor to ensure that all waste generated in the State is increasingly reduced and reused rather than discarded in a manner that adversely impacts our health and environment." The executive order also requires MDE to provide local governments with information on alternatives to landfilling.

In December 2011, the University of Maryland Environmental Finance Center issued a report for the Abell Foundation and the Waterfront Partnership of Baltimore, Inc., to quantify a beverage container deposit program's contribution to Maryland's goals to reduce GHG emissions and stormwater-related trash and to determine what money might be available to the State as a result of unredeemed beverage container deposits. The report noted the potential for litter reduction and an increase in recycling from a beverage container deposit program, but also acknowledged a potential negative impact on local recycling programs and potential concerns about handling costs. In conclusion, the report noted that the economic outcomes of a program would vary based on the design of the program. Finally, the report indicated that maximizing the benefits of container deposit legislation depends on achieving high recycling rates, and that minimizing the costs of container deposit legislation depends on an efficient return system.

State Fiscal Effect:

Reserve Recycling Fund

Special fund revenues increase, likely by several million dollars annually, between fiscal 2017 and 2019, as the bill directs up to $30 million of unredeemed container deposits collected by MBRO in the first two years of program operation (January 1, 2017 and December 31, 2018) into the Reserve Recycling Fund established by the bill. The reserve fund is held and administered by the Treasurer and accounted for by the Comptroller. The purpose of the fund is to ensure the viability of the grant program established by the bill and the fund may only be used for the grant program and maintenance of the reserve. The bill does not specify who may draw on the fund or otherwise prescribe how expenditures from the fund are to be made, except that *investment earnings* may be paid from the fund as part of the grant program once the reserve fund balance exceeds $30 million. Thus, it is unclear in what fiscal year, if any, special fund expenditures from the reserve fund may occur. However, it should be noted that the grant program is to receive a separate allocation of unredeemed deposit revenues from MBRO, and is not dependent specifically on the reserve fund for revenues.

MDE Staffing of the Maryland Recycling Advisory Committee

Special fund expenditures increase by $35,069 in fiscal 2017 for MDE to hire one natural resources planner to staff the Maryland Recycling Advisory Committee, which assumes that the new staff is hired on the January 1, 2017 start date for the bottle deposit. Special fund expenditures increase by more than $64,503 annually beginning in fiscal 2018. As part of the staffing assignment, the newly hired planner is required to coordinate with MBRO, conduct outreach with the public and other State and local agencies, and review legislative audits and other reports to assist the committee with its role in overseeing the success of MBRO and the new recycling program. This estimate reflects the cost of hiring the one planner and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	FY 2017	**FY 2018**
New Position	1	
Salary and Fringe Benefits	$30,488	$63,906
Start-up and Operating Expenses	4,581	597
Total MDE Expenditures	**$35,069**	**$64,503**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Audit Oversight

The bill requires OLA to audit the accounts and transactions of the Maryland Redeemable Beverage Container and Litter Reduction Program. OLA advises that a legislative audit of a program of this magnitude requires a relatively large audit of between 500 and 600 days and requires an additional staff auditor position to absorb the additional work requirements for OLA. Thus, general fund expenditures increase by about $89,746 in fiscal 2018, which assumes that the first audit is conducted in the first full fiscal year of program operation. This estimate reflects the cost of hiring one auditor and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	$84,014
Start-up and Operating Expenses	5,732
Total FY 2018 OLA Expenditures	**$89,746**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Administration of the Reserve Recycling Fund

The bill establishes a Reserve Recycling Fund to be administered by the State Treasurer and accounted for by the Comptroller. The Treasurer and Comptroller have each advised that the bill can be implemented with existing resources.

State Agency Recycling Finances

It is unclear what effect the bill may have on State agency finances generally. Some agencies may seek to separate discarded redeemable beverage containers and return the containers to redemption centers for collection of the refund. Assuming this is permissible (the bill requires certain large venues to apply to MBRO for a bulk refund rate, which would presumably be worth less than the full 5-cent deposit), it is unclear how many agencies may choose to take this action, as the value of such deposits must be weighed against the additional personnel cost of separating the containers (if any), the rate being collected by the agency for the scrap value of its recyclables (or offset from waste disposal charges), if any, the additional transport costs, and the logistical difficulties presented. Overall, it is unlikely that State agency finances are significantly affected for most agencies.

Local Fiscal Effect:

Scrap Value Losses and Other Changes to Local Recycling Programs

Local government recycling program revenues may decrease, potentially significantly, beginning in fiscal 2017, as a result of the diversion of redeemable beverage containers from local recycling programs, unless offset (as discussed below). Redeemable beverage containers are a relatively valuable portion of the recyclable material stream, particularly aluminum cans. For example, Montgomery County has estimated a potential annual loss of up to $1.3 million from the scrap value of recyclable materials that are diverted from its curbside recycling program; actual losses are likely lower, as a percentage of redeemable beverage containers likely continue to be recycled in curbside containers. The actual loss may also vary significantly from year to year, based on scrap material market conditions. Montgomery County also advises that its contractual costs to collect and transport recyclable materials also decrease as a result of the diversion, but by a significantly lesser amount. Harford County did not estimate the fiscal impact of the bill, but advises that the bill nullifies a recent agreement reached with Baltimore County to dispose of recyclable materials at no charge at Baltimore County's new recycling facility. Thus, the bill may have an impact on both Baltimore and Harford counties and may result in similar impacts to other local curbside and other recycling programs and facilities statewide.

New Grant Revenues to Local Governments

Although local recycling programs are likely to lose significant revenues associated with the relatively valuable scrap materials diverted to redemption centers and participating retailers, the bill provides for a financial offset to compensate jurisdictions for this loss. The bill requires MBRO to offset lost revenues for local jurisdictions until December 31, 2022. It is unclear whether any revenue loss is fully, or only partially, offset, or whether sufficient deposit revenues exist each year to ensure that all foregone local revenues are offset. The reserve fund established by the bill is dedicated only to maintaining the viability of the grant program, but not for payments to local jurisdictions. Additionally, the bill only requires this offset to apply to lost revenues, but not any additional *costs* incurred by a jurisdiction under the bill to alter local waste disposal and recycling programs.

Additionally, the bill directs $2 million annually in unredeemed deposit revenues to the Redeemable Beverage Container Environmental Grant Program administered by the Chesapeake Bay Trust. The bill provides the Chesapeake Bay Trust with the discretion to determine appropriate grant recipients, but, for a three-year period, the trust *must* award an additional $4 million annually to Baltimore City to address the Baltimore Harbor trash TMDL. It is unclear in which three-year period sufficient revenues are available to begin providing Baltimore City with the $12 million in grants, which is dependent on other uses of the grant program. The Chesapeake Bay Trust has indicated that it can implement the grant program with existing resources, but noted its concern regarding how the grant to Baltimore City is to be administered. Finally, it is unclear how much in grant revenues may accrue to local jurisdictions.

Other Potential Local Government Impacts

As noted above, it is unclear whether and to what extent government agencies may participate in the separation of discarded beverage containers for return to redemption centers. Further, it is unclear whether and to what extent local governments may choose to operate redemption centers, as the incentive to do so (if any) is to be established through future MBRO policies; some jurisdictions may benefit from the establishment of low-cost and/or high-efficiency redemption centers in convenient or high-traffic areas. Finally, local expenditures may decrease for some jurisdictions to the extent that the bill results in lower litter control or removal costs, including those associated with compliance with State and federal environmental laws.

Small Business Effect: Small business participating retailers may incur a meaningful increase in costs associated establishing the processes necessary to collect and transmit containers and to process and remit deposits; costs may increase instead for retailers to pay the exemption fee, although the bill does not establish or cap the exemption fee rate, so participation rates and fee levels cannot be estimated. Small business bottlers or distributors may incur costs associated with ensuring that redeemable beverage containers are marked in accordance with the bill. Small businesses engaged in the collection or transport of beverage containers for recycling may incur a reduction in revenues as a greater number of containers are returned by individuals.

Some small businesses may realize an additional business opportunity to operate as redemption centers, if approved by MBRO, although the number of businesses that may participate cannot be estimated, as the incentive to participate is to be established through future MBRO policies.

Additional Information

Prior Introductions: None.

Cross File: HB 982 (Delegate Frush, *et al.*) - Environment and Transportation and Economic Matters.

Information Source(s): Harford and Montgomery counties, Maryland Department of the Environment, Comptroller's Office, Maryland Municipal League, U.S. Environmental Protection Agency, University of Maryland Environmental Finance Center, Chesapeake Bay Trust, Department of Legislative Services

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