

**Department of Legislative Services**  
 Maryland General Assembly  
 2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 186 (Senator Kagan, *et al.*)

Education, Health, and Environmental Affairs  
 and Finance

**Environment - Polystyrene Food Service Products and Polystyrene Loose Fill Packaging - Prohibition on Sale**

This bill prohibits, beginning January 1, 2018, (1) a person from selling or offering for sale in the State an “expanded polystyrene food service product” or “loose fill packaging” and (2) a “food service business” from selling or providing food in an expanded polystyrene food service product. The Maryland Department of the Environment (MDE) must conduct a specified public education and outreach campaign and is authorized to (1) promulgate regulations to implement the bill and (2) grant a waiver to a food service business from the bill’s prohibition, as specified. County health departments must enforce the bill’s prohibitions, and the bill authorizes counties to impose a monetary penalty for violations under specified conditions.

The bill takes effect July 1, 2017.

**Fiscal Summary**

**State Effect:** Special fund expenditures for MDE increase by \$19,300 in FY 2018 only to conduct the education and outreach campaign. MDE can handle out-year administrative and outreach responsibilities with existing resources. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	19,300	0	0	0	0
Net Effect	(\$19,300)	\$0	\$0	\$0	\$0

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

**Local Effect:** Overall, the bill does not materially affect local finances. County health departments can enforce the bill’s prohibitions with existing budgeted resources during the

course of regular food service facility inspections. To the extent the bill results in a decrease in litter and a decrease in the contamination of recyclable materials, it may result in a minimal decrease in local waste management costs. The bill's penalty provision is not anticipated to materially affect county revenues.

**Small Business Effect:** Minimal overall, but potential meaningful impact on any small businesses that manufacture the products prohibited by the bill, as discussed below.

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## Analysis

### Bill Summary:

#### *Definitions*

“Expanded polystyrene” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by a number of techniques, including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). “Expanded polystyrene food service product” means a product made of expanded polystyrene that is used for selling or providing food and includes food containers, plates, hot and cold beverage cups, meat and vegetable trays, and egg cartons. “Expanded polystyrene loose fill packaging” means a void-filling packaging product made of expanded polystyrene that is used as packaging fill; the term includes packing peanuts made of expanded polystyrene.

“Expanded polystyrene food service product” does *not* include (1) prepackaged soup or other food that a food service business sells or provides to its customers in expanded polystyrene containers that have been filled and sealed before receipt by the food service business; (2) food or beverages that have been filled and sealed outside the State before receipt by the food service business; and (3) materials used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption.

A “food service business” is a business that sells or provides food for consumption in the State both on or off premises and includes specified businesses, including restaurants, fast food restaurants, cafes, supermarkets or grocery stores, vending trucks or carts, movie theaters, and business or institutional cafeterias, among others.

#### *Required Public Education and Outreach Campaign*

The public education and outreach campaign that MDE must conduct must include (1) information mailers to and direct contact with food service businesses; (2) distribution

of information through State Internet and web-based resources; and (3) news releases and news events.

### *Waivers and Enforcement*

MDE may grant to a food service business a waiver from the bill's prohibition if MDE determines compliance would present an undue hardship or practical difficulty that is not generally applicable to other food service businesses in similar circumstances.

County health departments must enforce the bill's prohibitions and may impose a penalty of up to \$250 on violators. However, the monetary penalty may only be imposed if (1) the county health department first issues a written notice of violation to the person or food service business and (2) the violation is not corrected within three months of the written notice. A county health department must notify MDE of any violations.

**Current Law/Background:** Generally, there are no restrictions on the use of expanded polystyrene products in the food service industry or other industries. However, the Education Article requires Prince George's County's recycling program to address a strategy for the collection, processing, and disposition of the polystyrene trays used in public school cafeterias. Additionally, existing environmental regulations establish restrictions related to the control of volatile organic compound emissions from expandable polystyrene operations, which is the process that expands polystyrene beads and includes expanding the beads, expanded bead aging, and the molding of expanded beads into a final product.

In Maryland, local governments are primarily responsible for managing the collection, processing, recycling, and disposal of solid waste. Plastics, including expanded polystyrene products, are labeled with different recycling numbers and, generally, counties only accept certain types of plastic. According to MDE, polystyrene or polystyrene foam is a #6 plastic, and polystyrene can be recycled into other polystyrene products as well as insulation, plastic lumber, license plate frames, cafeteria trays, and hard plastic pens. However, MDE reports in its 2014 [\*Maryland Solid Waste Management and Diversion Report\*](#), that only Caroline, Howard, and Washington counties and Baltimore City accept polystyrene plastics for recycling.

More than 80 jurisdictions across the country have introduced legislation to ban or partially ban the use of expanded polystyrene foam, including Montgomery and Prince George's counties in Maryland; Washington, DC; Minneapolis, Minnesota; Portland, Oregon; and Los Angeles County and the City of San Francisco in California. The ban in Washington, DC, includes a ban on the plastic foam products in restaurants and businesses; the ban took effect January 1, 2016, and applies to all businesses and organizations that serve food.

In Montgomery County, legislation passed in 2015 banned, beginning January 1, 2016, (1) food service businesses from using expanded polystyrene food service ware and (2) the sale of polystyrene loose fill packaging and expanded polystyrene food service products. The City of Takoma Park, which is located in Montgomery County, initiated a ban before the county; the Takoma Park ban on the use of polystyrene packaging and food service ware went into effect for food vendors and city events in July 2013, and for all food service facilities July 1, 2015. In Prince George's County, legislation passed in 2015 banned, beginning July 1, 2016, the use or sale of expanded polystyrene food service products by food service businesses and the sale of polystyrene loose fill packaging and other foam articles.

Although foam coffee cups and plates are often referred to as "Styrofoam®," that terminology is incorrect. Styrofoam® is actually a registered trademark of [Dow Chemical Company](#) and is a brand generally used in industrial settings for building materials and pipe insulation. Styrofoam® is not used in the food service industry for coffee cups, coolers, or packaging materials, which are generally made of expanded polystyrene.

**State Expenditures:** Special fund expenditures for MDE's Recycling Trust Fund increase by \$19,347 in fiscal 2018 only, which accounts for the bill's July 1, 2017 effective date. This estimate reflects costs associated with printing, postage, and mileage to conduct required mailings and the direct education and outreach campaign. The estimate is based on the fact that there are more than 25,700 food service businesses in Maryland. Although MDE is required to conduct an educational and outreach campaign both before and during the bill's implementation, MDE anticipates that once the majority of businesses are aware of the bill's requirements and have switched to nonpolystyrene food service product alternatives, the campaign can be scaled back to a level that can be handled with existing resources. Thus, there is no anticipated material fiscal impact on special fund expenditures beyond fiscal 2018.

**Small Business Effect:** According to the U.S. Small Business Administration, in 2012 there were 15,466 small businesses in the accommodation and food service sector in Maryland. Overall, the bill's impact on small food service businesses is likely minimal. According to the Washington, DC Department of Energy and Environment, which implemented a similar ban on January 1, 2016, the additional cost for alternative products is minimal. In addition, as the number of polystyrene foam bans for food service products increase across the nation, the supply of alternative products will increase, thereby decreasing their costs. Finally, because the ban does not take effect until January 1, 2018, affected food service businesses have sufficient time to use existing inventory and identify and purchase alternatives.

Any small business manufacturers of polystyrene foam products that are affected by the bill could be significantly impacted by the bill's prohibitions. Although the exact number of affected manufacturers in the State is unknown, Census data indicates that in calendar 2014, there was only one polystyrene foam product manufacturing establishment in Maryland that would be considered a small business. Thus, it is likely that the bill only affects a very small number of such manufacturers.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 229 (Delegate Lierman, *et al.*) - Environment and Transportation and Economic Matters.

**Information Source(s):** Baltimore City; Harford, Montgomery, and Wicomico counties; Maryland Department of the Environment; Department of Health and Mental Hygiene; U.S. Census Bureau; U.S. Small Business Administration; Washington, DC Department of Energy and Environment; Department of Legislative Services

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