

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader - Revised

House Bill 168 (Delegate Terrasa, *et al.*)
 Environment and Transportation and
 Economic Matters

Environment - Plastic Products - Postconsumer Recycled Content Program

This bill establishes the Postconsumer Recycled Content Program, administered by the Maryland Department of the Environment’s (MDE) Office of Recycling. Broadly, the bill requires a “producer” of “covered products” that are sold, offered for sale, or distributed in the State to (1) meet minimum postconsumer recycled content requirements for affected products; (2) register with MDE (individually or as part of a representative organization), as specified; and (3) pay annual registration fees to MDE to cover program costs. MDE must conduct an evaluation of the program, post specified information online annually, and adopt regulations. Existing and new enforcement and penalty provisions apply.

Fiscal Summary

State Effect: Special fund expenditures for MDE increase by \$148,900 in FY 2025; out-year administrative costs reflect additional staff, annualization, inflation, and ongoing costs. Special fund revenues increase correspondingly each year; special fund revenues may increase further from penalties. State expenditures (multiple fund types) may increase as early as FY 2026.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$148,900	\$335,200	\$406,100	\$623,700	\$442,000
SF Expenditure	\$148,900	\$335,200	\$406,100	\$623,700	\$442,000
GF/SF Exp.	\$0	-	-	-	-
Net Effect	\$0	(-)	(-)	(-)	(-)

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

Local Effect: Local revenues and expenditures may be affected, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Relevant Definitions

A “covered product” is a product that is subject to the postconsumer recycled content percentage requirements established under the bill.

“Postconsumer recycled content” means the portion of a covered product’s total weight that is composed of postconsumer recycled material, as determined by a material balance approach that calculates total postconsumer recycled material as a percentage of the total weight of the covered product; the term does not include pre-consumer or postindustrial secondary waste material or materials and by-products generated from, and commonly used within, an original manufacturing and fabrication process.

“Postconsumer recycled material” means a material or product generated by households or by commercial, industrial, and institutional facilities in their role as end users of the material or product that has (1) been used for its intended use or can no longer be used for its intended use, including material or product that has been returned from the distribution chain and (2) been separated from the solid waste stream for the purposes of collection and recycling.

“Producer” means a person responsible for complying with the bill’s requirements and includes a franchisor of a franchise located in the State; the term does not include (1) the State, a county, a municipality, or any other political subdivision of the State; (2) a tax-exempt charitable or social welfare organization, as specified; (3) a franchisee that operates a franchise in the State; (4) a person that annually sells, offers for sale, distributes, or imports into the country for sale in the State less than one ton of a single category of covered products; or (5) a person that annually sells, offers for sale, or distributes any category of a covered product in the State if the person’s aggregate global annual revenue is less than \$5.0 million.

“Household cleaning product” means a product that is labeled or marketed to clean, freshen, or remove unwanted substances such as dirt, stains, or other impurities from objects, interior or exterior structures, vehicles, possessions, and other environments associated with a household; the term includes (1) liquid soaps, laundry soaps, detergents, fabric softeners, surface polishes, and stain removers and (2) textile cleaners, carpet cleaners, and pet cleaners and treatments.

“Personal care product” means a product that is labeled or marketed for the application to an individual in order to clean, alter, or maintain the appearance of the individual; the term

includes (1) shampoo, conditioner, styling sprays and gels, and other hair care products; (2) lotion, moisturizer, facial toner, and other skin care products; and (3) liquid soap and other body care products.

Annual Registration and Fee for Producers

The bill establishes provisions relating to producer responsibility and prohibits a producer from selling, offering for sale, or distributing a covered product to any person in the State unless (1) the product meets the bill's minimum postconsumer recycled content requirements and (2) the producer individually (or as part of a representative organization) registers with MDE by March 1 each year, beginning in 2025, and submits an annual registration fee to MDE by May 15 each year, beginning in 2025.

MDE must establish an annual registration fee for each category of a covered product. Registration fees must be set in a manner that (1) will produce funds sufficient to cover MDE's estimated costs to plan, implement, administer, monitor, enforce, and evaluate the program for the upcoming year and (2) is proportional to each producer's share of total pounds of plastic sold in the State in each product category for the prior year. In addition, for the first year of the program's operation, registration fees must be set in a manner that will also produce funds sufficient to reimburse the general fund for the actual costs that result from the program in that year and must be used for such reimbursement.

If, in any given year, registration fee revenue exceeds MDE's actual costs, MDE must carry the excess amount forward to reduce registration fees for the following year. Likewise, if, in any given year, registration fee revenue is insufficient to cover MDE's actual costs, MDE must adjust the fees for the following year.

Registration fee revenue, along with any fines and penalties collected under the bill, must be deposited into a new, separate account within the State Recycling Trust Fund. The separate account may only be used to (1) cover the costs of planning, implementing, administering, monitoring, enforcing, and evaluating the program established under the bill and (2) for the first year of the program's operation, to reimburse the general fund for actual costs that result from the program for that year. Money deposited into the separate account may not otherwise revert to the general fund.

The registration must include (1) each producer and brand of covered product included under the registration; (2) the total number of covered products sold in the State in the immediately preceding calendar year, including the total number by each category of a covered product; (3) the average percentage of postconsumer recycled content for each category of a covered product sold in the State in the immediately preceding calendar year; and (4) any other information required by MDE by regulation. Additionally, beginning in 2027, by March 1 each year, a producer must include proof of third-party certification of

the postconsumer recycled content of each covered product included in the registration in a manner required by MDE. The certification must be completed by an independent, accredited certifying body as required by the International Organization for Standardization.

Any sales data submitted to MDE to comply with the registration requirements is confidential and proprietary and may not be disclosed unless otherwise required by law.

Minimum Postconsumer Content Requirements and Waivers

The bill establishes minimum postconsumer recycled content percentages for (1) beverage containers that are primarily composed of one or more plastic resins and intended to contain beverages up to two gallons in capacity, as specified; (2) rigid plastic containers or other nondurable containers that are primarily composed of one or more plastic resins, are capable of maintaining their shape when empty, and are used to package or store food; and (3) rigid plastic containers or other nondurable containers that are primarily composed of one or more plastic resins, are capable of maintaining their shape when empty, and are used for household cleaning products or personal care products. MDE may grant a temporary waiver from the postconsumer recycled content percentage requirements if MDE determines that achieving compliance would present an undue hardship or a practical difficulty not generally applicable to other producers in similar circumstances.

For each of the above products, the bill (1) specifies the products affected by the postconsumer recycled content requirements; (2) identifies products exempt from the requirements; and (3) phases in the minimum postconsumer recycled content percentages over time. Generally, the bill establishes the following minimum postconsumer recycled content percentage requirements:

- for plastic beverage containers: (1) 15% from January 1, 2026, to December 31, 2028, both inclusive; (2) 25% from January 1, 2029, to December 31, 2032, both inclusive; and (3) 50% beginning January 1, 2033;
- for rigid plastic containers or other nondurable containers *that are used to package or store food*: (1) 15% from January 1, 2027, to December 31, 2029, both inclusive; (2) 30% from January 1, 2030, to December 31, 2032, both inclusive; and (3) 40% beginning January 1, 2033; and
- for rigid plastic containers or other nondurable containers *that are used for household cleaning products or personal care products*: (1) 25% from January 1, 2027, to December 31, 2030, both inclusive; (2) 30% from January 1, 2031, to December 31, 2034, both inclusive; and (3) 35% beginning January 1, 2035.

Enforcement and Penalty Provisions

MDE is authorized to conduct audits and investigations to ensure compliance with the bill's requirements (specifically, new Title 9, Subtitle 26 of the Environment Article).

The bill specifies that §§ 9-334 through 9-342 of the Environment Article (existing enforcement provisions that generally apply to water pollution control violations) apply to enforce violations of the bill's provisions. However, a penalty may not be imposed on a producer for failing to register with MDE unless MDE first issues a written notice of violation and the producer has not registered with MDE within 90 days of receipt of the written notice.

Under §§ 9-334 through 9-342 of the Environment Article, in addition to being subject to an injunctive action, a violator is subject to a maximum penalty of \$10,000 to be collected in a civil action brought by MDE; each day a violation occurs is a separate violation. MDE may also impose a maximum administrative penalty of \$10,000 per violation and \$100,000 total; each day a violation occurs is a separate violation, and administrative penalties must be assessed with consideration given to specified factors.

Also, beginning January 1, 2026, a producer that does not meet the minimum postconsumer recycled content percentage requirements established under the bill is subject to an administrative penalty each year the violation occurs. The bill establishes an equation that must be used to calculate the amount of the administrative penalty. MDE is authorized to adjust the amount of the administrative penalty as necessary to ensure that the administrative penalty exceeds the cost of compliance. MDE may grant a reduction in the administrative penalties imposed, based on specified considerations, if a producer submits a specified corrective action plan and the department approves the corrective action plan.

Reporting Requirement and Other Miscellaneous Provisions

MDE must publish the following program information on its website on an annual basis: (1) a list of each registered producer of a covered product and associated brand names; (2) the compliance status for each registered producer; and (3) any other information deemed appropriate by MDE.

MDE may participate in the establishment and implementation of a multistate clearinghouse to assist in carrying out the bill's requirements, including to (1) help coordinate the review of registrations, waiver requests, and certifications and (2) implement education and outreach activities.

Required Evaluation of Effectiveness

MDE must contract with a research university or an independent third-party consultant to (1) evaluate the implementation of the bill and its effectiveness in stimulating the State's recycling markets and displacing virgin plastic with postconsumer recycled content and (2) make recommendations for any legislative or administrative actions necessary to further the bill's purpose. By October 1, 2029, MDE must (1) report the findings and recommendations to the Governor and specified legislative committees and (2) post the findings and recommendations on its website.

Current Law: The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. There are several examples of regional waste management partnerships in the State.

Maryland's recycling policy is guided by the Maryland Recycling Act (MRA), which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide waste diversion goal of 60% and a voluntary statewide recycling goal of 55% by 2020. Each county (including Baltimore City), must recycle at least 20% or 35% of the county's solid waste stream, depending on the county's population. Each county (including Baltimore City) must also prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate.

The Office of Recycling

MDE's Office of Recycling, among other things, reviews county recycling plans and coordinates the efforts of the State to facilitate the implementation of the recycling goals at the county level. Counties are required to periodically report solid waste and recycling data to the department.

The Office of Recycling submits annual reports, in coordination with the Maryland Environmental Service, to the Governor and the General Assembly on specified information related to recycling in Maryland. Beginning in 2009, MDE has combined the *Maryland Waste Diversion Activities Report* and the *Solid Waste Managed in Maryland Report* into one report, the *Maryland Solid Waste Management and Diversion Report*.

Chapter 465 of 2023 requires the Office of Recycling to hire an independent consultant to conduct a statewide recycling needs assessment, which must, among other things, include (1) an evaluation of the economic opportunities in the State's recycling system, including barriers to increasing the use of recyclable materials as feedstock for principal processors and manufacturers and means of eliminating those barriers and (2) analysis of the costs and benefits, and potential environmental impact, of implementing an extended producer

responsibility program for packaging materials, including containers. By July 30, 2024, the office must report on the results of the assessment. The Act also established a Producer Responsibility Advisory Council to provide advice and recommendations regarding establishing and implementing a producer responsibility program in the State for packaging materials. The advisory council must report its findings and recommendations to the Governor and specified legislative committees by December 1, 2024.

State Recycling Trust Fund

The State Recycling Trust Fund is a special fund that is used to carry out the purposes of MDE's Land Management Administration and to provide grants to (1) counties to develop and implement local recycling plans; (2) counties that have addressed methods for the separate collection and recycling of covered electronic devices; and (3) municipalities to be used to implement local covered electronic device recycling programs.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs, Related Registration Fee Revenue, and Penalties

The bill contemplates that producers (either individually or as part of a representative organization) will fully fund, through registration fees paid to MDE and deposited into the new account within the State Recycling Trust Fund, MDE's costs to implement the bill. Those entities are required to register by March 1, 2025, and are required to pay the registration fee by May 1, 2025. MDE begins to incur costs upon the effective date of the bill (October 1, 2024), before fees are collected; however, the bill requires the first registration fees to be set in a manner that produces funds sufficient both for the upcoming year as well as to reimburse the general fund for the actual costs that result from the program in the first year. While general funds may be used to cover costs for the earlier portion of fiscal 2025, because the general fund is reimbursed by fee revenues collected in fiscal 2025, it is assumed, for the purposes of this analysis, that the general fund is kept whole and that there is no overall effect on the general fund in fiscal 2025. Instead, special fund revenues from registration fees are assumed to fully offset MDE's administrative costs (discussed below), beginning in fiscal 2025.

In addition, special fund revenues may increase further beginning as early as fiscal 2026, from any penalties collected pursuant to the bill.

Administrative Costs: Special fund expenditures increase by \$148,904 in fiscal 2025, which reflects the bill's October 1, 2024 effective date, and by \$335,244 in fiscal 2026. These estimates reflect the cost of hiring two natural resources planners in fiscal 2025 and three additional employees in fiscal 2026 (two environmental compliance specialists and one administrative specialist) to (1) research and identify producers of covered products in

Maryland; (2) collect and process annual registrations and registration fees (beginning March 1, 2025, and May 1, 2025, respectively) and third-party certifications of postconsumer recycled content (beginning March 1, 2027); (3) process waiver requests; (4) promulgate regulations; and (5) conduct compliance and enforcement activities. It includes salaries, fringe benefits, one-time start-up costs (including outreach and the purchase of a vehicle in fiscal 2026), and ongoing operating expenses.

	<u>FY 2025</u>	<u>FY 2026</u>
Positions (New)	2.0	3.0
Salaries and Fringe Benefits (Total)	\$130,692	\$274,454
Vehicle Purchase	0	33,400
Other Operating Expenses	<u>18,212</u>	<u>27,390</u>
Total MDE Admin. Costs	\$148,904	\$335,244

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Additionally, MDE incurs contractual costs of \$200,000 in fiscal 2028 to contract with a research university or independent third-party consultant to conduct the required program evaluation.

State Agencies as Consumers of Affected Products

State expenditures (multiple fund types) could increase, likely not before fiscal 2026 (when the first of the minimum postconsumer recycled content requirements take effect), due to any increase in the price of affected products that may result from the bill. However, the magnitude of any such increase is unknown.

Local Fiscal Effect: The bill likely affects recycling streams, which are often managed by local governments. It is anticipated that the bill’s changes likely mean more materials are able to be recycled, which could reduce local recycling costs and increase local recycling revenues. Any increased ability to recycle under the bill could also assist counties in meeting their mandatory recycling rates under MRA.

Counties and municipalities are expressly exempted from the bill’s registration, fee, and postconsumer content requirements. However, similar to the impact described above at the State level, expenditures for local governments as consumers of covered products may increase as early as fiscal 2026.

Small Business Effect: Although it is anticipated that the bill primarily affects larger businesses that meet the minimum number of units and revenue standards necessary to meet the bill’s definition of producer, the bill results in additional operational responsibilities, and potentially significant costs, for affected producers to register, pay registration fees, and meet the minimum postconsumer recycled content standards for

covered products. Additionally, similar to the impact described above at the State and local levels, there could be an increase in costs for small businesses as consumers of covered products. On the other hand, the potential improvement of the recyclability of covered products could incentivize the development of small businesses in the State that support the manufacture of covered products that meet the bill's postconsumer recycled content standards or that supply raw materials used to manufacture compliant products.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 342 of 2023 and HB 1239 of 2022.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Calvert, Howard, and Prince George's counties; Northeast Maryland Waste Disposal Authority; University System of Maryland; Maryland Department of the Environment; Department of General Services; Department of Legislative Services

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