

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 511 (Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs
and Finance

Community Cleanup and Greening Act of 2012

This bill requires stores in “eligible counties” to charge and collect a fee of 5 cents per disposable carryout bag provided to a customer. The fee is not subject to sales and use tax. Stores may retain 1 cent of every 5-cent fee collected. Stores with a customer bag credit program may retain 2 cents of every 5-cent fee collected. Revenue generated by the bill must be used for administrative and program implementation and enforcement costs, but any remaining revenue is divided evenly between the Chesapeake Bay Trust and eligible counties. By January 1, 2014, a portion of the revenue must also be used for a public outreach campaign. The bill establishes other requirements for stores, as well as penalties for violations.

The bill takes effect January 1, 2013.

Fiscal Summary

State Effect: General fund expenditures increase by \$263,300 in FY 2013 only for information technology modifications and to provide notice. Special fund expenditures increase by \$221,200 in FY 2013 for additional Department of Labor, Licensing, and Regulation (DLLR) staff. Special fund expenditures in FY 2014 and future years reflect Department of Human Resources (DHR) outreach campaign costs (in FY 2014 only), annualization, and inflation. Special fund revenues increase by \$221,200 in FY 2013, and future year special fund revenues correspond to the special fund expenditures in those fiscal years. This analysis assumes revenues increase by at least the amount necessary to cover State program implementation costs. Special fund revenues and expenditures may increase significantly more; however, any such increase cannot be reliably estimated. The bill’s penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$221,200	\$816,500	\$337,200	\$352,600	\$368,800
GF Expenditure	\$263,300	\$0	\$0	\$0	\$0
SF Expenditure	\$221,200	\$816,500	\$337,200	\$352,600	\$368,800
Net Effect	(\$263,300)	\$0	\$0	\$0	\$0

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

Local Effect: Local revenues in eligible counties increase potentially significantly in FY 2013 and future years to the extent the bill generates more revenue than is necessary to administer and enforce the program.

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 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, but it does not include a roadside stand or farmers market.

A “customer bag credit program” is a program implemented in a store that requires the store to pay a customer a credit of at least 5 cents for each bag provided by the customer for packaging their purchases, requires the total amount of the credit paid to a customer to be displayed on the customer transaction receipt, and is prominently advertised at each checkout register in the store. An “eligible county” is a county that has not enacted a county-administered disposable carryout bag fee program by March 31, 2013.

Stores may not communicate that the reimbursement of the fee or any part of the fee they collect 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.

Stores must remit fee revenue they are not authorized to retain to the Comptroller. After retaining an amount necessary for administration, the Comptroller must distribute a portion of the fee revenue to DLLR to cover the costs of implementing and enforcing the bill, and remaining fee revenue must be divided equally between the Chesapeake Bay Trust and eligible counties. Funds must be allocated among eligible counties for community greening, stormwater control, trash, or litter cleanup programs in proportion to the estimated bag fee revenue generated by each county. The trust and eligible counties that receive funds must report to the Comptroller annually on the use of the funds.

Prior to the distribution to the trust and eligible counties, by January 1, 2014, the Comptroller must also distribute a portion of the fee revenue to DHR. DHR must implement a public outreach campaign, fully funded by fee revenues, that includes a (1) public-private partnership to provide reusable carryout bags to Maryland citizens; and (2) collaboration with service providers that assist seniors and low-income residents to distribute information and reusable carryout bags to low-income households.

DLLR must adopt regulations to implement and enforce the bill. Penalties ranging from a maximum of \$100 for a first violation to a maximum of \$500 for a third or subsequent violation are authorized, subject to some limitations.

The bill expands the purposes for which the trust must use funds to provide grants for citizen involvement projects that enhance or promote (1) training in environmental studies or environmental enhancement through the Chesapeake Conservation Corps; and (2) public education on the importance of reducing the number of disposable carryout bags from entering the waste stream.

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.

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 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 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 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 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 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 makes 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 Expenditures:

Comptroller

While the Comptroller is authorized to retain a portion of the bag fee revenue for administration, in order to collect the revenue, the Comptroller must first upgrade technology and notify businesses. Therefore, this estimate assumes that fee revenue would not yet be available and that the Comptroller's *general fund* expenditures increase by \$263,250 in fiscal 2013 to make necessary programming modifications to the automated State of Maryland Tax ("SMART") system and notify businesses about the bill's new requirements. The Comptroller can absorb any implementation expenditures in fiscal 2014 and future years with existing resources.

DLLR

The bill requires DLLR to work in an area in which it is not currently engaged. DLLR advises that it does not enforce recycling laws, regularly go into retail establishments, or have a system that could be used to issue fines.

DLLR special fund expenditures increase by \$221,227 in fiscal 2013, which reflects the bill's January 1, 2013 effective date. This estimate reflects the cost of hiring one administrator, two field auditors, one clerk, and a part-time assistant Attorney

General to develop and implement the program. It includes salaries, fringe benefits, one-time start-up costs, vehicles, postage, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- DLLR adopts regulations, develops an administration and enforcement scheme, and conducts outreach to retailers to encourage compliance; and
- DLLR conducts random audits in the field to ensure compliance.

Positions	4.5
Salaries and Fringe Benefits	\$147,984
Two Vehicles	45,612
Operating Expenses	<u>27,631</u>
Total Fiscal 2013 DLLR Expenditures	\$221,227

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

DHR

The bill requires DHR to conduct a one-time public outreach campaign that includes providing reusable carryout bags and outreach to seniors and low-income households. This analysis assumes DHR special fund expenditures increase by \$500,000 in fiscal 2014 only for contractual costs associated with implementing the public outreach campaign.

State Revenues: The bill authorizes a portion of the bag fee revenues to be used by the Comptroller, DHR, and DLLR to administer, implement, and enforce the bill. A cap is not placed on how much fee revenue may be used to implement the bill's requirements. Thus, this analysis assumes (1) State special fund revenues and expenditures increase correspondingly; and (2) the bill generates significant revenue that exceeds estimated implementation expenditures. The remainder of the fee revenue is distributed to eligible counties and the trust, which is not a State agency.

Revenues generated by the bill depend on a number of variables, including the number of retail trade establishments impacted, the number of bags used, and consumer shopping decisions. These variables may shift considerably. The number of retail trade establishments in the State may be much lower than estimated below due to the decline in Maryland's economy. Also, more consumers are using multiuse bags to carry goods and the Internet to meet their shopping needs. To the extent the fee provides an incentive for shoppers to use reusable bags or stop using disposable bags, revenues would be less. Revenues would also be less to the extent stores create customer bag credit programs and individuals bring their own bags.

For illustrative purposes only, assuming 18,540 retail trade establishments are impacted, each establishment uses 10,000 plastic bags annually, and 1 cent of every fee is retained by the affected retail establishment, \$7.4 million in total revenue is generated annually and \$1.9 million is retained annually by retail trade establishments.

While the bill does not establish a special fund for bag fee revenue, this analysis characterizes the fee revenue as special funds.

The bill establishes penalties for stores that violate the bill's requirements. This estimate assumes that the penalty provisions of the bill do not materially affect State revenues; however, any penalties assessed would be paid into the general fund.

Local Fiscal Effect: Local revenues increase, potentially significantly, in fiscal 2013 and future years to the extent the bill generates more revenue than is necessary to administer the program and funding is allocated to eligible counties for community greening, stormwater control, trash, or litter cleanup programs. The bill does not affect Montgomery County, as it administers its own carryout bag fee program.

Prince George's County estimates that its residents use 26 million plastic bags annually and the bill may result in several hundred thousand dollars in additional revenue for its county environmental programs.

Small Business Effect: Because the bill impacts all 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) account for the number and type of bags their customers purchase; (2) ensure customer transaction receipts include specified information; and (3) submit fee revenue to the State. However, small businesses may benefit from having the authority to retain a portion of the carryout bag fee. 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 18,540 retail trade establishments in Maryland in 2009, and 17,381 of these establishments had fewer than 50 employees.

Additional Comments: After making specified distributions to DHR and DLLR, remaining fee revenues generated by the bill must be allocated to eligible counties and the Chesapeake Bay Trust. Thus, the trust's revenues increase potentially significantly in fiscal 2013 and future years due to the fee revenue. In addition, the bill expands the trust's mission and responsibilities by requiring grants to be given to educate the public about the importance of reducing the number of disposable carryout bags.

While the total amount of bag fee revenue that will be allocated to the trust cannot be reliably estimated, it may be significant, based on revenue generated by the District of Columbia's bag program during its first year.

Additional Information

Prior Introductions: SB 602 of 2011, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1034, received a hearing in the House Environmental Matters Committee, but no further action was taken. Bills with similar provisions were also introduced in the 2009 and 2010 sessions.

Cross File: None.

Information Source(s): Baltimore City; Calvert, Howard, Montgomery, and Prince George's counties; District of Columbia; Department of Natural Resources; Maryland Department of the Environment; Comptroller's Office; Department of Labor, Licensing, and Regulation; Maryland Energy Administration; American Plastic Manufacturing; National Conference of State Legislatures; U.S. Census Bureau; Department of Legislative Services

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