

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 707 (Senator Raskin, *et al.*)

Education, Health, and Environmental Affairs
and Finance

Community Cleanup and Greening Act of 2014

This bill authorizes a county to impose, by law, a fee on a “store” for the use of “disposable carryout bags” as part of a retail sale of products. If a county imposes such a fee, a store in the county must charge a fee of 5 cents per disposable carryout bag provided to a customer. The fee is not subject to a sales and use tax. A store may retain 1 cent of every 5-cent fee collected, or 2 cents if the store has a “customer bag credit program.” A store must remit any fee revenue not retained to the county. Fee revenue remitted to counties must be used for specified purposes. A county that imposes a fee must establish a program to assist seniors, low-income residents, and disabled individuals by providing free reusable carryout bags or exemptions from the fee.

The bill takes effect January 1, 2015.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances, as discussed below.

Local Effect: Local net revenues increase significantly in FY 2015 and future years for any jurisdiction that imposes a fee under the bill’s authority, assuming fee revenues exceed the administrative expenditures needed by the county to administer the fee and to implement the required assistance program. Local expenditures for specified environmental activities increase.

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 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.

Fee revenue remitted to 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 Plan (WIP) projects; (5) recycling programs and projects; (6) any other project related to water quality improvement or solid waste source reduction; and (7) administration of the bill’s requirements, including education of the public and regulated businesses.

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.

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. 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 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 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 notes that while no state has enacted a statewide ban, fee, or tax, Hawaii does have a *de facto* statewide ban, as all four counties in the state ban nonbiodegradable plastic bags at checkout and paper bags that are less than 40% recycled. Additionally, a bill that passed the California Senate and, as of February 10, 2014, has been referred to the Senate Committee on Rules, would establish a statewide ban beginning July 1, 2015.

On 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. During its first two years of implementation, approximately \$2.0 million in annual revenues were generated and used to protect the Anacostia River and other impaired waterways. *The Washington Post* has reported that revenues increased from fiscal 2012 to 2013 and remain in the range of between \$180,000 to \$200,000 per month, despite projections that revenues would decline over time.

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

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 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 has estimated the collection of nearly \$2.3 million in bag tax revenues for fiscal 2013, which is significantly greater than earlier projections.

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 and providing revenue to remove litter and distribute reusable bags to low-income individuals.

State Expenditures: The bill is not anticipated to materially affect State operations or finances unless any State agencies, such as the Department of Natural Resources, that operate concession stands are covered under the bill's definition of a "store" and are not otherwise exempt. Generally, the State is not subject to local regulation without the express intent of the General Assembly. However, if the various State agencies that

operate concessions stands are subject to any county fees established pursuant to the bill, State expenditures (all funds) may increase, likely minimally, beginning in fiscal 2015.

Local Revenues: Local revenues increase, potentially significantly, in fiscal 2015 and future years from the 3- or 4-cent fee collected for each disposable bag provided to a customer. The bill *authorizes*, but does not *require*, a county to establish a fee. Thus, there is no fiscal or operational impact on a county that does not exercise the authority provided by the bill. It is uncertain how many counties, if any, may exercise the bill's authority. However, *for illustrative purposes only*, the statewide increase in local revenues could total about \$8.5 million in fiscal 2015, and by about \$17.0 million on an annualized basis, under the following information and assumptions:

- based on the Montgomery County estimate of the number of disposable carryout bags provided by stores in the county prior to the initiation of the county's bag tax, 485.9 million bags are provided to customers by stores in Maryland in fiscal 2015;
- 50% of bags provided by a store result in the collection of a 4-cent fee by the county;
- 50% of bags provided by a store result in the collection of a 3-cent fee by the county as a result of the store's participation in a customer bag credit program; and
- all counties impose a fee beginning January 1, 2015.

The actual increase in local revenues is likely to be significantly less, as many counties may decline to impose a fee. Moreover, fee revenues are likely to decline in future years as the imposition of a fee or tax has been shown to significantly affect the number of bags provided by stores. However, fee revenues may exceed the estimate provided above to the extent that the number of bags estimated by Montgomery County understates actual bag use.

Finally, Montgomery County bag tax revenues may decrease beginning in fiscal 2015, but only to the extent that the county is required to amend its current law to confirm to this bill. However, it is unclear whether the current county bag tax is preempted by the bill.

Local Expenditures: For any county that imposes a fee under the bill's authorization, expenditures increase, potentially significantly, to administer the fee and to implement the required assistance program. For example, Baltimore County, which estimates potential fee revenues of up to \$5.0 million per year, advises that expenditures may increase by more than \$224,200 annually for two additional positions (including start-up and operating costs) and significant contractual expenses.

Local expenditures increase for various environmental activities (such as community greening, stormwater control, TMDL, and WIP projects, etc.), as the counties are required to use fee revenue for those activities.

Small Business Effect: Because the bill impacts nearly 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 relevant county. 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 18,247 retail trade establishments in Maryland in 2011, and 17,091 of these establishments had fewer than 50 employees.

Additional Comments: The Department of Human Resources advises that, if recipients of federal food assistance purchase groceries with their electronic benefit transfer cards and must pay the carryout bag fee, it may prompt the federal government to reduce the State's food assistance grant funds.

Additional Information

Prior Introductions: A similar bill, HB 1086 of 2013, received a hearing in the House Environmental Matters Committee, but no further action was taken. Its cross file, SB 576, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Another similar bill, HB 1247 of 2012, received an unfavorable report from the House Economic Matters Committee. SB 511 of 2012, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. 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: HB 718 (Delegate Carr, *et al.*) - Environmental Matters and Economic Matters.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Department of Human Resources; Maryland Chamber of Commerce; Baltimore City; Maryland Association of Counties; Baltimore, Carroll, Harford, Montgomery, and St. Mary's counties; U.S. Census Bureau; Princeton University; *The Washington Post*; Department of Legislative Services

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