

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 57 (Senator Ramirez)
 Education, Health, and Environmental Affairs
 and Finance

Community Cleanup and Greening Act of 2016

This bill prohibits a “store” from distributing *plastic* disposable carryout bags *free of charge*. The bill specifies a store may provide customers with disposable *paper* bags but must charge a fee of 10 cents per paper bag. A store may retain 5 cents of every 10-cent paper bag fee collected, or 7 cents if the store has a “customer bag credit program.” A store must remit any paper bag fee revenue not retained to the Comptroller. Paper bag fee revenues remitted to the Comptroller must be used for specified purposes. The bill establishes penalty provisions for violations. The bill requires the Department of Labor, Licensing, and Regulation (DLLR) to adopt regulations to implement and enforce the bill.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues from the sales and use tax applied to plastic bag fees and the collection of penalties. Potential increase in special fund revenues from the collection of paper bag fees remitted to the Comptroller. General/special fund administrative expenditures increase by \$1.4 million in FY 2017 (\$617,200 for the Comptroller and \$773,500 for DLLR); future year administrative expenditures reflect annualization and inflation. Special fund expenditures may increase further to distribute any remaining paper bag fee revenues to local jurisdictions.

| (in dollars) | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 |
|--------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | - | - | - | - | - |
| SF Revenue | - | - | - | - | - |
| GF/SF Exp. | \$1,390,600 | \$1,216,600 | \$1,027,600 | \$1,068,200 | \$1,110,500 |
| Net Effect | - | - | - | - | - |

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

Local Effect: Local revenues may increase, for each county and Baltimore City, as any paper bag fee revenues remitted to the Comptroller, after administrative costs, are distributed to local governments. Local expenditures may increase as local governments spend those fee revenues for specified environmental purposes in accordance with the bill.

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. It includes a durable plastic bag with handles that is designed and manufactured for multiple reuse. A “disposable carryout bag” is not (1) a bag provided by a pharmacist to contain prescription drugs; (2) plastic bags sold in packages containing multiple plastic bags intended for use as garbage, pet waste, or yard waste bags; (3) a paper bag that a restaurant provides to a customer for food or drink; or (4) 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 farmer’s market.

A “customer bag credit program” is a program implemented in a store that (1) requires the store to pay a customer a credit of at least 5 cents for each bag provided by the customer for packaging the customer’s purchases; (2) requires the total amount of the credit paid to a customer to be displayed on the customer transaction receipt; and (3) is prominently advertised at each checkout register in the store.

Paper bag fee revenues remitted to the Comptroller must first be retained by the Comptroller for administrative cost recovery and distributed to DLLR for recovery of its costs in implementing and enforcing the bill. The remainder of fee revenues must then be distributed to counties in proportion to each county’s population. Fee revenues distributed to the counties may only be used for (1) community greening; (2) stormwater control; (3) trash or litter cleanup; (4) Total Maximum Daily Load and watershed implementation

projects; (5) recycling programs and projects; (6) fresh food financing; or (7) any other project related to water quality improvement or solid waste source reduction. A store may not communicate that the reimbursement of the paper bag fee or any part of the paper bag fee collected will be assumed or absorbed by the store or refunded to the customer. Also, store receipts must indicate the number of paper bags provided by the store and the total fee amount charged.

The *paper* bag fee is not subject to the sales and use tax. It is assumed that any fee charged by a store for a *plastic* disposable carryout bag is subject to the sales and use tax.

The bill establishes penalty provisions for violations. The bill establishes an administrative fine of up to \$100 for each violation of the bill. The distribution of one or more plastic bags free of charge at a point of sale constitutes a single violation, but a penalty may not be imposed on a store more than once within a seven-day period.

Current Law: State law does not address carryout bags provided by retail establishments.

Local jurisdictions with general taxing powers (*e.g.*, Baltimore City and Baltimore and Montgomery counties) have the authority to levy a bag fee, while other jurisdictions with home rule legislative authority may have the authority to ban certain disposable bags.

Background: The use of disposable carryout bags has been the center of significant attention in recent years. Proponents of disposable bag restrictions emphasize that plastic bags litter waterways, gather in vast arrays in parts of the oceans, harm wildlife, consume valuable landfill space, and lead to greater fossil fuel consumption. Proponents of paper bag restrictions argue that 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 in popularity despite their additional cost.

In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies, and in 2014, California became the first state to enact a ban on the issuance of single-use plastic bags in large retail stores; the California law also established a 10-cent fee on the issuance of disposable paper bags. Although California's ban was originally scheduled to go into effect July 1, 2015, it is currently on hold until a November 2016 referendum. The National Conference of State Legislatures notes that Hawaii also has a *de facto* statewide ban because all counties in Hawaii ban nonbiodegradable plastic bags at checkout as well as paper bags not made of at least 40% recyclable material.

Beginning 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. Fee revenues are paid to the

Anacostia River Clean-up Fund and used to protect the Anacostia River and other impaired waterways. Revenues have increased each year between fiscal 2012 and 2014.

A 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

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 originally projected that revenues from the charge would peak at about \$1.1 million in fiscal 2013, the first full year of implementation. However, the county collected nearly \$900,000 during only half of a year in fiscal 2012, followed by revenues of \$2.39 million and \$2.41 million in fiscal 2013 and 2014, respectively.

The Baltimore City Council passed a ban on the issuance of plastic bags in November 2014, but the bill was subsequently vetoed by the mayor. The City Council reintroduced the legislation in January 2015. Currently, Baltimore City implements 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.

Finally, the Town of Chestertown banned the use of plastic, but not paper, bags in retail establishments in April 2011.

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 that included, among other things, a discussion of bag recycling legislation and programs. The report made several conclusions about bag recycling, including that:

- while plastic bags are small contributors to waste, they are larger contributors to litter and 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 Fiscal Effect:

Revenues from Paper Bag Fees

Special fund revenues collected by the Comptroller may increase beginning in fiscal 2017 from fees collected upon the provision of *paper* disposable carryout bags to customers by stores, as required by the bill. However, a reliable estimate of any such increase cannot be made due to substantial uncertainty regarding:

- the number of paper and plastic bags currently provided to customers in Maryland;
- the number of paper and plastic bags provided to customers under the bill's provisions; and
- the number of stores that establish a customer bag credit program (since stores that do so are able to retain 7 cents instead of 5 cents from each 10-cent paper bag fee).

The Department of Legislative Services (DLS) notes that estimates of plastic bag use vary substantially (generally from as few as 50 per person per year to more than 600 per person per year). In addition, little data exists regarding annual per capita paper bag use. Finally, it is unclear how the bill affects consumer and business behavior regarding the use of plastic bags, paper bags, and reusable bags. Under the bill, stores that provide *plastic* disposable carryout bags may not do so free of charge. However, because no minimum fee level is specified for plastic carryout bags, stores could potentially establish a plastic bag fee that is less than the 10-cent fee on paper carryout bags, which may result in a shift from the use of paper to plastic bags. If a plastic bag fee is set at more than 10 cents, customers would likely shift from the use of plastic bags to paper bags. In addition, some current users of both paper and plastic carryout bags would likely purchase and use their own reusable bags to avoid paying any fee (or to get a credit if a store has established a customer bag credit program).

DLS advises that because stores that provide plastic bags under the bill are able to retain any plastic bag fees assessed (less any sales and use tax owned on those fees), a significant number of stores may choose to establish a plastic bag fee of less than 10 cents to encourage customers to choose plastic over paper bags.

Revenues from the Sales and Use Tax Assessed Plastic Bags

As noted above, it is assumed that some, or perhaps a significant portion of, stores continue to provide plastic disposable carryout bags and establish a fee for the bags (as required by the bill). Those fees are subject to the State sales and use tax of 6%. Thus, general fund revenues increase, perhaps significantly, from the sales and use tax on plastic bag fees. The actual increase in general fund revenues cannot be reliably estimated, given the uncertainties regarding the use of plastic bags under the bill as described above. In any event, for every 1-cent fee on a plastic disposable carryout bag, general fund revenues increase by 0.06 cents and stores retain 0.94 cents. *For illustrative purposes only*, if 2 billion plastic bags are sold in the State each year under the bill, general fund revenues from the sales and use tax increase by \$1.2 million; this assumes about 346 bags per resident each year.

Penalty Revenues

General fund revenues may also increase, potentially significantly, from the collection of penalties established for violations of the bill.

Comptroller Administrative Expenses

As noted above, the bill requires the paper bag fee revenues remitted to the Comptroller to first be retained for administrative cost recovery. Because the availability of special funds generated from the paper bag fee is unclear, it is assumed that some portion of the Comptroller's administrative costs must be borne by the general fund. Thus, general/special fund expenditures for the Comptroller increase by an estimated \$617,153 in fiscal 2017. The Comptroller advises that administering a new program of this type requires extensive computer programming and several new positions. To establish a new tax type within its current SMART data system requires nearly 2,000 hours of programming by an external vendor at an estimated cost of \$255,642 in fiscal 2017. The Comptroller further advises that administration of the bill requires hiring one new information technology programmer analyst (to maintain the new system), one accountant, one revenue examiner, and one field auditor. Finally, the Comptroller estimates postage costs of \$81,250 in fiscal 2017 to communicate with stores regarding the bill's new requirements. This estimate also includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | <u>FY 2017</u> | <u>FY 2018</u> |
|--|-----------------------|-----------------------|
| Positions | 4 | |
| Salaries and Fringe Benefits | \$260,852 | \$320,379 |
| Contractual Programming | 255,642 | 0 |
| Start-up and Operating Expenses | <u>100,659</u> | <u>2,432</u> |
| Comptroller Admin. Expenditures | \$617,153 | \$322,811 |

The bill's effective date is October 1, 2016, and it is assumed that the additional staff are hired on this date, with the exception of the programmer analyst, who is hired on July 1, 2016, to coordinate with the vendor hired to initiate the new program. Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DLLR Administrative Expenses

After recovery of the Comptroller's costs to administer the bill, paper bag fee revenues remitted to the Comptroller must then be distributed to DLLR to cover the cost of its administration and enforcement of the bill. As noted above, the availability of special fund revenues to cover administrative costs is unclear; thus, general funds are likely needed to cover some portion of DLLR's administrative costs.

DLLR advises that it does not currently administer programs of this nature and must establish a wholly new program. Thus, general/special fund expenditures for DLLR increase by \$773,464 in fiscal 2017 to hire 1 program administrator, 1 clerk to handle administrative tasks and communications, 11 (6 full-time and 5 contractual) field auditors to conduct outreach and enforcement, and 1 assistant Attorney General to assist in the development of the regulations, establish a citation procedure, and represent DLLR in enforcement actions. DLLR advises that the 5 contractual field auditors are necessary to set up the program and to assist in conducting a significant number of unplanned inspections during the first two fiscal years that the program is operational. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | <u>FY 2017</u> | <u>FY 2018</u> | <u>FY 2019</u> |
|---------------------------------|-----------------------|-----------------------|-----------------------|
| Contractual Positions | 5 | | -5 |
| Full-time Positions | 9 | | |
| Salaries and Fringe Benefits | \$702,760 | \$881,227 | \$682,530 |
| Start-up and Operating Expenses | <u>70,704</u> | <u>12,552</u> | <u>9,607</u> |
| DLLR Admin. Expenditures | \$773,464 | \$893,779 | \$692,137 |

The bill's effective date is October 1, 2016, and it is assumed that the additional staff are hired on this date, with the exception of the program administrator and clerk, who are hired on July 1, 2016, to initiate the new program within DLLR and begin outreach with affected businesses. Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DLS advises that the Comptroller's Office and DLLR may seek to coordinate in the hiring of personnel to implement the bill, particularly in the hiring of auditors and enforcement personnel. Nevertheless, the estimated seven full-time and initial five contractual field auditors hired by the two agencies to enforce the bill are likely needed, and any coordination is not likely to result in the hiring of fewer enforcement personnel. DLLR and the Comptroller's Office estimate that approximately 50,000 retail establishments in the State fall under the purview of the bill and that inspection activity for the first two fiscal years is likely comprised largely of unplanned inspections in response to complaints and referrals. The agencies advise that these unplanned inspections are more labor intensive and are less coordinated by nature, requiring significant staff resources. By the third fiscal year, DLLR anticipates conducting fewer unplanned inspections as compliance increases. Thus, the contractual field auditors are no longer needed beginning in fiscal 2019. However, the sheer volume of retail establishments affected by the bill necessitates the seven permanent field auditors between the two agencies.

Distribution of Remaining Fee Revenues

Special fund expenditures may increase further to distribute the remainder of fee revenues, if any, to local jurisdictions, as discussed below.

Local Fiscal Effect: As noted above, after administrative cost recovery by the Comptroller's Office and DLLR, the bill requires all remaining paper bag fee revenues to be distributed to the counties (and, presumably Baltimore City) in proportion to each jurisdiction's population. However, as discussed above, the magnitude of any available paper bag fee revenues is unknown. The administrative costs at the State level are substantial, and it is unclear whether special fund revenues from paper bag fees are significant enough to cover even those costs. To the extent that any paper bag fee revenues are distributed to local governments, they may only be used for specified purposes generally related to environmental improvements.

As noted above, Montgomery County currently imposes a 5-cent charge on each paper or plastic carryout bag provided by retail establishments, with revenues distributed to the county's Water Quality Protection Charge Fund for stormwater management water quality improvements. The county program has generated about \$2.4 million annually for the last several years. It is unclear what impact the bill may have on Montgomery County's program.

Small Business Effect: Because the bill impacts most 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 of paper and plastic bags provided to customers; (2) ensure customer transaction receipts include specified information; (3) submit paper bag fee revenue to the Comptroller; (4) establish plastic bag fees if those bags are provided to customers; and (5) remit the sales and use tax on any plastic bag fees to the Comptroller.

However, small businesses may benefit, possibly significantly, from additional plastic and/or paper bag fee revenues retained under the bill. 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 paper bag fees collected.

While the number of small businesses affected by the bill is unknown, *for illustrative purposes*, the U.S. Census Bureau estimates that in 2012, there were 16,979 retail trade establishments in Maryland that had fewer than 50 employees.

Additional Information

Prior Introductions: SB 620 of 2015, 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 551, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

Cross File: HB 31 (Delegate Lierman) - Environment and Transportation and Economic Matters.

Information Source(s): Baltimore City; Harford and Montgomery counties; Comptroller's Office; Maryland Department of the Environment; Department of Labor, Licensing, and Regulation; Maryland Chamber of Commerce; U.S. Census Bureau; Department of Legislative Services

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