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FISCAL AND POLICY NOTE
First Reader

House Bill 538 (Delegate Lierman, *et al.*)

Environment and Transportation and
Economic Matters

Environment - Expanded Polystyrene Food Service Products - Prohibition

This bill prohibits, beginning January 1, 2019, (1) a person from selling or offering for sale in the State an “expanded polystyrene food service product” and (2) a “food service business” or school from selling or providing food in an expanded polystyrene food service product. A local government, county, or municipality may enact standards that are at least as stringent as the bill’s provisions. 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 or school from the bill’s prohibition, as specified. County health departments must enforce the bill’s prohibitions and may impose a monetary penalty for violations under specified conditions. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: Overall, the bill is not anticipated to materially affect State finances, as discussed below.

Local Effect: Overall, the bill is not anticipated to materially affect local government expenditures, as discussed below. 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.

Analysis

Bill Summary:

Key Definitions

“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 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; (3) materials used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption; and (4) nonfoam polystyrene food service products.

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 and grocery stores, vending trucks and carts, movie theaters, and business and institutional cafeterias, among others.

A “school” includes a public elementary or secondary school, a nonpublic elementary or secondary school, and an institution of higher education.

Required Public Education and Outreach Campaign

The public education and outreach campaign that MDE must conduct must include (1) contact with food service businesses in consultation with local health departments and relevant trade organizations; (2) contact with schools, in consultation with the Maryland State Department of Education (MSDE); (3) distribution of information through State Internet and web-based resources; and (4) news releases and news events.

Waivers and Enforcement

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

County health departments must enforce the bill's prohibitions and may impose a penalty of up to \$250 on a person or food service business that violates the bill's prohibitions. 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.

A number of 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; New York, New York; 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. 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.

Additionally, MDE advises that the Montgomery County Public Schools have used paper recyclable trays instead of polystyrene foam trays since 2014. Further, MDE notes that in January 2018, the Baltimore City Council voted to phase out polystyrene foam trays from school cafeterias and will begin to use compostable trays. St. Mary's College of Maryland advises that the college only uses biodegradable, nonpolystyrene foam containers.

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: MDE incurs new responsibilities beginning in fiscal 2019 to develop outreach materials for its website, to conduct an educational and outreach campaign, and to grant any waivers from the bill's prohibition. However, MDE can implement the bill with existing budgeted resources. MSDE can consult with MDE, as required, with existing budgeted resources.

Higher education expenditures may increase minimally for any State institution of higher education that uses polystyrene foam food service products and must switch to an alternative product due to the bill's prohibition. According to the Washington, DC Department of Energy and Environment, which implemented a similar ban in January 2016, the additional cost for alternative products is minimal. In addition, as the number of polystyrene foam bans for food service products increases across the nation and the State, the supply of alternative products also increases, thereby decreasing their costs. Finally, because the ban does not take effect until January 1, 2019, affected schools have sufficient time to use existing products and identify and purchase alternatives. Accordingly, any impact on State institutions of higher education is anticipated to be minimal.

Local Expenditures:

Enforcement

Most local health departments can likely enforce the bill's prohibitions with existing budgeted resources during the course of regular food service facility and school inspections.

As noted above, Montgomery and Prince George's counties already ban the use of expanded polystyrene food service products. However, the county health departments do not enforce the existing bans; the Montgomery County Department of Environmental Protection and the Prince George's County Department of the Environment do so. In addition, Montgomery County advises that its enforcement is complaint based. Assuming the counties can continue enforcing and implementing the county-level bans through their respective county environmental departments, the bill does not materially affect expenditures in these two counties. However, to the extent the county health departments must instead enforce the bans and/or the counties must conduct a more robust enforcement program, county health department expenditures increase to hire additional staff to conduct inspections.

Impact on Local School Systems

The bill may result in a minimal increase in expenditures for local public school systems that use polystyrene foam food service products and must switch to an alternative product,

as discussed above with respect to State institutions of higher education under the State Expenditures section of this fiscal and policy note.

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, since the additional cost for alternative products is minimal, and the bill provides time to use existing inventory and identify and purchase alternatives, as discussed above.

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 2015, 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.

Additional Comments: The bill may result in a minimal increase in expenditures for any nonpublic schools that use polystyrene foam food service products and must switch to an alternative product, as discussed above.

Additional Information

Prior Introductions: SB 186 of 2017, 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 229, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: Although designated as a cross file, SB 651 (Senator Kagan, *et al.* - Education, Health, and Environmental Affairs and Finance) is not identical.

Information Source(s): New York City Department of Sanitation; Maryland Association of County Health Officers; Baltimore City; Montgomery and Prince George's counties; City of Bowie; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of the Environment; Maryland Department of Health; WNYC News; Department of Legislative Services

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