

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 314 (Delegate Lierman)

Environment and Transportation and
 Economic Matters

Finance

Plastic Bag Reduction Act

This bill prohibits, beginning July 1, 2022, a “retail establishment” from providing a customer with a “plastic carryout bag.” The appropriate unit of county government must enforce these provisions, and the bill establishes a civil penalty for violations. The bill’s provisions preempt local laws, but the bill grandfathers local fees on nonplastic carryout bags that were in effect as of February 1, 2021. The Maryland Department of Labor (MDL) must adopt implementing regulations.

Fiscal Summary

State Effect: General fund expenditures increase by \$82,500 in FY 2022 only. Revenues are not materially affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	82,500	0	0	0	0
Net Effect	(\$82,500)	\$0	\$0	\$0	\$0

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

Local Effect: County expenditures for enforcement increase beginning in FY 2022. Local revenues may decrease in some jurisdictions beginning in FY 2022, as discussed below.

This bill imposes a mandate on a unit of local government.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Implementation and Enforcement of the Bill's Prohibition on Plastic Carryout Bags

As noted above, the bill prohibits a retail establishment from providing a customer with a “plastic carryout bag” on or after July 1, 2022.

A “plastic carryout bag” is a plastic bag that is less than four mils thick and is provided by a retail establishment to a customer at the point of sale. It includes a compostable plastic bag that meets specifications established by the American Society of Testing and Materials International Standard Specification for Compostable Plastics D6400. A “plastic carryout bag” does not include (1) a plastic bag provided by a pharmacist to contain prescription drugs; (2) plastic bags sold in packages containing multiple plastic bags; (3) a plastic bag provided by a food service facility that is necessary to meet food safety and contamination standards; (4) a plastic bag provided by a retail establishment to take live fish, insects, mollusks, or crustaceans away from the retail establishment; (5) a plastic bag provided by a farm or orchard that contains fruits or vegetables that were grown by the farm or orchard; or (6) a plastic 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;
- contain a newspaper, garments, or dry-cleaned clothes; or
- contain ice.

A “retail establishment” is a store, a food service facility, or any other establishment that provides bags to its customers as a result of the sale of a product.

The appropriate unit of county government must enforce these provisions. A unit of county government may grant a retail establishment up to two waivers from the bill’s requirements for a period of up to three months for each waiver if the unit of county government determines that complying with the bill would cause the retail establishment an undue hardship or a practical difficulty not generally applicable to other retail establishments in similar circumstances.

The bill establishes a civil penalty of up to \$500 for each violation. The provision of one or more plastic carryout bags at a single point of sale is a single violation. However, a penalty

may not be imposed on a retail establishment more than once within a seven-day period. In addition, before any penalty is imposed, a written notice of a violation must be issued, and a retail establishment must have an opportunity to correct the violation within three months after receipt of the written notice.

Preemption of Local Laws/Ability for Local Governments to Collect Fees, Taxes, or Other Charges for the Use of Carryout Bags

Beginning July 1, 2022, only the State may enact a law or take any other action to prohibit, restrict, or regulate the use of plastic bags less than four mils thick by a retail establishment. The bill (1) preempts the authority of a local government to enact such a law or ordinance and (2) supersedes any local law or ordinance that prohibits, restricts, or regulates the use of plastic bags less than four mils thick by a retail establishment.

In addition, a local government is generally prohibited from adopting or enforcing a law or an ordinance that requires a retail establishment to charge and collect a fee, tax, or any other charge for the use of carryout bags at the point of sale unless the law or ordinance is authorized by a State law enacted on or after January 1, 2022. However, with respect to a local government that, on or before February 1, 2021, adopted a law or ordinance that includes such a requirement, the bill does not affect the local government's authority to charge and collect the fee, tax, or other charge for the use of carryout bags *that are not otherwise prohibited by the bill*.

Current Law: Although local jurisdictions with general taxing powers (*e.g.*, Baltimore City and Baltimore and Montgomery counties) have the authority to levy a bag fee, State law does not broadly address carryout bags provided by retail establishments.

Local Plastic Bag Bans and Fees

Chapter 725 of 2019 authorized Howard County to impose up to a 5-cent fee for the use of each disposable bag used as part of a retail sale of products. In December 2019, the Howard County Council used this authority and passed a 5-cent fee on the use of disposable plastic bags. Fees are collected by each store at the point of sale and are remitted to the county quarterly. Stores are authorized to retain up to 20% of the 5-cent fee collected. The fee took effect February 5, 2020.

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.

Baltimore City has also passed legislation that generally (1) prohibits grocers and other retailers from providing plastic checkout bags to customers and (2) requires a store to

charge a 5-cent fee for any other bag supplied to customers, including paper bags. Retailers are authorized to keep 4-cents from the fee for each alternative bag they supply. The remaining 1-cent is remitted to the city. The prohibition and fee requirements take effect in July 2021.

According to information provided by MDE for similar legislation introduced in a prior session, the Town of Chestertown and the cities of Takoma Park and Westminster also have local ordinances governing the distribution of single-use bags.

State Expenditures: General fund expenditures for MDL increase by \$82,465 in fiscal 2022 only, which assumes that MDL must develop and adopt regulations prior to the July 1, 2022 effective date of the provisions relating to the ban on plastic carryout bags. Accordingly, the estimate reflects the cost of hiring one assistant Attorney General beginning July 1, 2021, to coordinate with counties and industry associations and establish a new regulatory framework to implement the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$76,720
Operating Expenses	<u>5,745</u>
Total FY 2022 State Expenditures	\$82,465

No future year expenditures are anticipated, as it is assumed that the contractual position is terminated at the end of fiscal 2022 after MDL adopts the required regulations. Since counties are responsible for enforcing the bill's provisions, any out-year responsibilities for MDL can be handled with existing budgeted resources.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Local Expenditures: County expenditures increase to enforce the bill's provisions, as required by the bill. The increase in expenditures is likely most significant in the first year or two that the ban is in effect and for counties that do not currently regulate the use of plastic bags at retail establishments. It is assumed that as retail establishments come into compliance, the impact on county expenditures decreases.

Local Revenues: The bill prohibits, beginning July 1, 2022, a local jurisdiction from prohibiting, restricting, or regulating the use of plastic bags less than four mils thick by a retail establishment. The bill also prohibits a local jurisdiction from adopting or enforcing a law that requires a retail establishment to charge and collect a fee, a tax, or any other charge for the use of carryout bags. However, the bill authorizes a local jurisdiction that

adopted a law or ordinance requiring a retail establishment to charge and collect a fee, a tax, or any other charge for the use of carryout bags before February 1, 2021, to charge and collect the fee, tax, or other charge for the use of carryout bags *that are not otherwise prohibited under the bill*. Thus, any local jurisdictions that currently impose fees, taxes, or charges on *plastic* carryout bags will no longer be able to do so as of July 1, 2022. However, any local jurisdictions that impose fees, taxes, or charges for the use of *nonplastic* carryout bags can continue to do so. Accordingly, local revenues in some jurisdictions decrease beginning in fiscal 2023 from fees/taxes/charges collected on plastic carryout bags that otherwise would be collected.

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 historically generated about \$2.5 million annually. Howard County also recently established a 5-cent charge on disposable plastic bags provided to customers.

Small Business Effect: The ban on providing plastic carryout bags does not take effect until July 1, 2022, so it is assumed that retail establishments have adequate time to use existing inventory. Even so, the bill likely results in an increase in expenditures and/or operational impacts for retail establishments to identify and switch to nonplastic carryout bag alternatives.

While the number of small businesses affected by the bill is unknown, *for illustrative purposes*, the U.S. Census Bureau estimates that in 2017, there were 16,621 retail trade establishments in Maryland that had fewer than 50 employees.

Additional Information

Prior Introductions: HB 209 of 2020 passed the House with amendments and received a favorable report from the Senate Finance Committee, but no further action was taken. Its cross file, SB 313, received a favorable with amendments report from the Senate Finance Committee, but no further action was taken. Similar legislation was also introduced in prior sessions.

Designated Cross File: SB 223 (Senator Augustine) - Finance.

Information Source(s): Baltimore City; Calvert and Prince George's counties; Maryland Association of Counties; Maryland Department of Labor; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - January 26, 2021
rh/lgc Third Reader - March 11, 2021
Revised - Amendment(s) - March 11, 2021

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