

Department of Legislative Services

Maryland General Assembly
2022 Session

**FISCAL AND POLICY NOTE
First Reader**

Senate Bill 292

(Senator Augustine)

Finance

Environment - Packaging Materials - Producer Responsibility

This bill establishes a required framework for producers of packaging materials to create and implement producer responsibility plans for the affected products. Producer responsibility plans must be submitted by each producer (either individually or as part of a producer responsibility organization) to the Maryland Department of the Environment (MDE) for review and approval by April 1, 2024. Beginning October 1, 2024, a producer may not sell, offer for sale, distribute, or import for sale or distribution packaging materials for use in the State unless the producer has an approved plan on file with MDE, as specified. The bill also establishes a Producer Responsibility Plan Advisory Council, an ongoing statewide recycling assessment requirement for MDE, reporting requirements, and civil penalties for violations. MDE must adopt implementing regulations.

Fiscal Summary

State Effect: General/special fund expenditures for MDE increase by \$345,100 in FY 2023 for initial staff and contractual costs. Beginning in FY 2025, all MDE expenditures are assumed to be covered with special funds; out-years reflect additional staff, annualization, inflation, and ongoing costs. Special fund revenues increase correspondingly beginning in FY 2025 from producer fees. State expenditures (multiple fund types) may increase to purchase affected products as early as FY 2025. Potential minimal increase in general fund revenues from penalties (not reflected below).

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$0	\$0	\$488,300	\$450,300	\$462,400
SF Expenditure	\$0	\$0	\$488,300	\$450,300	\$462,400
GF/SF Exp.	\$345,100	\$286,100	-	-	-
Net Effect	(\$345,100)	(\$286,100)	(-)	(-)	(-)

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

Local Effect: Local revenues and expenditures may be affected as early as FY 2025.

Small Business Effect: Meaningful.

Analysis

Bill Summary: It is the intent of the General Assembly that the bill (specifically, new Title 9, Subtitle 24 of the Environment Article) provide a framework for modernizing and improving waste and recycling systems in the State, as specified, and reimbursing local governments for costs associated with transporting, collecting, and processing packaging materials. Subtitle 24 does not affect the authority of the State or a local jurisdiction to regulate the sale or use of any packaging material. Further, Subtitle 24 does not prohibit a producer responsibility organization from establishing a deposit-return system as one strategy for increasing the capture and recycling of beverage containers or other packaging materials.

Key Definitions

“Packaging materials” means, regardless of recyclability, any part of a package or container, including material that is used for the containment, protection, handling, delivery, and presentation of a product that is sold, offered for sale, imported, or distributed in the State. “Packaging materials” includes (1) primary, secondary, and tertiary packaging intended for the consumer market; (2) service packaging designed and intended to be filled at the point of sale (including carry-out bags, bulk good bags, take-out and home delivery food service packaging, and prescription and pharmaceutical packaging); and (3) beverage containers.

A “producer” is a person that meets one of the following classifications (in descending order of responsibility): (1) a person that uses packaging materials for the sale or distribution of a product under the person’s own name or brand; (2) a person that is a licensee of a trademark under which a packaging material is sold, offered for sale, distributed, or otherwise used in a commercial enterprise in the State, regardless of whether the trademark is registered; or (3) a person that imports a product that includes a packaging material that is sold, offered for sale, distributed, or otherwise used in a commercial enterprise in the State. A producer does not include a local government or a nonprofit charitable organization.

A “producer responsibility organization” is (1) a producer that individually submits a producer responsibility plan to MDE or (2) a nonprofit organization that is created by a group of producers to implement a producer responsibility plan. A “producer responsibility plan” means a packaging materials producer responsibility plan submitted to MDE by a producer or producer responsibility organization pursuant to the bill.

Exclusions to the Bill's Applicability

The bill does not apply to a producer that, on request by MDE, provides sufficient information to demonstrate that the producer (1) generated less than \$1.0 million in gross revenue during the prior calendar year; (2) sold, offered for sale, or distributed for sale in the State (during the prior calendar year) less than one ton of packaging materials; or (3) conducted all of the sales of packaging materials in the State (during the prior calendar year) at a single point of retail sale that was not supplied or operated as part of a franchise.

Producer Responsibility Plan Advisory Council

The bill establishes the Producer Responsibility Plan Advisory Council, the purpose of which is to provide advice to MDE and producer responsibility organizations for drafting, amending, and implementing producer responsibility plans. The Secretary of the Environment must appoint advisory council members, as specified. To the extent practicable, membership of the advisory council must represent all geographic regions of the State, large and small counties and municipalities, and the variability in how waste and recyclable and compostable materials are collected and processed in the State. Members of the advisory council may not receive compensation but are entitled to reimbursement for expenses. Among other duties, the advisory council must (1) meet at least quarterly; (2) provide advice regarding the drafting or amending of a producer responsibility plan on request; (3) receive and review the producer responsibility plans and annual reports submitted in accordance with the bill; and (4) make recommendations to MDE, as specified.

Development, Review, and Implementation of Producer Responsibility Plans

By April 1, 2024, each producer must submit a producer responsibility plan to MDE for review and approval (either individually or as part of a producer responsibility organization). The bill establishes additional coordination requirements and considerations that must be undertaken if more than one producer responsibility organization submits a producer responsibility plan to MDE. Before submitting a plan to MDE for review, a producer or producer responsibility organization must consult with the advisory council. Beginning October 1, 2024, a producer may not sell, offer for sale, distribute, or import for sale or distribution packaging materials for use in the State unless the producer has an approved producer responsibility plan on file with MDE (either individually or as part of a producer responsibility organization).

The bill establishes the minimum content for a producer responsibility plan. Among other things, the plan must (1) identify the producers and brands covered by the plan, as specified; (2) include a number of performance goals that are achievable within five years for each packaging material type; and (3) require each participating producer to reduce all

packaging material waste by at least 25% for each packaging material type within five years, as specified. The plan must also describe (1) how the performance goals will be met or exceeded; (2) how staffing and administering the implementation of the plan will be handled; (3) the actions taken or that will be taken for public outreach, education, and communication, as specified; (4) the amount of funding that will be used to improve reuse, composting, and recycling in the State; and (5) the process by which a local government may request reimbursement for costs associated with transporting, collecting, and processing packaging materials that are identified in the plan, as specified.

In addition, the plan must also describe the financing method that will be used by a producer or producer responsibility organization to implement the plan. Among other things, the financing method must (1) provide the method for either direct investments or reimbursements for improving infrastructure for reuse, composting, and recycling, as specified; (2) provide a reasonable annual rate per ton of recycled or composted packaging materials for reimbursing local governments for specified costs; (3) establish a fee structure for participating producers that is set to cover specified implementation and administrative costs (including implementing the strategy in the plan to improve reuse, composting, and recycling in the State); (4) describe the incentives to encourage participating producers to engage in waste reduction and recycling activities; (5) describe the disincentives to discourage designs or practices that increase the cost of managing packaging materials; and (6) meet any other requirement established by MDE. The financing method must be evaluated by an MDE-designated independent financial auditor to ensure that the costs of implementing the plan are covered. The mandatory reimbursement rate and fee structure must meet specified requirements and metrics. The funding used to improve reuse, composting, and recycling must include specified investments and give priority to specified existing infrastructure.

Based on the results of the mandatory statewide recycling needs assessment (discussed below), MDE, in coordination with a producer responsibility organization, must establish performance goals for each packaging material type using a baseline year that is informed by the statewide recycling needs assessment, including establishing recycling rate goals for each packaging material type at 5-, 10-, and 15-year intervals.

MDE must review the producer responsibility plan, and within 120 days, either approve, approve with conditions, or reject a plan submitted for review. The bill establishes several considerations MDE must take into account when making a determination regarding a producer responsibility plan. In addition to reviewing the producer responsibility plan(s), MDE must also review the work product of the independent financial auditor designated by MDE to evaluate the financing component of the producer responsibility plan(s).

A producer or producer responsibility organization must implement a producer responsibility plan within six months after the date the plan is approved by MDE. An

approved plan expires after five years, but MDE may rescind approval of a producer responsibility plan at any time for good cause. Additionally, a producer responsibility plan may continue beyond five years if it is renegotiated, renewed, or amended and approved by MDE in accordance with the bill.

By October 1, 2026, and annually thereafter, each producer responsibility organization that has an approved producer responsibility plan on file with MDE must submit a report to MDE on the progress toward meeting producer responsibility plan requirements and goals for the immediately preceding year. The annual report must include specified information. Any financial, production, or sales data reported to MDE by a producer responsibility organization must be kept confidential, as specified. Other than confidential information, the annual report must be posted on MDE's website and on the producer responsibility organization's website.

Reimbursement for Local Governments

A local government may request reimbursement from a producer responsibility organization that has an approved producer responsibility plan for costs associated with collecting, transporting, and processing packaging materials listed under the plan, in accordance with (1) the producer requirements established under an approved producer responsibility plan and (2) any other requirement that MDE has adopted.

Penalties and Legal Immunities

A producer responsibility organization that violates the bill's provisions is subject to a civil penalty of \$5,000 for a first violation, \$10,000 for a second violation, and \$20,000 for a third or subsequent violation.

Any person participating in a producer responsibility plan in compliance with the bill is immune from liability under State law relating to antitrust and restraint of trade for any cooperated activities arising out of the recycling, reuse, and disposal of packaging materials and products.

Office of Recycling Statewide Recycling Needs Assessment

MDE's Office of Recycling must conduct a statewide recycling needs assessment once every 10 years that addresses a variety of topics and makes certain recommendations related to the State's recycling system. By October 1, 2023, and every 10 years thereafter, the Office of Recycling must report the results of the most recent assessment to the Governor and the General Assembly. When conducting the assessment, the Office of Recycling must consult with producer responsibility organizations, the Producer Responsibility Plan Advisory Council, appropriate local government entities, and regional

solid waste organizations in the State. The Office of Recycling must establish and collect a fee that is paid by producer responsibility organizations to cover the costs to conduct the assessments. Fee revenue is paid into the State Recycling Trust Fund, and the uses of the trust fund are expanded to include the cost of conducting the statewide recycling needs assessments and producer responsibility plan review, oversight, and enforcement.

Current Law: Maryland does not require any kind of specific product producer responsibility for packaging materials. However, a person is prohibited from selling or offering for sale in the State an expanded polystyrene food service product, and a food service business or school is prohibited from selling or providing food or beverages in an expanded polystyrene food service product.

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. There are several examples of regional waste management partnerships in the State.

Maryland's recycling policy is guided by the Maryland Recycling Act (MRA), which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide waste diversion goal of 60% and a voluntary statewide recycling goal of 55% by 2020. Each county (including Baltimore City) must prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate. The plan must be submitted to MDE's Office of Recycling for approval when the jurisdiction submits its water and sewerage plan at least every 10 years. At least every 2 years, each county must also submit a progress report to MDE, which must include any revision of or amendment to the county plan that has been adopted.

The county recycling plan must address a variety of topics, including methods to reduce the solid waste stream; the feasibility of source separation of the solid waste stream generated within the county; and the strategy for the collection, processing, marketing, and disposition of recyclable materials.

MDE's Office of Recycling submits annual reports, in coordination with the Maryland Environmental Service, to the Governor and the General Assembly on specified information related to recycling in Maryland. Beginning in 2009, MDE has combined the *Maryland Waste Diversion Activities Report* and the *Solid Waste Managed in Maryland Report* into one report, the *Maryland Solid Waste Management and Diversion Report*.

The State Recycling Trust Fund is a special fund that is used to carry out the purposes of MDE's Land Management Administration and to provide grants to (1) counties to develop and implement local recycling plans; (2) counties that have addressed methods for the

separate collection and recycling of covered electronic devices; and (3) municipalities to be used to implement local covered electronics device recycling programs.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs and Related Producer Fee Revenue

General/special fund expenditures increase by \$345,052 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date, and by \$286,070 in fiscal 2024. Special fund expenditures increase by \$488,316 in fiscal 2025. This estimate reflects the cost of hiring four employees in fiscal 2023 (three natural resources planners and one administrative specialist) and two additional employees (environmental specialists) in fiscal 2025.

The three natural resources planners and the administrative specialist are hired in fiscal 2023 to begin implementing the bill by (1) identifying MDE's administrative costs and planning; (2) conducting outreach, identifying affected producers, and designating the independent financial auditor; (3) developing and promulgating regulations; (4) contracting for and overseeing the statewide recycling needs assessment and writing the required report to the General Assembly; (5) staffing the advisory council and conducting related duties; (6) reviewing producer responsibility plans, the work product of the independent financial auditor, and annual reports; (7) posting annual reports online; and (8) mailing correspondence, including notices of noncompliance and violations. The two environmental compliance specialists are hired in fiscal 2025 to (1) conduct compliance inspections and investigate complaints and (2) generally implement and enforce the bill once the producer responsibility plans are in place. These estimates include salaries, fringe benefits, one-time start-up costs (including contractual costs to conduct the statewide recycling needs assessment), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- although not explicitly required by the bill, MDE must staff the advisory council;
- the bill applies to a large number of producers, who are not already known by MDE, requiring a significant amount of outreach and administrative organization;
- MDE must review a relatively large number of producer responsibility plans on an ongoing basis;
- in order to establish a robust producer responsibility program in the State, MDE needs to hire additional staff; and
- although the uses of the Maryland State Recycling Trust Fund are expanded to cover specified costs, general funds are needed in fiscal 2023 and 2024 due to a lack of available special funds in those years.

	<u>Fiscal 2023</u>	<u>Fiscal 2025</u>
New Positions	4.0	2.0
Salaries and Fringe Benefits (Total)	\$212,340	\$426,066
Vehicle Purchase	0	32,000
Contractual Costs	100,000	0
Other Operating Expenses	<u>32,712</u>	<u>30,250</u>
Total MDE Administrative Costs	\$345,052	\$488,316

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that affected producers in the State ultimately end up working with a limited number of producer responsibility organizations, thereby reducing the number of proposed producer responsibility plans submitted for review and approval, MDE may not need to hire as many new employees, and costs decrease accordingly.

It is assumed that special fund revenues increase correspondingly, but not likely beginning before fiscal 2025, from producer fees. The financing method identified in a producer responsibility plan must establish a fee structure that is set in a manner to cover the administrative costs of the producer responsibility plan, including MDE's review, oversight, and enforcement of producer responsibility plans. Additionally, the bill requires the Office of Recycling to establish and collect a fee from producer responsibility organizations to cover the costs associated with conducting the statewide recycling needs assessment. However, because the plans are not required to be submitted and implemented until fiscal 2025, this estimate assumes that no fees are collected in fiscal 2023 or 2024. Thus, this analysis assumes that MDE's administrative costs are fully offset by producers beginning in fiscal 2025.

State Agencies as Consumers of Affected Products

State expenditures (multiple fund types) could increase, beginning as early as fiscal 2025, due to any increase in the price to purchase packaging materials that may result from the bill. However, the magnitude of any such increase in costs is unknown and depends largely on the specifics of the approved producer responsibility plans.

Penalty Revenue

General fund revenues may increase minimally, likely not before fiscal 2025, from any penalties collected pursuant to the bill.

Local Fiscal Effect: The bill likely affects recycling streams, which are often managed by local governments. This change means local revenues and expenditures are likely affected, although the overall impact on local jurisdictions depends largely on the content

of the producer responsibility plans, which cannot be predicted. Even so, local revenues likely increase from reimbursements from producers to offset local costs to collect, transport, and process packaging materials that are listed under a producer responsibility plan. Local governments may also benefit from the diversion of packaging materials from landfills and an increase in recycling rates, which assists counties in meeting their mandatory recycling rates under the MRA.

Similar to the impact described above at the State level, expenditures for local governments as consumers of packaging materials may increase as early as fiscal 2025.

Small Business Effect: Although it is anticipated that the bill primarily affects larger businesses that meet the minimum gross revenue and tonnage of packaging materials under the bill, the bill results in significant additional operational responsibilities, and potentially significant costs, for affected producers that are small businesses to develop and implement producer responsibility plans for packaging materials. Additionally, similar to the impact described above at the State and local levels, there could be an increase in costs for small businesses as consumers of packaging materials. On the other hand, the bill's performance goals could incentivize the development of small businesses in the State that recycle packaging materials or that supply raw materials used to manufacture compliant packaging materials.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 307 (Delegate Lierman) - Environment and Transportation and Economic Matters.

Information Source(s): Maryland Environmental Service; Baltimore City; Harford County; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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js/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510