

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 135 (Delegate Love)
Economic Matters

Environment – Single–Use Plastics – Restrictions

This bill generally prohibits, beginning January 1, 2023, a food service business from providing specified single-use food and beverage products to customers who are ordering carryout or delivery from or dining inside the food service business, unless the customer requests the product or accepts an offer for the product. The bill establishes civil penalties for violations. It also changes the definition of food or beverage product under existing provisions governing labeling and performance standards for specified plastic products.

Fiscal Summary

State Effect: Assuming local health departments (LHDs) are primarily responsible for enforcement, the Maryland Department of the Environment (MDE) can implement the bill with existing resources, as discussed below. The bill’s prohibition related to single-use food or beverage products could affect any State-owned or State-operated cafeterias; for example, the Department of Public Safety and Correctional Services (DPSCS) anticipates a significant increase in general fund expenditures to switch to alternative products. General fund revenues may increase minimally beginning in FY 2023 due to the bill’s civil penalty provisions.

Local Effect: Expenditures for LHDs may increase beginning in FY 2023 to enforce the bill and potentially to evaluate waiver requests. The bill’s prohibition related to single-use food or beverage products could affect expenditures for local school systems. Local revenues are not anticipated to be affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Prohibition Against Providing Single-use Food or Beverage Products to Customers

Beginning January 1, 2023, a food service business is generally prohibited from providing any of the following single-use food or beverage products to a customer who is ordering carryout or delivery from or dining inside the food service business, unless the customer requests the product or accepts an offer for (1) condiments; (2) lid plugs and stoppers; (3) stirrers; (4) straws; or (6) utensils. This prohibition does not apply to (1) food or beverage products provided by a food service business at a drive-through window; (2) prepackaged beverage products available at a food service business; (3) food or beverage products that customers at a food service business serve themselves, as specified; (4) lids; or (5) condiments and condiment containers and lids that customers at a food service business serve themselves. The bill does not affect the authority of a county, municipality, or other local government to enact or enforce more stringent requirements for the single-use food or beverage products affected by the bill.

Every food service business must maintain a limited stock of the listed single-use plastic straws to accommodate the physical or medical needs of an individual in compliance with federal, State, and local laws and regulations.

MDE, a unit of local government with inspection authority, or the Attorney General may enforce these provisions. A food service business may submit a request to one of these governmental entities for a waiver from the provisions. The governmental entity may grant a food service business up to two three-month waivers if compliance with the bill would cause undue hardship unique to that food service business.

A food service business that violates these provisions is subject to (1) for a first violation, a warning and (2) for a second or subsequent violation more than three months after the warning, a civil penalty of up to \$200 per violation but not exceeding more than one civil penalty within a seven-day period.

A “food service business” means a business in the State that sells or provides food and/or beverages for consumption on or off the premises. The term includes a business or institutional cafeteria, including a cafeteria operated by or on the behalf of the State or a local government.

Changes to Current Law Definition Related to Plastic Products

The bill modifies the definition of food or beverage product under current law to include condiment packages, lid plugs and stoppers, and stirrers. The bill also specifies that food or beverage product does not include small containers and lids for condiments that are filled on site by a food service business. The definition relates to existing provisions that govern labeling and performance standards for specified plastic products.

Current Law: State law does not address the provision of the single-use food or beverage products by food service businesses.

Title 9, Subtitle 21 of the Environment Article establishes labeling and performance standards for plastic products labeled as biodegradable, degradable, decomposable, or any other term that implies that the product will break down, fragment, biodegrade, or decompose in a landfill or any other environment. A “plastic product” means a product made of plastic, whether alone or in combination with another material including paperboard; it includes a package or packaging component, a film plastic product, a food or beverage product, and any other plastic product or part of a plastic product. A “food or beverage product” means a product that is used for food and drink and is made of plastic or paper with a plastic coating. A food or beverage product includes containers, food service ware and utensils, and straws and lids. The definition does not explicitly include condiment packages, nor does it include lid plugs and stoppers or stirrers. The definition does not explicitly exclude small containers and lids for condiments.

A person who violates the labeling and performance standards for specified plastic products is subject to a civil penalty of \$500 for a first violation, a civil penalty of \$1,000 for a second violation, and a civil penalty of \$2,000 for a third and subsequent violation. Local governments enforce these provisions, and any penalties collected pursuant to these provisions are paid to the county, municipality, or other local government that brought the enforcement action.

State Revenues: General fund revenues may increase minimally due to the bill’s civil penalty provisions for any cases heard in the District Court. The bill is silent on where any such penalties must be deposited. However, civil cases are typically heard in the District Court, and civil penalties assessed in cases heard in the District Court are generally deposited into the general fund.

State Expenditures: This analysis assumes that LHDs are primarily responsible for enforcing the bill. Thus, any impact on MDE related to enforcement is minimal and absorbable within existing budgeted resources.

The bill's prohibition related to single-use food or beverage products could affect any State-owned or State-operated cafeterias, including at institutions of higher education and cafeterias where incarcerated individuals are fed. For most affected cafeterias, any impact is expected to be primarily operational, but the impact on any given facility ultimately depends on the types of products that a cafeteria uses and how they are provided to customers. Affected cafeterias may realize cost savings from needing to purchase smaller quantities of affected products. On the other hand, there could be costs for affected cafeterias to identify and provide alternative products or to modify the distribution of affected products to customers.

For example, DPSCS advises that costs to feed incarcerated individuals and staff increase by at least \$2.0 million annually to purchase disposable utensils that are not made from plastic. DPSCS is unable to switch to more durable metal or wood utensils for safety reasons. Since incarcerated individuals cannot store or maintain personal utensils in their cells, DPSCS likely needs to provide new disposable utensils with each meal. DPSCS's estimate for costs to switch to biodegradable utensils is based on the average daily populations within the Division of Correction and the Division of Pretrial and Detention Services and daily staff levels in 2020. The Department of Legislative Services is unable to independently verify this estimate.

Local Expenditures: Local governments have the authority to enforce the bill's provisions, and this analysis assumes that LHDs are primarily responsible for doing so. LHDs already routinely inspect food service facilities. It is assumed that to the extent LHDs can check for noncompliance during routine food service facility inspections, and that any additional enforcement is done on a complaint basis, LHDs can likely implement the bill using existing resources. However, the Maryland Association of County Health Officers notes that LHDs are chronically understaffed, and other high risk or more emergent tasks will take priority over enforcement of the bill. To the extent that more robust enforcement is pursued, LHD expenditures likely increase to hire additional staff.

Similar to the State impact described above, the bill's prohibition related to single-use food or beverage products could affect local school cafeterias and local detention facilities. Again, the primary impact is expected to be operational, but the bill could affect local expenditures depending on the types of products currently used and how such products are distributed.

Small Business Effect: Small businesses that own and/or operate affected food service businesses, as well as any small businesses that manufacture or sell affected products, may be affected by the bill. For small businesses that are licensees/franchisees and have less control over brand standards and operating guidelines, the operating and/or fiscal impacts may be more significant.

Any small businesses that manufacture or sell affected products to food service businesses may be negatively affected to the extent the bill results in a decrease in sales of those products. On the other hand, any small businesses that manufacture or sell alternatives to those products may benefit.

Additional Comments: Nonpublic schools are also affected in the same ways that local public school systems are, as described above.

Additional Information

Prior Introductions: HB 69 of 2021, a bill with similar provisions, received an unfavorable report from the House Economic Matters Committee.

Designated Cross File: None.

Information Source(s): Caroline, Howard, Montgomery, and Prince George’s counties; City of Annapolis; Maryland Association of County Health Officers; Baltimore City Public Schools; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2022
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