

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1239 (Delegate Terrasa, *et al.*)

Environment and Transportation and
 Economic Matters

Environment - Plastic and Glass Products - Postconsumer Recycled Content
 Program

This bill establishes the Postconsumer Recycled Content Program, administered by the Maryland Department of the Environment’s (MDE) Office of Recycling. Broadly, the bill requires a “producer” of “covered products” that are sold, offered for sale, or distributed in the State to (1) meet minimum postconsumer recycled content requirements for affected products; (2) register with MDE (individually or as part of a representative organization), as specified; and (3) pay annual registration fees to MDE to cover program costs. MDE may adopt regulations. Existing enforcement and penalty provisions apply, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by \$134,700 in FY 2023; out-year costs, which are covered with a combination of general/special funds, reflect additional staff, annualization, inflation, and ongoing costs. Special fund revenues increase by an indeterminate amount beginning in FY 2024. State expenditures (multiple fund types) may increase as early as FY 2025 (not reflected below).

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	\$0	-	-	-	-
GF Expenditure	\$134,700	\$0	\$0	\$0	\$0
GF/SF Exp.	\$0	\$315,800	\$368,200	\$377,700	\$387,900
Net Effect	(\$134,700)	(-)	(-)	(-)	(-)

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 discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Relevant Definitions

A “covered product” is a product that is subject to the postconsumer recycled content percentage requirements established under the bill. “Postconsumer recycled content” is a material or product that has (1) completed its intended end use and product life cycle from households or by commercial, industrial, and institutional facilities and (2) been separated from the solid waste stream for the purposes of collection and recycling. “Producer” means a person responsible for complying with the bill’s requirements; the term does not include (1) the State, a county, a municipality, or any other political subdivision of the State; (2) a tax-exempt charitable or social welfare organization, as specified; or (3) a producer that annually sells, offers for sale, distributes, or imports into the country for sale in the State less than 1,000 units of a single category of covered products or a single category of a covered product that (in aggregate) generates less than \$1.0 million annually in revenues in the State.

Annual Registration and Fee for Producers

The bill establishes provisions relating to producer responsibility and prohibits a producer from selling, offering for sale, or distributing a covered product to any person in the State unless (1) the product meets the bill’s minimum postconsumer recycled content requirements and (2) the producer individually (or as part of a representative organization) registers and submits a \$1,000 annual registration fee to MDE by March 1 each year.

The registration must include specified information, including (1) each producer and brand of covered product included under the registration; (2) the total number of covered products sold in the State in the immediately preceding calendar year, including the total number by each category of a covered product; (3) the average percentage of postconsumer recycled content for each category of a covered product sold in the State in the immediately preceding calendar year; and (4) any other information required by MDE by regulation. Additionally, beginning in 2026, by March 1 each year, a producer must include proof of third-party certification of the postconsumer recycled content of each covered product included in the registration in a manner required by MDE.

All sales data submitted to MDE to comply with the registration requirements is confidential and proprietary and may not be disclosed unless otherwise required by law.

Minimum Postconsumer Content Requirements and Waivers

The bill establishes minimum postconsumer recycled content percentages for plastic carryout bags, beverage containers, rigid plastic containers and other nondurable containers made from plastic, trash bags, as specified, glass food and beverage containers, fiberglass building insulation, and other glass products identified by MDE in regulation. MDE may grant a waiver from the postconsumer recycled content percentage requirements if MDE determines that achieving compliance would present an undue hardship or a practical difficulty not generally applicable to other producers in similar circumstances.

For each of the above products, the bill (1) specifies the products affected by the postconsumer recycled content requirements; (2) identifies products exempt from the requirements; and (3) phases in the minimum postconsumer recycled content percentages over time. Generally, the bill establishes the following minimum postconsumer recycled content percentage requirements:

- for plastic carryout bags: (1) 20% between January 1, 2025, and December 1, 2027; and (2) 40% beginning January 1, 2028;
- for plastic beverage containers: (1) 15% between January 1, 2026, and December 31, 2029; (2) 25% between January 1, 2030, and December 31, 2034; and (3) 40% beginning January 1, 2035;
- for rigid plastic containers and other nondurable containers, as specified: (1) 25% between January 1, 2027, and December 31, 2030; (2) 30% between January 1, 2031, and December 31, 2034; (3) 35% between January 1, 2035, and December 31, 2038; and (4) 40% beginning January 1, 2039;
- for trash bags: (1) 10% between January 1, 2025, and December 31, 2027; and (2) 30% beginning January 1, 2028; and
- for glass containers and products: (1) 35% between January 1, 2025, and December 31, 2027; (2) 40% between January 1, 2028, and December 31, 2032; and (3) 50% beginning January 1, 2033.

Preemption and Other Miscellaneous Provisions

Only the State may enact a law or take any other action to regulate the postconsumer recycled content of covered products. The bill preempts the authority of a county or municipality to enact a law or ordinance to regulate the postconsumer recycled content of covered products.

MDE may participate in the establishment and implementation of a multistate clearinghouse to assist in carrying out the bill's requirements, including to (1) help coordinate the review of registrations, waiver requests, and certifications and (2) implement education and outreach activities.

Enforcement and Penalty Provisions

The bill specifies that §§ 9-334 through 9-342 of the Environment Article must be used and must apply to enforce violations of the bill's provisions. Under these provisions, MDE has a broad range of actions it is authorized to use. Among other things, MDE is authorized to issue injunctions against violators, notices of order, and final corrective orders. These provisions also contain civil and administrative penalties. Penalty revenue collected under Title 9, Subtitle 3 of the Environment Article is paid into the Clean Water Fund.

Current Law:

Solid Waste Infrastructure and Recycling in the State, Generally

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, 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 Office of Recycling

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*.

State Recycling Trust Fund

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 Revenues: Special fund revenues for the State Recycling Trust Fund increase on an annual basis beginning March 1, 2024 (fiscal 2024) from annual registration fees paid by producers and representative organizations. The annual fee is \$1,000, but it is unclear whether *each producer* must pay the fee or if a *single representative organization* may pay *one fee* on behalf of several producers. In addition, the actual number of affected producers in the State is unknown. Thus, a reliable estimate of the increase in special fund revenues from registration fees cannot be made at this time.

The application of existing penalty provisions is not anticipated to materially affect State revenues.

State Expenditures:

Maryland Department of the Environment Administrative Costs

MDE’s administrative expenditures increase by \$134,692 in fiscal 2023, which reflects the bill’s October 1, 2022 effective date, and by \$315,793 in fiscal 2024, as discussed below. These estimates reflect the cost of hiring two natural resources planners in fiscal 2023 and three additional employees in fiscal 2024 (two environmental compliance specialists and one administrative specialist) to (1) research and identify producers of covered products in Maryland; (2) collect and process annual registrations and registration fees (beginning March 1, 2024) and third-party certifications of postconsumer recycled content (beginning March 1, 2026); (3) process waiver requests; (4) promulgate regulations; and (5) conduct compliance and enforcement activities. It includes salaries, fringe benefits, one-time start-up costs (including outreach and the purchase of a vehicle in fiscal 2024), and ongoing operating expenses.

	<u>FY 2023</u>	<u>FY 2024</u>
Positions (New)	2.0	3.0
Salaries and Fringe Benefits (Total)	\$118,046	\$250,091
Vehicle Purchase	0	32,000
Other Operating Expenses	<u>16,646</u>	<u>33,702</u>
Total MDE Admin Costs	\$134,692	\$315,793

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

MDE begins collecting annual registration fees in fiscal 2024, as discussed above. Accordingly, it is assumed that general funds are needed to pay MDE's costs in fiscal 2023. In addition, because the actual revenues generated by the registration fees are unknown, ongoing general fund support may be needed beyond fiscal 2023. Accordingly, for purposes of this analysis, it is assumed that MDE's administrative costs are covered by a combination of general funds and special funds in the out-years.

State Agencies as Consumers of Affected Products

State expenditures (multiple fund types) could increase, likely not before fiscal 2025 (when the minimum postconsumer recycled content requirements go into effect), due to any increase in the price of affected products that may result from the bill. However, the magnitude of any such increase is unknown.

Local Fiscal Effect: The bill likely affects recycling streams, which are often managed by local governments. It is anticipated that the bill's changes likely mean more materials are able to be recycled, which could reduce local recycling costs and increase local recycling revenues. Any increased ability to recycle under the bill could also assist counties in meeting their mandatory recycling rates under MRA.

Counties and municipalities are expressly exempted from the bill's registration, fee, and postconsumer content requirements under the bill. However, 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 number of units and revenue standards necessary to meet the bill's definition of producer, the bill results in additional operational responsibilities, and potentially significant costs, for affected producers to register, pay registration fees, and meet the minimum postconsumer recycled content standards for covered products. 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 covered products. On the other hand, the potential improvement of the recyclability of covered products could incentivize the development of small businesses in the State that support the manufacture of covered products that meet the bill's postconsumer recycled content standards or that supply raw materials used to manufacture compliant products.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Prince George's County; Maryland Association of Counties; City of Annapolis; Maryland Municipal League; Maryland Department of the Environment; Department of Legislative Services

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