

Department of Legislative Services  
 Maryland General Assembly  
 2023 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 342 (Delegate Terrasa, *et al.*)  
 Environment and Transportation and  
 Economic Matters

**Environment - Plastic 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 must conduct an evaluation of the program, post specified information online annually, and adopt regulations. Existing and new enforcement and penalty provisions apply.

**Fiscal Summary**

**State Effect:** General/special fund expenditures for MDE increase by \$147,100 in FY 2024; out-year administrative costs, which are covered by special funds, reflect additional staff, annualization, inflation, and ongoing costs. Special fund revenues increase to cover a portion of expenditures in FY 2024, and correspondingly to expenditures beginning in FY 2025; special fund revenues may increase further from penalties. State expenditures (multiple fund types) may increase as early as FY 2025.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	\$337,300	\$406,300	\$524,200	\$446,400
SF Expenditure	\$0	\$337,300	\$406,300	\$524,200	\$446,400
GF/SF Exp.	\$147,100	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

*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 and includes a franchisor of a franchise located in the State; 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; (3) a franchisee that operates a franchise in the State; or (4) a person 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 \$5.0 million annually in global revenue.

#### *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 with MDE and submits an annual registration fee to MDE by March 1 each year, beginning in 2024.

MDE must establish an annual registration fee for each category of a covered product. Registration fees must be set in a manner that (1) will produce funds sufficient to cover MDE’s estimated costs to plan, implement, administer, monitor, enforce, and evaluate the program for the upcoming year and (2) is proportional to each producer’s share of total pounds of plastic sold in the State in each product category for the prior year. If, in any given year, registration fee revenue exceeds MDE’s actual costs, MDE must carry the excess amount forward to reduce registration fees for the following year. Likewise, if, in any given year, registration fee revenue is insufficient to cover MDE’s actual costs, MDE must adjust the fees for the following year.

Registration fee revenue, along with any fines and penalties collected under the bill, must be deposited into a new, separate account within the State Recycling Trust Fund. The separate account may only be used to cover the costs of planning, implementing,

administering, monitoring, enforcing, and evaluating the program established under the bill.

The registration must include (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.

Any 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 (1) beverage containers; (2) rigid plastic containers or other nondurable containers made from plastic that are used to package or store food; and (3) rigid plastic containers or other nondurable containers made from plastic that are used for household cleaning products or personal care products. MDE may grant a temporary 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 beverage containers: (1) 15% from January 1, 2025, to December 31, 2027, both inclusive; (2) 25% from January 1, 2028, to December 31, 2032, both inclusive; and (3) 50% beginning January 1, 2033;
- for rigid plastic containers or other nondurable containers that are made from plastic and *are used to package or store food*, as specified: (1) 15% from January 1, 2027, to December 31, 2029, both inclusive; (2) 30% from January 1, 2030, to December 31, 2032, both inclusive; and (3) 40% beginning January 1, 2033; and

- for rigid plastic containers or other nondurable containers that are made from plastic and *are used for household cleaning products or personal care products*, as specified: (1) 25% from January 1, 2027, to December 31, 2030, both inclusive; (2) 30% from January 1, 2031, to December 31, 2034, both inclusive; (3) 35% from January 1, 2035 to December 31, 2038, both inclusive; and (4) 40% beginning January 1, 2039.

### *Enforcement and Penalty Provisions*

MDE is authorized to conduct audits and investigations to ensure compliance with the bill's requirements (specifically, new Title 9, Subtitle 25 of the Environment Article).

The bill specifies that §§ 9-334 through 9-342 of the Environment Article (existing enforcement provisions that generally apply to water pollution control violations) apply to enforce violations of the bill's provisions. However, a penalty may not be imposed on a producer for failing to register with MDE unless MDE first issues a written notice of violation and the producer has not registered with MDE within 90 days of receipt of the written notice.

Under §§ 9-334 through 9-342 of the Environment Article, in addition to being subject to an injunctive action, a violator is subject to a maximum penalty of \$10,000 to be collected in a civil action brought by MDE; each day a violation occurs is a separate violation. MDE may also impose a maximum administrative penalty of \$10,000 per violation and \$100,000 total; each day a violation occurs is a separate violation, and administrative penalties must be assessed with consideration given to specified factors. Criminal (misdemeanor) penalties may also be imposed, with a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. Each day on which a violation occurs is a separate violation. Additional criminal penalties apply for making false statements in required documents.

Also, beginning January 1, 2025, a producer that does not meet the minimum postconsumer recycled content percentage requirements established under the bill is subject to an administrative penalty each year the violation occurs. The bill establishes an equation that must be used to calculate the amount of the administrative penalty. MDE is authorized to adjust the amount of the administrative penalty as necessary to ensure that the administrative penalty exceeds the cost of compliance.

### *Reporting Requirement and Other Miscellaneous Provisions*

MDE must publish the following program information on its website on an annual basis: (1) a list of each registered producer of a covered product and associated brand names;

(2) the compliance status for each registered producer; and (3) any other information deemed appropriate by MDE.

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.

### *Required Evaluation of Effectiveness*

MDE must contract with a research university or an independent third-party consultant to (1) evaluate the implementation of the bill and its effectiveness in stimulating the State's recycling markets and displacing virgin plastic with postconsumer recycled content and (2) make recommendations for any legislative or administrative actions necessary to further the bill's purpose. By October 1, 2028, MDE must (1) report the findings and recommendations to the Governor and specified legislative committees and (2) post the findings and recommendations on its website.

**Current Law:** 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 recycle at least 20% or 35% of the county's solid waste stream, depending on the county's population. Each county (including Baltimore City) must also 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 Fiscal Effect:**

#### *Maryland Department of the Environment Administrative Costs, Related Registration Fee Revenue, and Penalties*

The bill contemplates that producers (either individually or as part of a representative organization) will fully fund, through registration fees paid to MDE and deposited into the new account within the State Recycling Trust Fund, MDE's costs to implement the bill. However, those entities are not required to begin registering until March 1, 2024, and MDE begins to incur costs upon the effective date of the bill (October 1, 2023). Thus, it is assumed that registration fees do not fully offset MDE's costs until fiscal 2025. Accordingly, for purposes of this analysis, it is assumed some general funds are needed in fiscal 2024. Beginning in fiscal 2025, special fund revenues from registration fees fully offset MDE's administrative costs, which are discussed below.

In addition, special fund revenues may increase further beginning as early as fiscal 2025, from any fines and penalties collected pursuant to the bill. The application of existing criminal penalty provisions is not anticipated to materially affect State incarceration expenditures.

*Administrative Costs:* General/special fund expenditures increase by \$147,083 in fiscal 2024, which reflects the bill's October 1, 2023 effective date, and special fund expenditures increase by \$337,328 in fiscal 2025. These estimates reflect the cost of hiring two natural resources planners in fiscal 2024 and three additional employees in fiscal 2025 (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 2025), and ongoing operating expenses.

	<u>FY 2024</u>	<u>FY 2025</u>
Positions (New)	2.0	3.0
Salaries and Fringe Benefits (Total)	\$129,565	\$273,055
Vehicle Purchase	0	32,000
Other Operating Expenses	<u>17,518</u>	<u>32,273</u>
<b>Total MDE Admin. Costs</b>	<b>\$147,083</b>	<b>\$335,528</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Additionally, MDE incurs contractual costs of \$100,000 in fiscal 2027 to contract with a research university or independent third-party consultant to conduct the required program evaluation.

*State Agencies as Consumers of Affected Products*

State expenditures (multiple fund types) could increase, likely not before fiscal 2025 (when the first of the minimum postconsumer recycled content requirements take 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. However, similar to the impact described above at the State level, expenditures for local governments as consumers of covered products may increase as early as fiscal 2025.

The application of existing criminal penalty provisions is not anticipated to materially affect local incarceration expenditures.

**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.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced within the last three years. See HB 1239 of 2022.

**Designated Cross File:** None.

**Information Source(s):** Maryland Department of the Environment; Department of General Services; Maryland Environmental Service; Baltimore, Carroll, Harford, and Queen Anne's counties; Northeast Maryland Waste Disposal Authority; City of Salisbury; towns of Bel Air and Leonardtown; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2023  
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