

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 285

(Senator Kagan, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation and
 Economic Matters

Environment – Expanded Polystyrene Food Service Products – Prohibitions

This bill prohibits, beginning July 1, 2020, (1) a person from selling or offering for sale in the State an “expanded polystyrene food service product” and (2) a “food service business” or school from selling or providing food or beverages in an expanded polystyrene food service product. The Maryland Department of the Environment (MDE) must conduct specified public education and outreach campaigns and is authorized to (1) promulgate regulations and (2) grant a waiver to a food service business or school from the bill’s prohibition, as specified. A “unit of county government” must enforce the bill’s prohibitions and may impose a monetary penalty for violations under specified conditions. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$150,000 in FY 2020 only. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	150,000	0	0	0	0
Net Effect	(\$150,000)	\$0	\$0	\$0	\$0

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

Local Effect: Overall, the bill is not anticipated to materially affect local government expenditures, as discussed below. The bill’s penalty provision is not anticipated to materially affect county revenues.

Small Business Effect: Minimal overall, but potential meaningful impact on any small businesses that manufacture the products prohibited by the bill, as discussed below.

Analysis

Bill Summary:

Key Definitions

“Expanded polystyrene food service product” means a product made of “expanded polystyrene” that is (1) used for selling or providing food or beverages and (2) intended by the manufacturer to be used once for eating or drinking or generally recognized by the public as an item to be discarded after one use. “Expanded polystyrene food service product” includes food containers, plates, hot and cold beverage cups, trays, and cartons for eggs or other food. “Expanded polystyrene food service product” does *not* include (1) food or beverages that have been packaged in expanded polystyrene containers before receipt by a food service business; (2) a product made of expanded polystyrene that is used to package raw, uncooked, or butchered meat, fish, poultry, or seafood; or (3) nonfoam polystyrene food service products.

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

A “school” includes a public elementary or secondary school, a nonpublic elementary or secondary school, and an institution of higher education.

A “unit of county government” includes a local health department or a local environmental department.

Required Public Education and Outreach Campaigns

MDE must conduct a public outreach and education campaign that includes (1) contact with food service businesses in consultation with relevant units of county government and relevant trade organizations; (2) contact with schools, in consultation with the Maryland State Department of Education (MSDE); (3) distribution of information through State Internet and web-based resources; and (4) news releases and news events. MDE must also conduct a public education and outreach antilittering campaign.

Waivers and Enforcement

MDE may grant to a food service business or school a waiver from the bill’s prohibition for up to one year if MDE determines that compliance would present an undue hardship or a practical difficulty that is not generally applicable to other food service businesses or schools in similar circumstances.

A unit of county government must enforce the bill's prohibitions and may impose a penalty of up to \$250 on a person or food service business that violates the bill's prohibitions. However, the monetary penalty may only be imposed if (1) the unit of county government first issues a written notice of violation to the person or food service business and (2) the violation is not corrected within three months of the written notice. A unit of county government must notify MDE of any violations.

Other Provisions

A person is not prohibited from storing a food service product for later distribution outside the State. A county, municipality, or other local government may enact standards that are at least as stringent as the bill's provisions.

Current Law/Background: Generally, there are no restrictions on the use of expanded polystyrene products in the food service industry or other industries. However, the Education Article requires Prince George's County's recycling program to address a strategy for the collection, processing, and disposition of the polystyrene trays used in public school cafeterias. Additionally, existing environmental regulations establish restrictions related to the control of volatile organic compound emissions from expandable polystyrene operations.

Although there are no statewide bans in the United States, several jurisdictions across the country have introduced legislation to ban or partially ban the use of expanded polystyrene foam, including Montgomery and Prince George's counties in Maryland; Washington, DC; Portland, Oregon; New York, New York; and Los Angeles County and the City of San Francisco in California. The ban in Washington, DC, includes a ban on the plastic foam products in restaurants and businesses; the ban took effect January 1, 2016, and applies to all businesses and organizations that serve food.

In Montgomery County, legislation passed in 2015 banned, beginning January 1, 2016, (1) food service businesses from using expanded polystyrene food service ware and (2) the sale of polystyrene loose fill packaging and expanded polystyrene food service products. In Prince George's County, legislation passed in 2015 banned, beginning July 1, 2016, the use or sale of expanded polystyrene food service products by food service businesses and the sale of polystyrene loose fill packaging and other foam articles.

Additionally, MDE advises that the Montgomery County Public Schools have used paper recyclable trays instead of polystyrene foam trays since 2014. Further, MDE notes that Baltimore City no longer uses polystyrene foam trays in school cafeterias, and a Baltimore City ordinance, which takes effect in October 2019, bans the use of expanded polystyrene foam food service products in school cafeterias. St. Mary's College of

Maryland advises that the college typically only uses biodegradable, nonpolystyrene foam containers.

Although foam coffee cups and plates are often referred to as “Styrofoam®,” that terminology is incorrect. Styrofoam® is actually a registered trademark of [Dow Chemical Company](#) and is a brand generally used in industrial settings for building materials and pipe insulation. Styrofoam® is not used in the food service industry for coffee cups, coolers, or packaging materials, which are generally made of expanded polystyrene.

State Expenditures: MDE incurs new responsibilities beginning in fiscal 2020 to develop outreach materials for its website, conduct educational and outreach campaigns, track any violations reported by units of county government, and grant any waivers from the bill’s prohibition. While MDE can handle several of these new responsibilities with existing resources, general fund expenditures increase by an estimated \$150,000 in fiscal 2020 only for MDE to conduct the required public antilittering campaign. Depending on the strategy of the campaign, however, costs could vary. MSDE can consult with MDE, as required, using existing budgeted resources.

Higher education expenditures may increase minimally for any State institution of higher education that uses polystyrene foam food service products and must switch to an alternative product due to the bill’s prohibition. According to the Washington, DC Department of Energy and Environment, which implemented a similar ban in January 2016, the additional cost for alternative products is minimal. In addition, as the number of polystyrene foam bans for food service products increases across the nation and the State, the supply of alternative products also increases, thereby decreasing their costs. Finally, because the ban does not take effect until July 1, 2020, affected schools have sufficient time to use existing products and identify and purchase alternatives. Accordingly, any impact on State institutions of higher education is anticipated to be minimal.

Similarly, there may be a minimal increase in State expenditures for any institutional cafeteria operated by or on behalf of the State government that uses polystyrene foam food service products and must switch to an alternative product due to the bill’s prohibition.

Local Expenditures:

Enforcement

Most units of county government can likely enforce the bill’s prohibitions with existing budgeted resources. For counties that enforce the bill through their local health departments, enforcement can likely be conducted during the course of regular food service facility and school inspections.

As noted above, Montgomery and Prince George's counties already ban the use of expanded polystyrene food service products. The Montgomery County Department of Environmental Protection and the Prince George's County Department of the Environment enforce the existing bans and can continue to do so under the bill with existing resources.

Impact on Local School Systems and Other Units of Local Government

The bill likely results in a minimal increase in expenditures for local public school systems that use polystyrene foam food service products and must switch to an alternative product, as discussed above with respect to State institutions of higher education under the State Expenditures section of this fiscal and policy note. It is assumed that local public school systems pass on any increase in costs to students in the form of higher prices for school meals.

Anne Arundel County Public Schools and Baltimore County Public Schools both advise that they use foam trays and that the estimated increase in costs for alternative products is at least \$0.03 per tray.

Anne Arundel County estimates that annual expenditures to replace foam trays with biodegradable alternatives increase by approximately \$290,000 to \$680,000, depending on the type of replacement trays purchased. The Department of Legislative Services notes that this increase is relatively minimal given the overall food services budget for the school system, which totals about \$36 million annually.

Baltimore County Public Schools estimates that expenditures increase by approximately \$281,000 to \$304,000 annually to switch from foam trays to paper trays. For contextual purposes, the fiscal 2019 budget for Baltimore County Public Schools includes \$49.7 million in its Food Service Enterprise Fund, \$22.5 million of which is for supplies and materials.

Similarly, there may be a minimal increase in local expenditures for any institutional cafeteria operated by or on behalf of a local government that uses polystyrene foam food service products and must switch to an alternative product due to the bill's prohibition.

Small Business Effect: According to the U.S. Small Business Administration, in 2012 there were 15,466 small businesses in the accommodation and food service sector in Maryland. Overall, the bill's impact on small food service businesses is likely minimal, since the additional cost for alternative products is minimal, and the bill provides time to use existing inventory and identify and purchase alternatives, as discussed above. The bill also explicitly states that the bill does not prohibit a person from storing a food service product for later distribution outside the State.

Any small business manufacturers of polystyrene foam products that are affected by the bill could be significantly impacted by the bill's prohibitions. Although the exact number of affected manufacturers in the State is unknown, Census data indicates that in calendar 2016, there were two polystyrene foam product manufacturing establishments in Maryland that would be considered small businesses. Thus, it is likely that the bill only affects a limited number of such manufacturers.

Additional Comments: The bill may result in a minimal increase in expenditures for any nonpublic schools that use polystyrene foam food service products and must switch to an alternative product, as discussed above.

Additional Information

Prior Introductions: SB 651 of 2018, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 538, received a hearing in the House Environment and Transportation Committee, but no further action was taken. SB 186 of 2017, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 229, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Cross File: HB 109 (Delegate Lierman, *et al.*) - Environment and Transportation and Economic Matters.

Information Source(s): Maryland Association of County Health Officers; Charles, Frederick, Montgomery, and Prince George's counties; Anne Arundel County Public Schools; Baltimore City Public Schools; Baltimore County Public Schools; Frederick County Public Schools; Montgomery County Public Schools; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Natural Resources Defense Council; Washington, DC Department of Energy and Environment; U.S. Census Bureau; Californians Against Waste; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2019
an/lgc Third Reader - March 21, 2019
Revised - Amendment(s) - March 21, 2019
Enrolled - April 17, 2019
Revised - Amendment(s) - April 17, 2019

Analysis by: Kathleen P. Kennedy

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