

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

Senate Bill 313  
 Finance

(Senator Augustine, *et al.*)

Plastics and Packaging Reduction Act

This bill prohibits a store from providing a customer with a “plastic carryout bag” and requires a store to charge, collect, and retain at least 10-cents for each “durable carryout bag” provided to a customer. The appropriate unit of county government must enforce these provisions, and the bill establishes a civil penalty for violations. The Maryland Department of Labor (MDL) must adopt implementing regulations. The bill also establishes the Single-Use Products Workgroup, staffed by the Maryland Department of the Environment (MDE); the workgroup must submit a report of its findings and recommendations to the Governor and the General Assembly by December 1, 2020. **The bill’s provisions relating to the workgroup take effect July 1, 2020, and terminate June 30, 2021. The bill’s other provisions take effect July 1, 2021.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$71,700 in FY 2021 only. Revenues are not materially affected.

| (in dollars)   | FY 2021    | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|------------|---------|---------|---------|---------|
| Revenues       | \$0        | \$0     | \$0     | \$0     | \$0     |
| GF Expenditure | 71,700     | 0       | 0       | 0       | 0       |
| Net Effect     | (\$71,700) | \$0     | \$0     | \$0     | \$0     |

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

**Local Effect:** County expenditures for enforcement increase beginning in FY 2022. Local revenues may decrease in some jurisdictions beginning in FY 2022. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Implementation and Enforcement of the Bill's Prohibition on Plastic Carryout Bags and the Requirement for Stores to Impose a Charge on Durable Carryout Bags*

As noted above, the bill prohibits a store from providing a customer with a “plastic carryout bag” and requires a store to charge, collect, and retain at least 10-cents for each “durable carryout bag” provided to a customer.

A “plastic carryout bag” is a plastic bag that is less than four mils thick and is provided by a store to a customer at the point of sale. It includes a compostable plastic bag that meets specifications established by the American Society of Testing and Materials International Standard Specification for Compostable Plastics D6400. A “durable carry out bag” is a bag that is provided by a store to a customer at the point of sale and does not include (1) a bag provided by a pharmacist to contain prescription drugs; (2) plastic bags sold in packages containing multiple plastic bags; or (3) a bag used to:

- package bulk items, including fruit, vegetables, nuts, grains, candy, or small hardware items;
- contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- contain or wrap flowers, potted plants, or other damp items;
- contain unwrapped prepared foods or bakery goods; or
- contain a newspaper, garments, or dry-cleaned clothes.

A “store” is a retail establishment that provides durable carryout bags or plastic carryout bags to its customers as a result of the sale of a product.

A store may not communicate that reimbursement of any part of the durable carryout bag charge will be assumed or absorbed by the store or refunded to the customer. Also, store receipts must indicate the number of durable carryout bags provided by the store and the total amount of money charged for the bags. The durable carryout bag charge is not subject to the sales and use tax.

The appropriate unit of county government must enforce these provisions. A unit of county government may grant a store up to two waivers from the bill's requirements for a period

of up to three months for each waiver if the unit of county government determines that complying with the bill would cause the store an undue hardship or a practical difficulty not generally applicable to other stores in similar circumstances.

The bill establishes a civil penalty of up to \$500 for each violation. The distribution of one or more plastic carryout bags at a single point of sale is a single violation, as is the failure to charge money for providing one or more durable carryout bags at a single point of sale. However, a penalty may not be imposed on a store more than once within a seven-day period. In addition, before any penalty is imposed, a written notice of a violation must be issued, and a store must have an opportunity to correct the violation within three months after receipt of the written notice.

MDL must adopt regulations to implement these provisions.

### *Single-Use Products Workgroup*

The stated purpose of the Single-Use Products Workgroup is to study, identify, assess, and make recommendations regarding materials, process, infrastructure, and policy to directly address plastic and single-use container waste throughout Maryland in alignment with the Waste Reduction and Resource Recovery Plan for Maryland that was established by Executive Order 01.01.2017.13.

The workgroup must (1) evaluate current State and municipal policies and requirements for the management of single-use products; (2) recommend policies or requirements that the State should enact to reduce the use of single-use products, reduce the environmental impact of single-use products, improve statewide management of single-use products, divert single-use products from disposal in landfills, and prevent contamination of natural resources by discarded single-use products; and (3) evaluate and make recommendations to mitigate the potential economic impact on specified low-income Marylanders, as specified. Workgroup members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations.

**Current Law:** Although local jurisdictions with general taxing powers (*e.g.*, Baltimore City and Baltimore and Montgomery counties) have the authority to levy a bag fee, State law does not broadly address carryout bags provided by retail establishments.

### *Local Plastic Bag Bans and Fees*

Chapter 725 of 2019 authorized Howard County to impose up to a 5-cent fee for the use of each disposable bag used as part of a retail sale of products. In December 2019, the Howard County Council used this authority and passed a 5-cent fee on the use of disposable plastic bags. Fees are collected by each store at the point of sale and are remitted to the

county quarterly. Stores are authorized to retain up to 20% of the 5-cent fee collected. The fee took effect February 5, 2020.

Montgomery County passed legislation (No. 8-11) on May 3, 2011, that places a 5-cent charge on each paper or plastic carryout bag provided by retail establishments at the point of sale, pickup, or delivery. The law took effect January 1, 2012.

Baltimore City also recently passed legislation that generally (1) prohibits grocers and other retailers from providing plastic checkout bags to customers and (2) requires a store to charge a 5-cent fee for any other bag supplied to customers, including paper bags. Retailers are authorized to keep 4-cents from the fee for each alternative bag they supply. The remaining one-cent is remitted to the city. The prohibition and fee requirements take effect in 2021.

According to MDE, the Town of Chestertown and the cities of Takoma Park and Westminster also have local ordinances governing the distribution of single-use bags.

#### *Executive Order 01.01.2017.13*

In January 2017, Governor Hogan issued [Executive Order 01.01.2017.13](#) that addresses waste reduction and resource recovery in Maryland and rescinded Executive Order 01.01.2015.01, issued by Governor O'Malley, which established a "Zero Waste Plan" in Maryland. Among other things, Governor Hogan's executive order establishes that it is Maryland's policy that solid waste and recycling planning should, to the extent practicable, (1) minimize the environmental impacts of materials management over their entire life cycles, including from product design to production, consumption, and end-of-life management; (2) conserve and extend existing in-state disposal capacity through source reduction, reuse, and recycling; (3) capture and make optimal use of recovered resources, including raw materials, water, energy, and nutrients; and (4) work toward a system of materials management that is both environmentally and economically sustainable in the long term.

**Background:** According to the National Conference of State Legislatures, eight states ban single-use plastic bags: California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont. Additionally, the cities of Boston, Massachusetts; Chicago, Illinois; Los Angeles and San Francisco, California; and Seattle, Washington ban plastic bags. Further, the cities of Boulder, Colorado; New York, New York; Portland, Maine; and Washington, DC have plastic bag bans and fees.

**State Expenditures:** General fund expenditures for MDL increase by \$71,696 in fiscal 2021 only, which assumes that MDL must develop and adopt regulations prior to the July 1, 2021 effective date of the provisions relating to the ban on plastic carryout bags and

the requirement for stores to impose a charge on the use of durable carryout bags. MDL advises that it needs one regular, full-time position to implement the bill. However, the Department of Legislative Services advises that the added responsibilities for MDL resulting from the bill are not permanent and, thus, may be performed by a contractual employee instead. Accordingly, this estimate reflects the cost of hiring one assistant attorney general to coordinate with counties and industry associations and establish a new regulatory framework to implement the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                 |
|---|-----------------|
| Contractual Position                    | 1               |
| Salary and Fringe Benefits              | \$66,171        |
| Operating Expenses                      | <u>5,525</u>    |
| <b>Total FY 2021 State Expenditures</b> | <b>\$71,696</b> |

Future year expenditures reflect termination of the contractual position in fiscal 2022 after MDL adopts the required regulations. This estimate assumes that since counties are responsible for enforcing the bill’s provisions, any out-year responsibilities for MDL can be handled with existing budgeted staff and resources.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

MDE can staff and otherwise participate in the workgroup with existing budgeted staff and resources.

**Local Expenditures:** County expenditures increase to enforce the bill’s provisions, as required by the bill. The increase in expenditures is potentially significant, particularly in the first year or two that the ban and charge requirements are in effect and for counties that do not currently regulate the use of plastic bags at retail stores. It is assumed that as retail stores come into compliance, the impact on county expenditures decreases.

**Local Revenues:** Because the bill prohibits stores from providing plastic carryout bags, any local jurisdictions that currently impose fees on those types of bags will no longer be able to do so as of July 1, 2021. Accordingly, local revenues in some jurisdictions decrease beginning in fiscal 2022. As noted above, Montgomery County currently imposes a 5-cent charge on each paper or plastic carryout bag provided by retail establishments, with revenues distributed to the county’s Water Quality Protection Charge Fund for stormwater management water quality improvements. The county program has generated about \$2.5 million annually for the last several years. Howard County also recently established a 5-cent charge on disposable plastic bags provided to customers.

Baltimore City's program takes effect in 2021, and at that time, 1-cent of each 5-cent charge for plastic bag alternatives will be remitted to the city. To the extent that the additional charge required by the bill decreases the number of alternative bags provided by stores in the city, city revenues could decrease.

The bill's penalty provision is not anticipated to materially affect local revenues.

**Small Business Effect:** Because the bill affects most retail trade establishments, a significant number of small businesses may be affected. Small businesses may benefit, possibly significantly, from durable carryout bag charge revenues retained under the bill.

The ban on providing plastic carryout bags does not take effect until July 1, 2021, so it is assumed that stores have adequate time to use existing inventory. However, the bill results in potentially significant additional operational responsibilities for small retailers, as they are required to (1) account for the number of paper and plastic bags provided to customers; (2) ensure customer transaction receipts include specified information; and (3) establish and implement durable carryout bag charges if such bags are provided to customers.

While the number of small businesses affected by the bill is unknown, *for illustrative purposes*, the U.S. Census Bureau estimates that in 2017, there were 16,621 retail trade establishments in Maryland that had fewer than 50 employees.

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### **Additional Information**

**Prior Introductions:** SB 57 of 2016, 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 31, received an unfavorable report from the House Environment and Transportation Committee. SB 620 of 2015, 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 551, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

**Designated Cross File:** HB 209 (Delegate Lierman, *et al.*) - Environment and Transportation and Economic Matters.

**Information Source(s):** Baltimore, Harford, Howard, and Montgomery counties; Maryland Association of Counties; Maryland Department of the Environment; Maryland Department of Labor; National Conference of State Legislatures; U.S. Census Bureau; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2020  
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