

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 36 (Delegate Lierman, *et al.*)

Environment and Transportation and
 Economic Matters

**Environment – Packaging, Containers, and Paper Products – Producer
 Responsibility**

This bill establishes a required framework for “producers” of “covered materials and products” to create and implement “stewardship plans” for the affected products. Stewardship plans must be submitted by each producer (either individually or as part of a stewardship organization) to the Maryland Department of the Environment (MDE) for review and approval by October 1, 2022. Plans must be approved by October 1, 2024, for a producer to sell, offer for sale, distribute, or import for sale or distribution covered materials or products for use in the State. The bill also establishes annual reporting requirements and civil penalties for violations. MDE must adopt implementing regulations.

Fiscal Summary

State Effect: General fund expenditures increase by \$122,500 in FY 2022 for initial staff; out-years reflects additional staff, annualization, and ongoing costs. General fund revenues increase correspondingly beginning in FY 2023 from producer fees. State expenditures (multiple fund types) may increase to purchase affected products as early as FY 2023.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	\$0	\$283,000	\$340,600	\$352,700	\$365,200
GF Expenditure	\$122,500	\$283,000	\$340,600	\$352,700	\$365,200
GF/SF Exp.	\$0	-	-	-	-
Net Effect	(\$122,500)	(-)	(-)	(-)	(-)

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 early as FY 2023.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Key Definitions

“Covered materials and products” means, regardless of recyclability (1) any part of a package or container, including material that is used for the containment, protection, handling, delivery, and presentation of a product that is sold, offered for sale, imported or distributed in the State and (2) paper products. “Covered materials and products” includes (1) primary, secondary, and tertiary packaging intended for the consumer market; (2) service packaging designed and intended to be filled at the point of sale (including carry-out bags, bulk good bags, take-out and home delivery food service packaging, and prescription bottles); (3) paper sold as a product; (4) printed materials; and (5) beverage containers. The term does not include any library, text, or reference bound book.

A “producer” is a person that (1) manufactures a covered material or product under the person’s own name or brand and sells, offers for sale, or distributes the covered material or product in the State; (2) imports a covered material or product as owner or licensee of a trademark or brand under which a covered material or product is sold or distributed in the State; or (3) sells, offers for sale, or distributes a covered material or product in the State. A producer does not include a local government.

A “stewardship organization” is a nonprofit organization created by a group of producers to implement a stewardship plan. A “stewardship plan” is a covered materials and products stewardship plan developed by a producer or stewardship organization pursuant to the bill.

Exclusions to the Bill’s Applicability

The bill does not apply to a producer that, on request by MDE, provides sufficient information to demonstrate that the producer (1) generated less than \$1.0 million in gross revenue during the prior calendar year; (2) sold, offered for sale, or distributed for sale in the State (during the prior calendar year) less than one ton of covered materials or products; or (3) conducted all of the sales of covered materials or products in the State (during the prior calendar year) at a single point of retail sale that was not supplied or operated as part of a franchise.

Development, Review, and Implementation of Stewardship Plans

By October 1, 2022, each producer must submit a stewardship plan to MDE for review and approval (either individually or as part of a stewardship organization). Beginning October 1, 2024, a producer may not sell, offer for sale, distribute, or import for sale or

distribution covered materials or products for use in the State unless the producer has an approved stewardship plan on file with MDE (either individually or as part of a stewardship organization).

The stewardship plans must (1) list the producers and brands covered by the plan, as specified; (2) include performance goals for a minimum postconsumer recycled material content rate and a minimum recycling rate for covered materials or products that includes specific minimum goals for postconsumer content, recyclability, and reductions in single use plastic, as specified; (3) describe several specific items related to the development of the plan, the implementation of the plan, the attainment of the performance goals, and outreach and education, as specified; and (4) include any other information required by MDE.

In addition to the items listed above, the plan must also describe the financing method that will be used by a producer or stewardship organization to implement the plan. The financing method must, among other things, (1) provide a method for reimbursing local governments for costs associated with collecting, transporting, and processing covered materials and products listed in the stewardship plan and (2) establish a fee structure for participating producers that is set to cover costs associated with implementing the stewardship plan (including administrative costs), reimbursing local governments, as discussed above, and MDE's related administrative, review, oversight, and enforcement costs. The financing method must be evaluated by an MDE-designated independent financial auditor to ensure that the costs of implementing the stewardship plan are covered.

MDE must review the stewardship plan, and within 90 days, either approve, approve with conditions, or reject a stewardship plan submitted for review. The bill establishes several considerations MDE must take into account when making a determination regarding a stewardship plan. In addition to reviewing the stewardship plan(s), MDE must also review the work product of the independent financial auditor designated by MDE to evaluate the financing component of the stewardship plan.

A producer or stewardship organization must implement a stewardship plan within six months after the date the plan is approved by MDE. An approved stewardship plan expires after five years, but MDE may rescind approval of a stewardship plan at any time.

By October 1, 2023, and annually thereafter, a producer must submit a report to MDE evaluating the progress toward meeting stewardship plan requirements and goals for the immediately preceding year. Any financial, production, or sales data reported to MDE by a producer must be kept confidential, as specified. Other than confidential information, the annual report must be posted on MDE's website and on the producer's or stewardship organization's website.

Reimbursement for Local Governments

A local government may request reimbursement from a producer or stewardship organization that has an approved stewardship plan for costs associated with collecting, transporting, and processing covered materials and products listed under the stewardship plan, in accordance with (1) producer requirements established under the stewardship plan and (2) any other requirement that MDE has adopted by regulation.

Penalties and Legal Immunities

A producer or stewardship organization that violates the bill's provisions is subject to a civil penalty of \$5,000 for a first offense, \$10,000 for a second offense, and \$20,000 for a third or subsequent violation. If a penalty is imposed on a stewardship organization, each participating producer is jointly and severally liable for the payment of the penalty.

Any person participating in a stewardship plan in compliance with the bill is immune from liability under State law relating to antitrust and restraint of trade for any cooperated activities arising out of the recycling, reuse, and disposal of covered materials and products.

Current Law: Maryland does not require any kind of specific product stewardship for covered materials and products. However, a person is prohibited from selling or offering for sale in the State an expanded polystyrene food service product, and a food service business or school is prohibited from selling or providing food or beverages in an expanded polystyrene food service product.

More broadly, 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 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 county recycling plan must address a variety of topics, including methods to reduce the solid waste stream; the feasibility of source separation of the solid waste stream generated within the county; and the strategy for the collection, processing, marketing, and disposition of recyclable materials.

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 Fiscal Effect:

Maryland Department of the Environment Administrative Costs and Related Producer Fee Revenue

General fund expenditures increase by \$122,452 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date, and by \$282,974 in fiscal 2023. This estimate reflects the cost of hiring two natural resources planners in fiscal 2022 and three additional employees in fiscal 2023 (one administrative specialist at the beginning of fiscal 2023 and two environmental compliance specialists later in fiscal 2023).

The two natural resources planners are hired in fiscal 2022 to begin implementing the bill by (1) identifying MDE’s administrative costs and planning; (2) conducting outreach and identifying affected producers; and (3) developing and promulgating regulations. Over time, the planners will also be responsible for reviewing stewardship plans and annual reports and assisting with compliance activities. The administrative specialist and the two environmental compliance specialists are hired in fiscal 2023 to (1) conduct additional outreach and education as necessary; (2) review stewardship plans and annual reports; (3) post annual reports online; (4) mail correspondence, including notices of noncompliance and violations; (5) conduct compliance inspections and investigate complaints; and (6) generally implement and enforce the bill once the stewardship plans are in place. These estimates include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill applies to a large number of producers, who are not already known by MDE, requiring a significant amount of outreach and administrative organization;
- MDE must review a relatively large number of stewardship plans on an ongoing basis; and
- in order to establish a robust producer responsibility program in the State, MDE needs to hire additional staff.

	<u>Fiscal 2022</u>	<u>Fiscal 2023</u>
New Positions	2	3
Salaries and Fringe Benefits (Total)	\$109,814	\$224,815
Vehicle Purchase	0	32,000
Other Operating Expenses	<u>12,638</u>	<u>26,159</u>
Total MDE Administrative Costs	\$122,452	\$282,974

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. To the extent that affected producers in the State ultimately end up working with a limited number of stewardship organizations, thereby reducing the number of proposed stewardship plans submitted for review and approval, MDE may not need to hire as many new employees, and costs decrease accordingly.

It is assumed that general fund revenues increase correspondingly, beginning in fiscal 2023, from producer fees. The financing method identified in a stewardship plan must establish a fee structure that is set in a manner to cover the administrative costs of the stewardship plan, including MDE's review, oversight, and enforcement of stewardship plans. Thus, this analysis assumes that MDE's administrative costs are fully offset by producers beginning in fiscal 2023. The bill does not identify a special fund to which producer fees are to be deposited, so it is assumed that such fees accrue to the general fund. Furthermore, because the plans are not required to be submitted and implemented until fiscal 2023 (at the earliest), this estimate assumes that no fees are collected in fiscal 2022.

State Agencies as Consumers of Affected Products

State expenditures (multiple fund types) could increase, beginning as early as fiscal 2023, due to any increase in the price to purchase covered materials and products that may result from the bill. However, the magnitude of any such increase in costs are unknown and depend largely on the specifics of the approved stewardship plans.

The Department of General Services (DGS) anticipates that the largest State agency spending category that is likely affected by the bill is office products, such as copy paper. According to DGS, Blind Industries and Services of Maryland is the preferred provider of paper products to the State and currently provides copy paper with 50% post-consumer recycled content at \$40.50 per case. DGS notes that the State of New York recently awarded a contract for 100% post-consumer recycled copy paper at \$30.22 per case. Thus, State costs to shift to 100% post-consumer recycled copy paper could be similar or even less expensive.

Penalty Revenue

General fund revenues may increase minimally beginning in fiscal 2023 due to the bill's civil penalty provisions.

Local Fiscal Effect: The bill likely affects recycling streams, which are often managed by local governments. This change means local revenues and expenditures are likely affected, although the overall impact on local jurisdictions depends largely on the content of the stewardship plans, which cannot be predicted. Even so, local revenues likely increase from reimbursements from producers to offset local costs to collect, transport, and process

covered materials and products that are listed under a stewardship plan. Local governments may also benefit from the diversion of affected products from landfills and an increase in recycling rates, which assists counties in meeting their mandatory recycling rates under MRA. Montgomery County notes, for example, that cost savings from diverted recycling costs and/or reimbursements could be significant.

Similar to the impact described above at the State level, expenditures for local governments as consumers of affected products may increase as early as fiscal 2023.

Small Business Effect: Although it is anticipated that the bill primarily affects larger businesses that meet the minimum gross revenue and tonnage of covered materials or product standards under the bill, the bill results in significant additional operational responsibilities, and potentially significant costs, for affected producers that are small businesses to develop and implement stewardship plans for covered materials and 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 affected products. On the other hand, the bill's performance goals could incentivize the development of small businesses in the State that recycle covered materials and products or that supply raw materials used to manufacture compliant covered materials and products.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Garrett, and Montgomery counties; Northeast Maryland Waste Disposal Authority; Maryland Department of the Environment; Department of General Services; Department of Legislative Services

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