



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 2, 2022

The Honorable C. T. Wilson, Chair
House Economic Matters Committee
House Office Building, Room 231
Annapolis, MD 21401

Re: House Bill 135 - Environment – Single-Use Plastics – Restrictions

Dear Chair Wilson and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 135 entitled *Environment – Single-Use Plastics – Restrictions* and would like to provide some information regarding the bill.

HB 135 would prohibit the provision of single-use condiments, lid plugs and stoppers, stirrers, straws, and utensils to a customer purchasing food or beverages for on-site dining, carryout, or food delivery, unless the customer requests the single-use food or beverage product or the business offers the product and it is accepted by the customer. This prohibition would not apply to food or beverages provided at a drive-through window, prepackaged beverage products, food or beverage products that customers serve themselves, lids, and condiment containers and lids that customers fill themselves. This prohibition would begin January 1, 2023.

The bill would require food service businesses to maintain a limited stock of single-use straws to accommodate the physical or medical needs of an individual in compliance with federal, state, and local laws and regulations. However, it is unclear whether this provision is intended to require a food service business to purchase and maintain a limited stock of single-use plastic straws that it does not currently provide as part of its normal course of business. The bill would permit a food service business to request a waiver from single-use food and beverage product prohibition, which a government entity may grant if it determines a food service business' compliance with the proposed restrictions would cause an undue hardship to the business.

The bill provides enforcement provisions and may be enforced by MDE, a unit of local government with the authority to inspect food service businesses, or the Attorney General. MDE does not currently inspect food service businesses, and local governments may therefore be in a better position to enforce the bill's prohibitions. To the extent the Department investigates any suspected violations, MDE anticipates doing so on the basis of any complaints received. Although the bill establishes penalties, it does not provide that any penalties collected are to be paid to the government entity that brought the enforcement action, nor specify an MDE-administered special fund where penalties collected by MDE would be deposited. It is anticipated the majority of penalties would be collected by local governments that bring enforcement actions against violators.

According to the *U.S. Environmental Protection Agency's Advancing Sustainable Materials Management: 2018 Tables and Figures* report, single-use food and beverage products covered under this bill appear to constitute less than 1.0% of the national solid waste stream. While single-use food and beverage products like straws and stirrers make up a small portion of the overall waste stream by weight, they can pose litter and water quality problems. These items are typically used away from home and are susceptible to littering. Due to being lightweight, they can make their way into storm drains and waterways and pose a risk of ingestion by marine and other wildlife. Litter prevention is important for protecting water quality. Maryland currently has trash total maximum daily loads under the federal Clean Water Act for the Anacostia River and the Baltimore Harbor.

There are a few provisions of the bill that, if clarified, may assist government entities in enforcing the bill and food service businesses in complying with the bill's requirements. The bill is not clear about whether enforcement under Part II of Subtitle 21 is civil or administrative in nature, and does not provide government entities the authority to issue administrative orders or seek an injunction through a court order. It is unclear what would happen if MDE issued a waiver but a local government or the Attorney General does not. Additionally, the bill may have inadvertently excluded certain small condiment containers from existing provisions regarding labeling of biodegradable and compostable plastic products by excluding them from the definition of food and beverage products in § 9-2101 of the Environment Article. That definition is used for both the compostable and biodegradable plastic product labeling provisions and the new provisions of this bill.

Thank you for your consideration. We will continue to monitor HB 135 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal line extending to the left.

Tyler Abbott

cc: Kaley Laleker, Director, Land and Materials Administration