

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 1034 (Delegate Carr, *et al.*)
Environmental Matters and Economic
Matters

Clean the Streams and Beautify the Bay Act of 2011

This bill requires stores to charge and collect a fee of 5 cents per disposable carryout bag provided to a customer. The fee is not subject to sales and use tax. Stores may retain 1 cent of every 5-cent fee collected. Stores with a “customer bag credit program” may retain 2 cents of every 5-cent fee collected. Stores must remit remaining fee revenue to the Comptroller. After retaining an amount necessary for administration, the Comptroller must distribute a portion of the fee revenue to the Department of Labor, Licensing, and Regulation (DLLR) to cover the costs of implementing and enforcing the bill and the remainder of the fee revenue to the Chesapeake Bay Trust. Prior to the distribution to the Chesapeake Bay Trust, by January 1, 2013, the Comptroller must also distribute a portion of the fee revenue to the Department of Human Resources (DHR) to cover the cost of a specified public outreach campaign that includes promoting reusable bags to citizens. DLLR must adopt implementing regulations. The bill establishes other requirements for stores, as well as penalties for violations.

The bill takes effect January 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by \$263,300 in FY 2012 only for information technology modifications and to provide notice. Special fund expenditures increase by \$176,900 in FY 2012 for additional DLLR staff. Special fund expenditures in FY 2013 and future years reflect DHR outreach campaign costs (in FY 2013 only), annualization, and inflation. Special fund revenues increase by \$176,900 in FY 2012, and future year special fund revenues correspond to the special fund expenditures in those fiscal years. The bill’s penalty provisions are not expected to materially affect State finances.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	\$176,900	\$818,000	\$333,600	\$350,100	\$367,500
GF Expenditure	\$263,300	\$0	\$0	\$0	\$0
SF Expenditure	\$176,900	\$818,000	\$333,600	\$350,100	\$367,500
Net Effect	(\$263,300)	\$0	\$0	\$0	\$0

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

Local Effect: Although the bill does not directly affect local government, to the extent local jurisdictions have their own local plastic bag programs, they may be affected by the bill.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “disposable carryout bag” is a paper or plastic bag provided by a store to a customer at the point of sale. A “disposable carryout bag” is not (1) a durable plastic bag with handles that is at least 2.25 mils thick and is designed and manufactured for multiple reuse; (2) a bag provided by a pharmacist to contain prescription drugs; (3) plastic bags sold in packages containing multiple plastic bags intended for use as garbage, pet waste, or yard waste bags; (4) a bag that a restaurant provides to a customer for food or drink; and (5) 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; and
- contain a newspaper or dry cleaning.

A “store” is a retail establishment that provides disposable carryout bags to its customers as a result of the sale of a product, but it does not include a roadside stand or farmers market.

A “customer bag credit program” is a program implemented in a store that requires the store to pay a customer a credit of at least 5 cents for each bag provided by the customer for packaging their purchases; requires the total amount of the credit paid to a customer to be displayed on the customer transaction receipt; and is prominently advertised at each checkout register in the store.

Stores that provide disposable carryout bags must provide customers with bags that are made of 100% recyclable material. If the bags are made of paper, they must contain a minimum of 40% postconsumer recycled content and display a specified phrase in a specified manner. Bags made of plastic must be made of either high-density polyethylene film marked with the SPI resin identification code “2” or low-density polyethylene film marked with the SPI resin identification code “4.” In either case, they must display a specified phrase in a specified manner.

Stores may not communicate that the reimbursement of the fee or any part of the fee they collect will be assumed or absorbed by the store or refunded to the customer. Also, store receipts must indicate the number of bags provided by the store and the total fee amount charged.

DLLR must adopt regulations to implement and enforce the bill. Penalties ranging from a maximum of \$100 for a first violation to a maximum of \$500 for a third or subsequent violation are authorized, subject to some limitations.

DHR must implement a public outreach campaign, funded by fee revenues, that includes a (1) public-private partnership to provide reusable carryout bags to Maryland citizens; and (2) collaboration with service providers that assist seniors and low-income residents to distribute information and reusable carryout bags to low-income households.

The bill expands the purposes for which the Chesapeake Bay Trust must use funds to provide grants for citizen involvement projects that enhance or promote (1) training in environmental studies or environmental enhancement through the Chesapeake Conservation Corps; and (2) public education on the importance of reducing the number of disposable carryout bags from entering the waste stream.

Current Law: State law does not address carryout bags provided by retail establishments.

Background: Americans use up to an estimated 100 billion plastic grocery bags annually, and the use of disposable carryout bags has been the center of much media attention. Proponents of disposable bag restrictions emphasize that the production of paper bags consumes a significant number of trees and that plastic bags clog waterways, harm wildlife, consume valuable landfill space, and lead to greater fossil fuel consumption.

As a result of these concerns, dozens of jurisdictions have adopted fees, bans, or other programs to discourage the use of disposable bags or to promote bag recycling. In March 2007, San Francisco became the first city in the United States to ban nonbiodegradable bags from large grocery stores and pharmacies. Earlier this year,

Baltimore City began implementing its plastic bag reduction program focused on encouraging consumers to use reusable bags and to recycle disposable plastic bags. The National Conference of State Legislatures reported that about 90 bills relating to plastic bags were introduced in 24 states in 2009. North Carolina enacted a ban on plastic bags in the Outer Banks region, and Delaware requires stores to establish at-store recycling programs.

On January 1, 2010, a new law took effect in the District of Columbia banning the use of disposable, nonrecyclable plastic carryout bags and requiring specified stores to charge a fee of 5 cents for each disposable bag a shopper is given. During the first 10 months of program implementation, approximately \$2.0 million in revenue had been raised and distributed for city efforts to protect the Anacostia River and other impaired waterways. In addition, the program is estimated to have reduced the number of bags consumed in the city by between 50% and 80%.

In April 2009, a bill (H.R. 2091) was introduced in the U.S. House of Representatives that imposes a retail tax on single-use carryout bags. Internationally, Bangladesh, China, France, Uganda, and several other countries have approved nationwide bans on the use of plastic bags. Germany, Ireland, Denmark, Sweden, South Africa, and Switzerland, among others, impose a tax or levy, while Holland and Canada focus on recycling. The United Nations has encouraged other countries to support plastic bag restrictions.

Due to concerns associated with both plastic and paper bags, reusable bags are gaining popularity, despite their additional cost.

Chesapeake Bay Trust

The trust is a private, nonprofit grant-making organization established by the General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality and aquatic and land resources of the Chesapeake Bay and other aquatic and land resources of the State. The trust awards grants to community-led environmental education and habitat restoration projects and implements the newly established Chesapeake Conservation Corps service program. The trust is governed by a board of trustees. The trust has general powers and duties to, among other things:

- solicit and accept gifts, grants, legacies, or endowment of money from the federal government, the State government, local governments, and private sources;
- provide grants to nonprofit organizations, community associations, civic groups, schools, or public agencies for citizen involvement projects;
- develop projects for sponsorship by corporate and business organizations or private individuals;

- develop criteria for such projects;
- make, execute, and enter into any contracts and other legal instruments; and
- receive appropriations as provided in the State budget.

The trust's funding comes from (1) sales of *Treasure the Chesapeake* commemorative license plates; (2) donations from Maryland's Chesapeake Bay and Endangered Species Fund income tax check-off program; (3) federal and State government contributions; and (4) private and corporate contributions.

State Expenditures:

Comptroller

While the Comptroller is authorized to retain a portion of the bag fee revenue for administration, in order to collect the revenue, the Comptroller must first upgrade technology and notify businesses. Therefore, this estimate assumes that fee revenue would not yet be available and that the Comptroller's *general fund* expenditures increase by \$263,250 in fiscal 2012 to make necessary programming modifications to the automated State of Maryland Tax ("SMART") system and notify businesses about the bill's new requirements. The Comptroller can absorb any implementation expenditures in fiscal 2013 and future years with existing resources.

DLLR

The bill requires DLLR to work in an area in which it is not currently engaged. DLLR advises that it does not enforce recycling laws, regularly go into retail establishments, or have a system that could be used to issue fines.

DLLR special fund expenditures increase by \$176,871 in fiscal 2012, which reflects the bill's January 1, 2012 effective date. This estimate reflects the cost of hiring one administrator, two field auditors, one clerk, and a part-time assistant Attorney General to develop and implement the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- DLLR adopts regulations, develops an administration and enforcement scheme, and conducts outreach to retailers to encourage compliance; and
- DLLR conducts random audits in the field to ensure compliance.

Positions	4.5
Salaries and Fringe Benefits	\$144,458
Operating Expenses	<u>32,413</u>
Total Fiscal 2012 DLLR Expenditures	\$176,871

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

DHR

The bill requires DHR to conduct a one-time public outreach campaign that includes providing reusable carryout bags and outreach to seniors and low-income households. This analysis assumes DHR special fund expenditures increase by \$500,000 in fiscal 2013 only for contractual costs associated with implementing the public outreach campaign.

State Revenues: The bill authorizes a portion of the bag fee revenues to be used by the Comptroller, DHR, and DLLR to administer, implement, and enforce the bill. A cap is not placed on how much fee revenue may be used to implement the bill's requirements. Thus, this analysis assumes (1) State special fund revenues and expenditures increase correspondingly; and (2) the bill generates significant revenue that exceeds estimated implementation expenditures. The remainder of the fee revenue is distributed to the Chesapeake Bay Trust, which is not a State agency.

The bill establishes penalties for stores that violate the bill's requirements. This estimate assumes that the penalty provisions of the bill do not materially affect State revenues; however, any penalties assessed would be paid into the general fund.

Small Business Effect: Because the bill impacts all retail trade establishments, a significant number of small businesses may be affected. The bill results in potentially significant additional operating responsibilities for small retailers, as they are required to (1) account for the number and type of bags their customers purchase; (2) provide carryout bags that meet specified requirements; (3) ensure customer transaction receipts include specified information; and (4) submit fee revenue to the State. However, small businesses may benefit from having the authority to retain a portion of the carryout bag fee. Small businesses with a customer bag credit program are required to implement the program in accordance with the requirements set forth in the bill, but retain a greater portion of the fees collected.

While the number of small businesses affected by the bill is unknown, *for illustrative purposes*, the U.S. Census Bureau estimates there were 19,088 retail trade establishments in Maryland in 2008, and 17,864 of these establishments had fewer than 50 employees.

Additional Comments: After making specified distributions to DHR and DLLR, remaining fee revenues generated by the bill must be allocated to the Chesapeake Bay Trust. Thus, the trust's revenues increase potentially significantly in fiscal 2012 and future years due to the fee revenue. In addition, the bill expands the trust's mission and responsibilities by requiring grants to be given to educate the public about the importance of reducing the number of disposable carryout bags.

While the total amount of bag fee revenue that will be allocated to the trust cannot be reliably estimated, it is anticipated to be significant, based on revenue generated over the past year by the District of Columbia's new bag program. *For illustrative purposes only*, assuming 19,088 retail trade establishments are impacted, each establishment uses 10,000 plastic bags annually, and 1 cent of every fee is retained by the affected retail establishment, \$7.6 million in total revenue is generated annually and \$1.9 million is retained annually by retail trade establishments.

Revenues generated by the bill depend on a number of variables, including the number of retail trade establishments impacted, the number of bags used, and consumer shopping decisions. These variables may shift considerably. The number of retail trade establishments in the State may be much lower than estimated above due to the decline in Maryland's economy. Also, more consumers are using multiuse bags to carry goods and the Internet to meet their shopping needs. To the extent the fee provides an incentive for shoppers to use reusable bags or stop using disposable bags, revenues would be less. Revenues would also be less to the extent stores create customer bag credit programs and individuals bring their own bags.

While the bill does not establish a special fund for bag fee revenue, this analysis characterizes the fee revenue as special funds.

Additional Information

Prior Introductions: SB 462 of 2010, a bill with similar provisions, received an unfavorable report from the Senate Finance Committee. Its cross file, HB 351 of 2010, received an unfavorable report from the House Environmental Matters Committee. HB 1210 of 2009, a bill with similar provisions, received a hearing in the House Environmental Matters Committee, but no further action was taken.

Cross File: SB 602 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs and Finance.

Information Source(s): Department of Human Resources; Department of Natural Resources; Department of Labor, Licensing, and Regulation; Comptroller's Office; National Conference of State Legislatures; U.S. Census Bureau; *The Washington Post*; Department of Legislative Services

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