



April 11, 2023

FISCAL AND POLICY NOTE

TO: Jennifer A. Jenkins
Council Administrator

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THRU: Josh Hamlin
Director of Budget and Policy Analysis

FROM: Alex Hirtle
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Policy Analysis and Fiscal Impact Statement
CB-032-2023 Better Bag Bill (DR-2)

CB-032-2023 (proposed by: Chairman Dernoga and Vice Chair Blegay)

Assigned to Transportation, Infrastructure, Energy, and Environment (TIEE) Committee

AN ACT CONCERNING BETTER BAG BILL for the purpose of providing for legislative intent; defining certain terms; prohibiting, after a certain date, a retail establishment from distributing certain plastic carryout bags to a customer at the point of sale; establishing a minimum charge for certain paper and reusable carryout bags provided by a retail establishment; providing for a certain exception; providing for a certain prohibition on certain advertising; providing for a certain promotion; providing for certain information on a certain receipt; providing that certain signage may be posted regarding certain charges for paper and reusable carryout bags; providing for education and outreach; establishing a certain maximum civil penalty for a violation of this Division; establishing that the distribution of a certain number of plastic carryout bags at a single point of sale constitutes a single violation; prohibiting the imposition of a penalty under this Division unless certain conditions are met; providing for the enforcement of this Division; providing for a certain waiver; providing for a certain report; providing for certain citations; permitting the Department of the Environment to adopt certain regulations; providing for the applicability of this Division; and generally relating to one-time use plastic carryout bags.

Fiscal Summary

Direct Impact:

Expenditures: Modest additional expenditures.

Revenues: No revenues foreseen.

Indirect Impact:

Potentially positive.

Legislative Summary:

CB-019-2023, sponsored by Council Chair Dernoga, Vice Chair Blegay, and Council Member Olson was presented on March 14th, 2023, and referred to the Transportation, Infrastructure, Energy and Environment (TIEE) Committee. The Bill was discussed in the TIEE Committee on March 23, 2023 and held in Committee.

The Bill prohibits, after December 31st, 2023, a retail establishment from providing plastic carryout bags to customers. Retail establishments are required to charge at least 10 cents for each paper carryout bag or reusable bag to the customer. The charge cannot be assumed, absorbed, or refunded by the retail establishment to the customer; the number of bags given out and the charge must be reflected on the customer's receipt.

A Plastic Carryout Bag is defined as a plastic bag that is provided by a retail establishment to a customer at the point of sale and is not a reusable carryout bag. A Plastic Carryout Bag does not include: a plastic bag used to: (i) package bulk items, including fruit, vegetables, nuts, grains, candy, or small hardware items; (ii) contain or wrap frozen foods, meat, or fish, whether prepackaged or not; (iii) contain or wrap flowers, potted plants, or other damp items; (iv) contain unwrapped prepared foods or bakery goods; (v) contain garments or dry-cleaned clothes; or (vi) take live fish, insects, mollusks, or crustaceans away from the retail establishment.

Paper bags containing a prescription medication by a pharmacy are exempt from the required charge.

One week out of the year retail establishments may provide reusable bags complimentary as a promotion.

Retail establishments may post a sign at each point of sale, visible to customers and employees during a transaction stating the charge for each paper and reusable bag it provides.

The Department of the Environment will conduct an education and outreach campaign before and during implementation of the legislation. The campaign should include mailers to businesses, internet and web-based information, as well as news releases and news events. The Department

will collaborate with community organizations and the business community to inform county residents of the legislation's provisions.

Penalties for a retail establishment that violates the provisions of this legislation is subject to a civil penalty not exceeding \$500, and the provision of one or more plastic carryout bags at a single point of sale is a single violation. The failure to charge the amount of money required under this Bill for the provision of one or more paper or reusable carryout bags at a single point of sale is a single violation. A penalty may not be imposed unless a retail establishment is first issued a written notice of violation, and does not correct the violation within seven days after receipt of the written notice.

The Department may grant waivers to retail businesses for up to three months if they see that a business would have undue hardship in complying with the provisions. Additionally, no citations with a monetary value will be issued during the first 90 days after the legislation takes effect.

The Department will also be required to submit an annual report to the County Executive and the County Council that includes a list of all the enforcement actions taken, and penalties issued regarding these provisions.

Draft 2 (DR-2) of the Bill has several amendments, including: requiring signage be posted at each point of sale, visible to customers and employees, for charging of paper and reusable bags; clarification of what a violation is; allowing for plastic garment bags in protecting dry-cleaned suits, dresses, and formal wear; and not charging for paper carry-out bags at drive-through windows of restaurants, or paper bags provided at full-service restaurants after the meal for leftovers.

Current Law/Background:

Plastic bags and plastics pollution have been an on-going environmental concern in the County, and world-wide. The world's oceans are taking in millions of tons of plastic from land-based sources annually.¹ Keep America Beautiful, a nationally known organization that educates the public in beautifying communities, mainly through its litter and trash clean-ups, found that plastic items are the largest percentage of litter type. Plastics account for 38.6% of all litter, paper being a distant second at 15.2%.² The Metropolitan Washington Council of Governments database on litter clean-ups in the Anacostia Watershed, of which large parts of it falls in Prince George's County, indicates that in 2022, litter clean-ups at sixteen different sites along these waterways revealed plastic bags were 32.5% of the trash picked up (nearly 1/3 of all trash). Plastic bottles were a distant second at 18.1%.³

¹ <https://www.iucn.org/resources/issues-brief/marine-plastic-pollution>

² Keep America Beautiful Litter Study Summary, May 2021, page 4.

³ March 9, 2023 email from DoE with MWCOG spreadsheets attached.

The County has long sought to reduce or eliminate plastic bag use. The Council supported reduced use of plastic bags and plastic bag recycling in legislation (CR-083-2008).⁴ The Council also considered, but did not enact, legislation to encourage the use of reusable bags and study the environmental impact of plastic bags (CB-038-2010).⁵ Additionally, the Council has passed legislation banning or regulating other petroleum-based products that have been a nuisance and financial burden on the County in terms of clean-ups, including the expanded polystyrene ban (CB-005-2015),⁶ and plastic straws and stirrers ban (CB-052-2019),⁷ as well as the Accessory Disposable Food Service Ware (CB-014-2022),⁸ which regulates food service facilities in providing disposable accessories to customers with food service orders.

Resource Personnel:

- Hugo Cantu, Policy Analyst for Chair Dernoga

Discussion/Policy Analysis:

What are the environmental impacts and human health concerns of plastic bags?

As noted earlier (in Current Law/Background), plastic bags are a very large percentage of trash and litter found and picked up in the County, in some cases as much as *one-third* of all trash content. Plastic bags can be seen nearly everywhere in the County- along roadways, being blown across parking lots and streets, trapped in tree branches and bushes, floating in waterways and stormwater management ponds. The aesthetics of this can take from the natural beauty of the County's environment, and is a reflection of the lack of control the County, and its communities have on everyday use and disposal of plastic bags.

Americans use about *100 billion* plastic bags every year, produced from nearly 12 million barrels of oil.⁹ Estimates indicate that Prince George's County alone uses about 353 million plastic bags annually.¹⁰ The cost of this in terms of greenhouse gasses and associated climate change is astronomical.¹¹ Plastic bags in waterways and the oceans are often ingested by turtles, fish, and other aquatic life; about 34% of leatherback turtles have ingested plastics.¹² Endocrine disruptors from chemical additives used in plastic products like bags have been associated with various cancers, birth defects, and immune system suppression in humans and wildlife.¹³ Plastic bags

⁴ [CR-083-2008](#)

⁵ [CB-038-2010](#)

⁶ [CB-005-2015](#)

⁷ [CB-052-2019](#)

⁸ [CB-014-2022](#)

⁹ https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html

¹⁰ Prince George's County Sierra Club Plastic Bag Presentation, March 17, 2023, slide 2.

¹¹ https://www.biologicaldiversity.org/programs/population_and_sustainability/sustainability/plastic_bag_facts.html

¹² N. Mrosovsky, 2009. Leatherback Turtles: The Menace of Plastic, 58 MARINE POLLUTION BULLETIN 287.

¹³ Ecology Center. Accessed 2021. Adverse Health Effects of Plastics. <https://ecologycenter.org/factsheets/adverse-health-effects-of-plastics/>

also take about 1,000 years to degrade in a landfill¹⁴; microplastics, i.e., plastic items that break down into tiny pieces, have been found in the earth’s deepest waters, on its highest mountains, and has been found ubiquitously in regular samples of household dust and human blood.^{15 16 17}

What other jurisdictions have banned plastic bags?

Below is a table listing jurisdictions and municipalities with plastic bag laws in Maryland, as of 3/12/23.¹⁸

Policy	Jurisdiction & year effective	Amount of fee/tax*	What is banned/taxed?
Tax on plastic and paper carryout bags	Montgomery County (2012)	5-cent tax	Plastic & paper carryout bags
Tax on plastic carryout bags	Howard County (2020)	5-cent tax	<2.25 mils thick plastic bags
Ban on plastic carryout bags	Chestertown (2012) Takoma Park (2016) Westminster (July 2021) Laurel (January 2022)	N/A	<2.4 mils thick plastic bags “disposable” bags <3 mils thick plastic bags <4 mils thick plastic bags
“Hybrid”- Ban on plastic carryout bags, tax or charge (retained by the store) on other bags	City of Baltimore (Oct. 2021) Baltimore County (Nov. 1, 2023) Easton (April 2, 2023) Salisbury (July 1, 2023) College Park (Sept. 1, 2023)	5-cent tax 5-cent charge 10-cent charge 10-cent charge 10-cent charge	<4 mils thick Plastic bags that aren’t reusable (as defined)

In addition to Maryland municipalities and jurisdictions that have plastic bag bans and bag fees, eight states have banned single-use plastic bags, including California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont.¹⁹ Also, major cities including Boston, Chicago, Los Angeles, San Francisco, Seattle have banned single use plastic bags; the cities/jurisdictions of Boulder, Colorado; Montgomery County, MD.; New York City; Portland, Maine; and Washington DC have plastic bag fees.²⁰ Many states, jurisdictions, and municipalities, inside and outside of Maryland, are presently considering plastic bag bans and/or single-use bag fees.

¹⁴ ACS Publications. 2020. “Degradation Rates of Plastics in the Environment,” Pages 3495, 3499-3500, 3503. <https://pubs.acs.org/doi/10.1021/acssuschemeng.9b06635>

¹⁵ <https://www.theguardian.com/environment/2019/aug/14/microplastics-found-at-profuse-levels-in-snow-from-arctic-to-alps-contamination>

¹⁶ <https://www.smithsonianmag.com/smart-news/microplastics-detected-in-human-blood-180979826/>

¹⁷ <https://www.sciencedirect.com/science/article/pii/S016041201931952X>

¹⁸ Prince George’s County Sierra Club Plastic Bag Presentation, March 17, 2023, slide 16.

¹⁹ <https://www.ncsl.org/environment-and-natural-resources/state-plastic-bag-legislation#:~:text=Eight%20states%E2%80%94California%2C%20Connecticut%2C,bags%20at%20large%20retail%20stores.>

²⁰ IBID

Why not just recycle plastic bags instead of banning them?

In Prince George's County, plastic bag recycling cannot be part of the single-stream recycling program because the Material Recycling Facility (MRF) cannot process plastic bags, plastic wrap, or other types of thin plastic film or materials. In fact, the equipment that separates the single stream items for recycling regularly gets clogged with plastic bags and plastic wrap and film, and needs to be cleaned frequently. Other efforts to recycle plastic bags have been mixed. For example, many grocery stores will accept used bags for recycling, but it has been determined that a very small percentage of plastics are ever recycled. Greenpeace, using standards set by The Ellen MacArthur Foundation, found that no type of plastic, even plastic bottles, is considered "recycled" when compared with their recycling standard of 30%. In fact, some rates of recycling for certain plastics, using the definition that recycling a certain material (such as paper) will create a new product, may be as low as 5%.²¹

How will the Department of the Environment enforce the Better Bag Bill?

Enforcement will realistically be a challenge, but not an impossible task. As seen with the expanded polystyrene ban (CB-005-2015), the Department partnered with community and civic organizations, and others to observe and inform the County when a business or entity was distributing or selling the banned product (under the legislation's terms). By utilizing the residents of the County, the polystyrene ban has been successful. Empirically, there is very little polystyrene seen as litter in the County now. The Department can emulate this type of success with the Better Bag Bill and dramatically reduce the use, and amount of plastic bags that will accumulate in the County's environment.

Why does the Bill include charging for paper and other types of bags?

The Bill is designed to incentivize the use of reusable bags, or to use no bag at all. By being charged a fee each time a customer is provided a bag, it reminds the customer that by using their own reusable bags, no fee is incurred. Additionally, the use of paper bags creates environmental concerns, usually in the form of upstream impacts such as raw material extraction (including trees), energy use, air and water pollution; downstream impacts include landfill breakdown of the product and volume challenges, and (as with plastic bags) litter issues.

How will the Bill affect low-income shoppers?

The Bill should have minimal impact on low-income shoppers. The Bill allows for the Department of the Environment to designate one week per year when retail establishments may provide reusable bags free of charge as a promotion. Additionally, when retailers start collecting the fees of customers using paper and other carryout bags, customers may see prices stabilize or even lowered when the retailers' cost of providing bags is no longer a liability to them. Low-income shoppers can take advantage of the free giveaway of reusable bags, purchase reusable bags at a nominal cost for themselves, and avoid ever having to pay for paper or other carryout bags.

²¹ <https://www.npr.org/2022/10/24/1131131088/recycling-plastic-is-practically-impossible-and-the-problem-is-getting-worse#:~:text=While%2052%25%20of%20recycling%20facilities,is%20put%20into%20a%20landfill.>

Are farmers markets, public festivals, and food trucks required to follow this legislation?

Under the definition of “Retail Establishment” used in the legislation, the text “...any other establishment that provides bags to its customers...” appears to cover farmers markets. The inclusion of public festivals and food trucks in the definition is more ambiguous.

Fiscal Impact:

- *Direct Impact*

Enactment of CB-032-2023 will have a modest adverse fiscal impact. The Department of the Environment will be required to conduct an education and outreach campaign before and during the implementation of the legislation. This will include the cost of mailers to the affected businesses, internet and web-based efforts, and news releases and news events. All this will require staff hours and resources. Collaboration with community and civic organizations will again incur a cost staff-wise, but this can be a cost-effective approach in spreading information about the new requirements to citizens, businesses, and other groups.

Enforcement of the legislation will also necessitate additional expenditures as staff resources will be required to perform spot-inspections, follow-ups on alleged violations, regular inspections, and issuing citations. However, as was seen with the polystyrene ban, if residents and communities are engaged in observing and calling in violators, enforcement can be more efficient with a lower fiscal impact to the County.

- *Indirect Impact*

Enactment of CB-032-2023 should have notable favorable indirect impacts on the County by significantly reducing the amount of plastic bags that enter the environment. Reductions would include cleaner waterways, street and road rights-of-way, and cleaner public spaces and private parcels. A cleaner and more aesthetically pleasing environment can raise property values, encourage residents and businesses to move in and remain in the County, and less plastic in and outside of homes can help create a healthier environment, especially with newer established evidence of the effects of micro-plastics, both for humans and animals.

Additionally, less bags in the environment means less resources needing to go into litter clean-ups, especially when local data indicates plastic bags are one of, if not the most prevalent litter items that are picked up regularly.

- *Appropriated in the Current Fiscal Year Budget*

No.

Effective Date of Proposed Legislation:

The proposed Bill shall be effective forty-five (45) calendar days after it becomes law.

If you require additional information, or have questions about this fiscal impact statement, please reach out to me via phone or email.