

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 109 (Delegate Lierman, *et al.*)

Environment and Transportation and  
Economic Matters

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**Environment - Expanded Polystyrene Food Service Products - Prohibition**

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This bill prohibits, beginning January 1, 2020, (1) a person from selling or offering for sale in the State an “expanded polystyrene food service product” and (2) a “food service business” or school from selling or providing food in an expanded polystyrene food service product. A county, municipality, or other local government may enact standards that are at least as stringent as the bill’s provisions. The Maryland Department of the Environment (MDE) must conduct a specified public education and outreach campaign and is authorized to (1) promulgate regulations to implement the bill and (2) grant a waiver to a food service business or school from the bill’s prohibition, as specified. County health departments must enforce the bill’s prohibitions and may impose a monetary penalty for violations under specified conditions. **The bill takes effect July 1, 2019.**

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**Fiscal Summary**

**State Effect:** Overall, the bill is not anticipated to materially affect State finances, as discussed below.

**Local Effect:** Overall, the bill is not anticipated to materially affect local government expenditures, as discussed below. The bill’s penalty provision is not anticipated to materially affect county revenues.

**Small Business Effect:** Minimal overall but potential meaningful impact on any small businesses that manufacture the products prohibited by the bill, as discussed below.

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## Analysis

### Bill Summary:

#### *Key Definitions*

“Expanded polystyrene food service product” means a product made of “expanded polystyrene” that is used for selling or providing food and includes food containers, plates, hot and cold beverage cups, meat and vegetable trays, and egg cartons.

“Expanded polystyrene food service product” does *not* include (1) prepackaged soup or other food that a food service business sells or provides to its customers in expanded polystyrene containers that have been filled and sealed before receipt by the food service business; (2) food or beverages that have been filled and sealed outside the State before receipt by the food service business; (3) materials used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption; or (4) nonfoam polystyrene food service products.

A “food service business” is a business that sells or provides food for consumption in the State both on or off premises and includes specified businesses, including restaurants, fast food restaurants, cafes, supermarkets and grocery stores, vending trucks and carts, movie theaters, and business and institutional cafeterias, among others.

A “school” includes a public elementary or secondary school, a nonpublic elementary or secondary school, and an institution of higher education.

#### *Required Public Education and Outreach Campaign*

The public education and outreach campaign that MDE must conduct must include (1) contact with food service businesses in consultation with county health departments and relevant trade organizations; (2) contact with schools, in consultation with the Maryland State Department of Education (MSDE); (3) distribution of information through State Internet and web-based resources; and (4) news releases and news events.

#### *Waivers and Enforcement*

MDE may grant to a food service business or school a waiver from the bill’s prohibition for up to one year if MDE determines that compliance would present an undue hardship or a practical difficulty that is not generally applicable to other food service businesses or schools in similar circumstances.

County health departments must enforce the bill's prohibitions and may impose a penalty of up to \$250 on a person or food service business that violates the bill's prohibitions. However, the monetary penalty may only be imposed if (1) the county health department first issues a written notice of violation to the person or food service business and (2) the violation is not corrected within three months of the written notice. A county health department must notify MDE of any violations.

**Current Law/Background:** Generally, there are no restrictions on the use of expanded polystyrene products in the food service industry or other industries. However, the Education Article requires Prince George's County's recycling program to address a strategy for the collection, processing, and disposition of the polystyrene trays used in public school cafeterias. Additionally, existing environmental regulations establish restrictions related to the control of volatile organic compound emissions from expandable polystyrene operations.

Although there are no statewide bans in the United States, several jurisdictions across the country have introduced legislation to ban or partially ban the use of expanded polystyrene foam, including Montgomery and Prince George's counties in Maryland; Washington, DC; Portland, Oregon; New York, New York; and Los Angeles County and the City of San Francisco in California. The ban in Washington, DC, includes a ban on the plastic foam products in restaurants and businesses; the ban took effect January 1, 2016, and applies to all businesses and organizations that serve food.

In Montgomery County, legislation passed in 2015 banned, beginning January 1, 2016, (1) food service businesses from using expanded polystyrene food service ware and (2) the sale of polystyrene loose fill packaging and expanded polystyrene food service products. In Prince George's County, legislation passed in 2015 banned, beginning July 1, 2016, the use or sale of expanded polystyrene food service products by food service businesses and the sale of polystyrene loose fill packaging and other foam articles.

Additionally, MDE advises that the Montgomery County Public Schools have used paper recyclable trays instead of polystyrene foam trays since 2014. Further, MDE notes that Baltimore City no longer uses polystyrene foam trays in school cafeterias, and a Baltimore City ordinance, which takes effect in October 2019, bans the use of expanded polystyrene foam food service products in school cafeterias. St. Mary's College of Maryland advises that the college typically only uses biodegradable, nonpolystyrene foam containers.

Although foam coffee cups and plates are often referred to as "Styrofoam®," that terminology is incorrect. Styrofoam® is actually a registered trademark of [Dow Chemical Company](#) and is a brand generally used in industrial settings for building materials and

pipe insulation. Styrofoam® is not used in the food service industry for coffee cups, coolers, or packaging materials, which are generally made of expanded polystyrene.

**State Expenditures:** MDE incurs new responsibilities beginning in fiscal 2020 to develop outreach materials for its website, conduct an educational and outreach campaign, track any violations reported by local health departments, and grant any waivers from the bill's prohibition. However, MDE can implement the bill with existing budgeted resources. MSDE can consult with MDE, as required, using existing budgeted resources.

Higher education expenditures may increase minimally for any State institution of higher education that uses polystyrene foam food service products and must switch to an alternative product due to the bill's prohibition. According to the Washington, DC Department of Energy and Environment, which implemented a similar ban in January 2016, the additional cost for alternative products is minimal. In addition, as the number of polystyrene foam bans for food service products increases across the nation and the State, the supply of alternative products also increases, thereby decreasing their costs. Finally, because the ban does not take effect until January 1, 2020, affected schools have sufficient time to use existing products and identify and purchase alternatives. Accordingly, any impact on State institutions of higher education is anticipated to be minimal.

### **Local Expenditures:**

#### *Enforcement*

Most local health departments can likely enforce the bill's prohibitions with existing budgeted resources during the course of regular food service facility and school inspections.

As noted above, Montgomery and Prince George's counties already ban the use of expanded polystyrene food service products. However, the county health departments do not enforce the existing bans; the Montgomery County Department of Environmental Protection and the Prince George's County Department of the Environment do so. In addition, Montgomery County advises that its enforcement is complaint based. Assuming the counties can continue enforcing and implementing the county-level bans through their respective county environmental departments, the bill does not materially affect expenditures in these two counties. However, to the extent the county health departments must instead enforce the bans and/or the counties must conduct a more robust enforcement program, county health department expenditures increase to hire additional staff to conduct inspections.

### *Impact on Local School Systems*

The bill likely results in a minimal increase in expenditures for local public school systems that use polystyrene foam food service products and must switch to an alternative product, as discussed above with respect to State institutions of higher education under the State Expenditures section of this fiscal and policy note. It is assumed that local public school systems pass on any increase in costs to students in the form of higher prices for school meals.

Anne Arundel County Public Schools and Baltimore County Public Schools both advise that they use foam trays and that the estimated increase in costs for alternative products is at least \$0.03 per tray.

Anne Arundel County estimates that annual expenditures to replace foam trays with biodegradable alternatives increase by approximately \$290,000 to \$680,000, depending on the type of replacement trays purchased. The Department of Legislative Services notes that this increase is relatively minimal given the overall food services budget for the school system, which totals about \$36 million annually.

Baltimore County Public Schools estimates that expenditures increase by approximately \$281,000 to \$304,000 annually to switch from foam trays to paper trays. For contextual purposes, the fiscal 2019 budget for Baltimore County Public Schools includes \$49.7 million in its Food Service Enterprise Fund, \$22.5 million of which is for supplies and materials.

**Small Business Effect:** According to the U.S. Small Business Administration, in 2012 there were 15,466 small businesses in the accommodation and food service sector in Maryland. Overall, the bill's impact on small food service businesses is likely minimal, since the additional cost for alternative products is minimal, and the bill provides time to use existing inventory and identify and purchase alternatives, as discussed above.

Any small business manufacturers of polystyrene foam products that are affected by the bill could be significantly impacted by the bill's prohibitions. Although the exact number of affected manufacturers in the State is unknown, Census data indicates that in calendar 2016, there were two polystyrene foam product manufacturing establishments in Maryland that would be considered small businesses. Thus, it is likely that the bill only affects a limited number of such manufacturers.

**Additional Comments:** The bill may result in a minimal increase in expenditures for any nonpublic schools that use polystyrene foam food service products and must switch to an alternative product, as discussed above.

## Additional Information

**Prior Introductions:** SB 651 of 2018 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 538, received a hearing in the House Environment and Transportation Committee, but no further action was taken. SB 186 of 2017, 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 229, received a hearing in the House Environment and Transportation Committee, but no further action was taken.

**Cross File:** SB 285 (Senator Kagan, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Association of County Health Officers; Charles, Frederick, Montgomery, and Prince George's counties; Anne Arundel County Public Schools; Baltimore City Public Schools; Baltimore County Public Schools; Frederick County Public Schools; Montgomery County Public Schools; Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Natural Resources Defense Council; Washington, DC Department of Energy and Environment; U.S. Census Bureau; Californians Against Waste; Department of Legislative Services

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