

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 901

(Senator Augustine, *et al.*)

Education, Energy, and the Environment

Environment and Transportation and
 Economic Matters

Environment - Packaging and Paper Products - Producer Responsibility Plans

This bill alters provisions relating to the existing Producer Responsibility Advisory Council and establishes a required framework for producers of covered materials to create and implement producer responsibility plans. The producer responsibility organization approved by Maryland Department of the Environment (MDE) pursuant to current law must register annually beginning July 1, 2026. Producer responsibility plans must be submitted by each producer to MDE for review and approval by July 1, 2028. Beginning on a date set by MDE, a producer may not sell, offer for sale, distribute, or import for sale or distribution covered materials for use in the State unless the producer has an approved plan. The bill also, among other things, requires MDE to develop a statewide list of covered materials and establishes provisions relating to (1) service providers; (2) an ongoing statewide recycling needs assessment and (3) enforcement. MDE must adopt implementing regulations. **The bill takes effect June 1, 2025.**

Fiscal Summary

State Effect: No effect in FY 2025. Special fund expenditures increase by \$212,800 in FY 2026; out-years reflect annualization, inflation, ongoing costs, and new staff in FY 2027 and 2029. Special fund revenues increase by \$667,000 in FY 2026 from a certain fee; out-years reflect ongoing fee revenues, which increase correspondingly to MDE’s costs in FY 2027 and annually beginning in FY 2029; FY 2028 revenues cannot be estimated. State expenditures (multiple funds) may increase beginning in FY 2029.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$667,000	\$330,100	-	\$572,300	\$549,000
SF Expenditure	\$212,800	\$330,100	\$338,000	\$572,300	\$549,000
Exp. (Mult. Funds)	\$0	\$0	\$0	-	-
Net Effect	\$454,200	\$0	(-)	(-)	(-)

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

Local Effect: Local finances may be affected, likely not before FY 2029, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: It is the intent of the General Assembly that Title 9, Subtitle 25 of the Environment Article, as altered by the bill, provide a framework for (1) minimizing the environmental and human health impacts of packaging, as specified; (2) conserving resources by increasing the recycling rates and recycled content of covered products; (3) modernizing and improving waste and recycling systems in the State, as specified; and (4) making producers financially responsible for investing in the needed infrastructure and reimbursing local governments and other service providers for costs associated with transporting, collecting, and processing covered materials.

Subtitle 25 does not affect the authority of the State or a local jurisdiction to regulate the sale or use of any packaging material. Further, Subtitle 25 may not be construed to (1) prohibit a local government, a service provider, or any other entity from selling recycled materials or compost to end markets and retaining the revenues from those sales; (2) affect the authority of a publicly or privately owned materials recycling facility or composting facility to determine which entities may use the facility; or (3) limit the ability of local governments, materials recycling facilities, or composting facilities to make decisions on recycling infrastructure purchases, including processing equipment.

Key Definitions

The bill alters the definition of “producer” that was established under Chapter 465 of 2023 – in general, a producer is the person responsible for compliance with a producer responsibility plan – and generally includes brand owners, manufacturers, or importers, as further delineated by the bill based on, among other things, whether the item is (1) sold in or with packaging at a physical retail location in the State or (2) sold or distributed in packaging in or into the State via e-commerce, remote sale, or online distribution. For packaging that is not described under those provisions, the producer of the packaging is the person that first distributes the item in or into the State, and for paper products, the producer is generally either the publisher, the manufacturer, the brand owner, or the importer of the paper product.

The definition of “producer” is further altered to exclude the following entities:

- a state, federal or state agency, a political subdivision, or other governmental unit;
- a registered 501(c)(3) charitable organization or a 501(c)(4) social welfare organization;
- a “*de minimis* producer,” defined as a person that in their most recent fiscal year, introduced less than one ton of covered material into the State or earned global gross revenues of less than \$2.0 million;
- a mill that uses any virgin wood fiber in the product it produces;
- a paper mill that produces container board derived from 100% postconsumer recycled content and nonpostconsumer recycled content;
- an entity that owns or operates a restaurant, food cart, or similar establishment that is headquartered in the State and primarily sells food to members of the public, as specified, and is not a producer of food serviceware;
- an entity that owns or operates a single retail sales establishment that has no online sales and is not supplied or operated as part of a franchise or chain;
- an entity that is licensed under Title 2 of the Alcoholic Beverages and Cannabis Article and generated less than \$10.0 million in gross revenue during the immediately preceding calendar year; or
- a producer that has executed an agreement with another entity, under which the other entity has agreed to assume responsibility by written certification under a producer responsibility program for any packaging materials attributable to the first entity.

“Producer responsibility plan” means a covered materials producer responsibility plan submitted by a producer or producer responsibility organization in accordance with the bill.

“Covered entity” means a person or location that receives “covered services” for “covered materials” in accordance with Subtitle 25, including a single-family or multifamily residence, a public or nonpublic kindergarten, elementary school, or secondary school, a child care center, and a public building owned or operated by the State or a local government.

“Covered services” means (1) collecting, transferring, transporting, sorting, processing, recovering, preparing, or otherwise managing covered materials for purposes of waste reduction, reuse, recycling, or composting and (2) public education and outreach activities related to those activities. The term does not include disposal of covered materials.

“Covered materials” means packaging and paper products sold, offered for sale, imported, or distributed in the State; the term does not include “exempt materials,” as further defined. Generally, “exempt materials” includes packaging for:

- infant formula, medical food, and fortified oral nutritional supplements;
- specified products regulated by the U.S. Food and Drug Administration, the U.S. Department of Agriculture, and the U.S. Environmental Protection Agency;
- liquefied petroleum gas containers that are designed to be refilled;
- certain federally regulated hazardous and flammable products;
- newsprint and paper products used for a magazine’s print publication, as specified; and
- the containment of hazardous or flammable products, as specified.

In addition, packaging collected and properly managed through the State’s Paint Stewardship Program, and certain material that is distributed from one producer to another, are considered “exempt materials.”

“Service provider” means an entity that provides covered services for covered materials; the term includes a local government that provides, contracts for, or otherwise arranges with another party to provide covered services for covered materials within its jurisdiction regardless of whether the local government provided, contracted for, or otherwise arranged for similar services before the approval of the applicable producer responsibility plan.

Producer Responsibility Advisory Council

The bill alters provisions related to the membership, stated purpose, and duties of the Producer Responsibility Advisory Council that was established pursuant to Chapter 465. Under the bill, the stated purpose of the advisory council is to provide advice and make recommendations regarding establishing and implementing a producer responsibility program in the State for *covered* (rather than *packaging*) materials, *include providing advice on drafting, amending, and implementing producer responsibility plans.*

The bill repeals the existing duty of the advisory council (which, under current law, is to evaluate and make recommendations, including legislative recommendations, on how to effectively establish and implement a producer responsibility program in the State for packaging materials). It also repeals a related reporting requirement. Under the bill, the advisory council must (1) provide advice regarding the drafting or amending of a producer responsibility plan, on request of a producer or producer responsibility organization; (2) receive and review the producer responsibility plans and annual reports submitted in accordance with the bill; (3) make recommendations to MDE regarding producer responsibility plan approval; (4) make recommendations to MDE and producer responsibility organizations regarding plan implementation; and (5) provide written recommendations regarding the producer responsibility plan, including any update or revision to an approved plan, to a producer responsibility organization before the plan is submitted to MDE.

Registration of Producer Responsibility Organizations

Beginning July 1, 2026, and annually thereafter, the producer responsibility organization (already approved by MDE pursuant to current law) must file a registration form with MDE and pay an annual registration fee to cover specified administrative costs. More specifically, the annual fee must be set by MDE in an amount sufficient to cover (in each year) record keeping costs (not to exceed \$1,000) and the costs of developing and updating a statewide list of covered materials determined to be recyclable or compostable through curbside recycling programs, as required by the bill and discussed in more detail below. Additionally, in 2026 only, the fee must cover the costs of developing and implementing regulations that MDE must adopt to carry out Title 9, Subtitle 25 of the Environment Article. Finally, beginning in 2028, the fee must cover the costs of registering service providers under the bill. The registration form must include specified information, including a list of the producers participating in the producer responsibility organization.

Beginning July 1, 2033, a nonprofit organization may request that MDE designate the nonprofit organization as an additional producer responsibility organization. MDE may designate an additional producer responsibility organization if MDE determines, in coordination with the advisory council, that the designation is necessary to increase recycling rates or improve recycling services for a specific type of covered material. If MDE approves the designation of an additional producer responsibility organization, the producer responsibility organization must (1) register with MDE within 30 days of approval (and by July 1 annually thereafter) and (2) pay the annual registration fee. The registration form must include specified information. Any additional producer responsibility organizations must coordinate with the original producer responsibility organization established under the bill, MDE, and local governments, as specified.

The original producer responsibility organization and any additional producer responsibility organizations designated as described above may create a representative organization to represent the participating producer responsibility organizations to implement the bill's requirements.

Alternative Collection Programs

Beginning July 1, 2026, and in accordance with the bill and any regulations adopted by MDE, a producer or group of producers may develop and operate an alternative collection program to collect and manage a type or types of covered material sold, offered for sale, or distributed for sale in or into the State by the producer or producers. If a producer manages a type of covered material under an alternative collection program through reuse, recycling, or composting, this action may wholly or in part offset the producer's payment obligations under the bill.

Development, Review, and Implementation of Producer Responsibility Plans

Submission of Plans: By July 1, 2028, and every five years thereafter, each producer must submit a producer responsibility plan to MDE for review and approval (either individually or as part of a producer responsibility organization). Before submitting a plan to MDE for review, a producer or producer responsibility organization must consult with, consider written recommendations from, and respond in writing to the advisory council.

General Prohibition on the Sale or Distribution of Covered Materials Unless Producer Has an Approved Plan: Beginning on a certain date determined by MDE and established in regulation, a producer may not sell, offer for sale, distribute, or import for sale or distribution covered materials for use in the State unless the producer has an approved producer responsibility plan on file with MDE (either individually or as part of a producer responsibility organization). However, a producer is not required to submit a producer responsibility plan to MDE (individually or as part of a producer responsibility organization) if another person has agreed to assume responsibility for the producer's covered material, as specified.

Content of Plans: The bill establishes the minimum content for a producer responsibility plan. Among other things, the plan must (1) identify the producers and brands covered by the plan, as specified; (2) include a number of performance goals that are achievable within five years and are relevant and appropriate for each covered material type (that do not apply in certain circumstances); (3) include performance standards for service providers as applicable to the service provider, as specified; (4) include the written recommendations from the advisory council, the producer responsibility organization's written response, and how the written recommendations were considered and addressed in the development plan; (5) explain how the program will be paid for by the producer responsibility organization through fees from producers, as specified; and (6) any other information required by MDE.

The plan must also describe, among other things, (1) the financing method that will be used to implement the plan (discussed in more detail below); (2) how, for each covered material type, the producer responsibility organization will measure recycling, waste reduction, reuse, composting, and the inclusion of postconsumer recycled content; (3) infrastructure investments, as specified; (4) how the performance goals will be met or exceeded; (5) how the producer responsibility organization will provide technical assistance to service providers in order to assist them in delivering covered materials to responsible end markets; (6) how staffing and administering the implementation of the plan will be handled; (7) the actions taken or that will be taken for public outreach, education, and communication, as specified; (8) the amount of funding that will be used to improve reuse, composting, and recycling in the State; and (9) the process by which a service provider may request reimbursement for costs associated with transporting, collecting, and processing covered materials that are identified in the plan, as specified.

Financing and Reimbursement Rates: The financing method that will be used by a producer responsibility organization to implement a producer responsibility plan must, among other things, (1) provide the method for either direct investments or reimbursements for improving infrastructure improvements, as specified; (2) provide for a methodology for reimbursement rates for covered services for covered materials, exclusive of exempt materials; and (3) establish a fee structure for participating producers, as specified; the producer responsibility organization must take specified actions before establishing the fee structure. The financing method must be evaluated by an MDE-designated independent financial auditor to ensure that the costs of implementing the plan are covered.

The funding that will be used for improving reuse, composting, and recycling must include investment in market development and existing and future reuse, composting, and recycling infrastructure, as specified, giving priority to existing infrastructure.

A producer responsibility organization must retain any fee collected in its own account, and a service provider must retain all revenue from the sale of covered materials. MDE may request an audit of a producer responsibility organization's financial records at any time. Nothing in Subtitle 25 may be construed to restrict a service provider from charging a fee for covered services of covered materials to the extent that reimbursement from a producer responsibility organization does not cover all costs of services, as specified.

Regarding the mandatory reimbursement rate, the reimbursement rate is phased in, and the required level of reimbursement increases over the time; specifically, the reimbursement rate must be equivalent to the following percentages of costs:

- by July 1, 2028, reimburse at least 50% of the cost per ton;
- by July 1, 2029, reimburse at least 75% of the cost per ton; and
- by July 1, 2030, and each year thereafter, reimburse at least 90% of the cost per ton.

Additionally, the reimbursement rate must be based on specified factors, as applicable, that broadly relate to (1) fixed amounts for each ton of covered material collected, processed, and otherwise managed by the service providers; (2) the value of the materials that were managed; (3) administrative costs, including costs to conduct education, public awareness campaigns, and outreach, as applicable; and (4) a fixed amount for costs to manage covered materials capable of being refilled and reused (and specified related costs).

Regarding the fee structure for participating producers, the fee must be set in a manner to cover costs associated with (1) implementing the plan, including the administrative costs of a producer responsibility organization; (2) reimbursing service providers; (3) the administration, review, oversight, and enforcement of the plan by MDE; and (4) implementing the strategy in the plan for improving reuse, composting, and recycling in the State. Additionally, the fee structure must be variable based on (1) costs associated

with transporting, collecting, and processing covered materials; (2) an eco-modulation of fees, based on the recycled content of the covered materials; and (3) any other factor, as determined by MDE.

Performance Goals: Based on the results of the most recent statewide recycling needs assessment conducted pursuant to Chapter 465 or the bill (discussed below), MDE, in coordination with a producer responsibility organization and via the approval of producer responsibility plans, must establish performance goals for each covered material type using a baseline year that is informed by the needs assessment, including establishing recycling rate goals for each covered material type at 5-, 10-, and 15-year intervals.

Review of Plans and Auditor's Work Product: MDE must review the producer responsibility plan, and within 120 days, either approve, approve with conditions, or reject a plan submitted for review. The bill establishes several considerations MDE must take into account when making a determination regarding a producer responsibility plan. Within 60 days of plan approval, the entity that submitted the plan must pay to MDE (1) MDE's cost of reviewing the plan and (2) MDE's estimated costs to administer, oversee, and enforce the plan between the initial approval date and the date of the initial annual report required by the bill.

In addition to reviewing the producer responsibility plan(s), MDE must also review the work product of the independent financial auditor designated by MDE to evaluate the financing component of the producer responsibility plan(s).

Plan Implementation: The implementation of an approved producer responsibility plan must begin no later than six months after the date the plan is approved by MDE. An approved plan expires after five years, but MDE may rescind approval of a plan at any time for good cause. Additionally, a producer responsibility plan may continue beyond five years if it is renegotiated, renewed, or amended and approved by MDE in accordance with the bill. If, based on the annual report submitted, specified performance goals have not been met, MDE may require a plan amendment or impose an administrative penalty on a producer or producer responsibility organization (discussed more below). If MDE requires a producer or producer responsibility organization to amend a plan, the producer or producer responsibility organization must cover MDE's costs, as specified.

Annual Reports: Beginning July 1, 2029, each producer or producer responsibility organization that has an approved producer responsibility plan on file with MDE must report annually to MDE on the progress toward meeting plan requirements and goals for the immediately preceding calendar year. The annual report must include specified information. Any financial, production, or sales data reported to MDE by a producer or producer responsibility organization must be kept confidential, as specified. Other than confidential information, the annual report must be posted on MDE's website and the

website of the producer or producer responsibility organization. Along with the annual report, a producer or producer responsibility organization must also submit payment for MDE's estimated costs of administering, overseeing, and enforcing the plan for the next year.

Review by Office of Recycling: MDE's Office of Recycling is tasked with reviewing and approving, in consultation with the advisory council, producer responsibility plans and annual reports.

Service Provider Reimbursement and Registration

In accordance with the requirements of a producer responsibility organization, as established in an approved plan on file with MDE, and any other requirement adopted by MDE, a service provider may request reimbursement from a producer responsibility organization for costs associated with collecting, transporting, and processing covered materials that are identified under the plan, as specified.

If multiple producer responsibility organizations register approved producer responsibility plans with MDE, the producer responsibility organizations (1) must coordinate reimbursement requested pursuant to this provision and (2) may establish a third-party entity to coordinate reimbursement. A service provider is not authorized to request reimbursement for costs associated with composting materials that are not covered materials.

By January 1, 2029, and each January 1 thereafter, a service provider seeking reimbursement for services provided under an approved plan must register with MDE by submitting specified information. The bill also establishes various duties for a service provider that receives reimbursement or funding under an approved producer responsibility plan. Among other things, a service provider must submit invoices for reimbursement, ensure that covered materials are sent to responsible end markets, provide specified documentation to the producer responsibility organization, and otherwise comply with all other applicable requirements. A service provider may designate any proprietary information provided to MDE or a person determining reimbursement rates as confidential. Any such information is not subject to disclosure under the Maryland Public Information Act but may be disclosed as summarized or aggregated data if doing so does not directly or indirectly disclose the proprietary information of any specific facility.

Statewide List of Covered Materials

By July 1, 2027, MDE, in consultation with specified entities, including the advisory council, producer responsibility organizations, service providers, and local governments, must develop a statewide list of covered materials determined to be recyclable or

compostable through curbside programs. In developing the list, MDE may consider specified criteria. Covered materials in the list must be collected at an optimal level of service and convenience for covered entities and, at a minimum, wherever collection services for mixed municipal solid waste are available.

MDE may amend the list at any time and must provide an amended list to producer responsibility organizations within a reasonable amount of time (as determined by MDE) after amending the list. Upon receipt of an amended list, a producer responsibility organization must provide the list to service providers as soon as practicable and work to incorporate changes in relevant service provider reimbursement rates within one calendar year.

A producer may request that MDE classify one or more types of packaging as an exempt material. MDE must submit such a request to the advisory council for review and comment before approving or denying the request. MDE may only approve the request if it determines that a specific federal or State health and safety requirement prevents the packaging from being waste reduced or made reuseable, recyclable, or compostable. Within 120 days after it receives a request, MDE must review and approve or deny the request or request additional information from the producer. MDE must publish and update as necessary on its website a list of materials exempted by request under these provisions. An exemption expires after two years, but a producer may file a subsequent request for an exemption.

Legal Immunities and Enforcement

Any person participating in a producer responsibility 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.

Current law provisions under §§ 9-334 through 9-344 of the Environment Article apply to enforce violations of Title 9, Subtitle 25 of the Environment Article (as amended by the bill) and any regulations adopted or orders issued pursuant to Subtitle 25. In addition, a producer or producer responsibility organization that violates Subtitle 25 is subject to an administrative penalty of \$5,000 for a first violation, an administrative penalty of \$10,000 for a second violation, and a civil penalty of \$20,000 for a third or subsequent violation. Before imposing a penalty on a producer, MDE must first issue a written notice of violation to the producer and give the producer an opportunity to correct the violation within 60 days after receipt of the written notice. After the 60-day period, each day that a violation continues is a separate violation.

As discussed above, MDE may also impose an administrative penalty on a producer responsibility organization if, based on the annual report submitted, the performance goals

established pursuant to the bill have not been achieved. The administrative penalty may not exceed \$250,000.

Any penalty collected by MDE under these provisions must be paid into the State Recycling Trust Fund.

Statewide Recycling Needs Assessments

By July 30, 2034, and at least once every 10 years thereafter, MDE's Office of Recycling must hire an independent consultant to conduct a statewide recycling needs assessment to inform the provision of recycling services in the State, including the implementation of Subtitle 25. The needs assessment must include specified analyses and evaluations, address a variety of topics, and make certain recommendations related to the State's recycling system and extended producer responsibility programs, among other things. The Office of Recycling must report the results of each assessment to the Governor and the General Assembly. In conducting the assessment, the independent consultant must consult with producer responsibility organizations, the advisory council, appropriate local government entities, and regional solid waste organizations in the State. The Office of Recycling must establish and collect a fee that is paid by producer responsibility organizations to cover the costs of conducting the assessment required under Chapter 465 and each subsequent assessment required under the bill. Fee revenue is paid into the State Recycling Trust Fund.

Expanded Fund Sources and Uses of the State Recycling Trust Fund and New Account

The fund sources for the State Recycling Trust Fund are expanded to include any fees collected from producer responsibility organizations. The authorized uses of the State Recycling Trust Fund are expanded to include covering the cost of conducting the statewide recycling needs assessments and producer responsibility plan review, oversight, and enforcement. The bill requires the establishment of a separate account within the fund that consists of any fees collected from producer responsibility organizations and all fines and penalties collected pursuant to the bill's enforcement provisions. The separate account may only be used for the costs of the statewide needs assessment and producer responsibility plan review, oversight, and enforcement.

Future Enactment of a Beverage Container Deposit Program

If a beverage container deposit program is enacted in the State, MDE must coordinate the implementation of the program in a manner that ensures compatibility with producer responsibility plans and related provisions of law as provided by the bill. MDE must also ensure that (1) materials covered in such a program are exempt from producer responsibility plans or (2) related financial obligations are reduced.

Current Law: The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, incineration, storage, and exporting for disposal or recycling.

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 recycle at least 20% or 35% of the county's solid waste stream, depending on the county's population. Each county (including Baltimore City) must also prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate.

The Office of Recycling

MDE's Office of Recycling, among other things, reviews county recycling plans and coordinates the efforts of the State to facilitate the implementation of the recycling goals at the county level. Counties are required to periodically report solid waste and recycling data to the department.

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*.

Chapter 465 required the Office of Recycling to hire an independent consultant to conduct a statewide recycling needs assessment, which must, among other things, include (1) analysis of the costs and benefits, and potential environmental impact, of implementing an extended producer responsibility program for packaging materials (which include beverage containers) and (2) recommendations on the best practices to follow from successful extended producer responsibility programs in other states and countries. By July 30, 2024, the office was required to report on the results of the assessment. The Act also established a Producer Responsibility Advisory Council to provide advice and recommendations regarding establishing and implementing a producer responsibility program in the State for packaging materials. The advisory council was required to report its findings and recommendations to the Governor and specified legislative committees by December 1, 2024. The [final statewide recycling needs assessment](#) was submitted in February 2025, and the advisory council's [report](#) was submitted in March 2025.

State Recycling Trust Fund

The State Recycling Trust Fund is a special fund that is used to:

- carry out the purposes of MDE's Land Management Administration;
- provide grants to (1) counties to develop and implement local recycling plans; (2) counties that have addressed methods for the separate collection and recycling of covered electronic devices; and (3) municipalities to be used to implement local covered electronic device recycling programs; and
- cover specified costs of the Paint Stewardship Program (established under Chapters 587 and 588 of 2024).

Relevant Enforcement Provisions

The provisions of §§ 9-334 through 9-341 of the Environment Article, which are established under provisions relating to Title 9, Subtitle 3 of the Environment Article (Water Pollution Control), establish enforcement procedures that govern (1) the ability of MDE to issue complaints, conduct hearings, issue corrective orders, and obtain injunctive relief and (2) judicial review of final decisions.

Under § 9-343 of the Environment Article, a person who violates any provision of or fails to perform any duty imposed by Title 9, Subtitle 3 of the Environment Article, or who violates any provision or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under that subtitle, is guilty of a misdemeanor and on conviction is subject to a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. The person may also be enjoined from continuing the violation. Each day on which a violation occurs is a separate violation.

In addition, a person is guilty of misdemeanor and on conviction is subject to a maximum fine of \$50,000 and/or imprisonment for up to two years if the person (1) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the subtitle or (2) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle.

Pursuant to § 9-344 of the Environment Article, the Attorney General is in charge of prosecuting and defending cases that arise on behalf of the State.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs and Related Fee Revenue

Overview: The bill contemplates that producer responsibility organizations and producers will fully fund, through fees paid to MDE, MDE's costs to implement the bill. Although the ability for MDE to collect fees each year in an amount sufficient to cover its administrative costs is somewhat unclear – at least until fiscal 2029 – this analysis assumes that sufficient special funds are available each year to fully offset MDE's costs, as discussed below.

Administrative Costs: Special fund expenditures increase by \$212,843 in fiscal 2026 (which accounts for a 120-day start-up delay), by \$330,134 in fiscal 2027, by \$338,322 in fiscal 2028, by \$572,322 in fiscal 2029, and by similar amounts annually thereafter. These estimates reflect the cost of hiring two natural resource planners and one administrative specialist in fiscal 2026, one additional natural resource planner in fiscal 2027, and two environmental compliance specialists in fiscal 2029.

The initial two natural resource planners and the administrative specialist are hired in fiscal 2026 to begin implementing the bill by (1) conducting outreach and registering the producer responsibility organization as well as designating the independent financial auditor; (2) developing and promulgating regulations; and (3) providing additional staff support for the advisory council. The third natural resource planner is hired in fiscal 2027 to (along with the initial employees) (1) assist in developing the statewide list of covered materials; (2) review producer responsibility plans, the work product of the independent financial auditor, and annual reports; (3) track progress of implemented plans; (4) post annual reports online; and (5) beginning in fiscal 2029, register service providers. The environmental compliance specialists are hired in fiscal 2029 to (1) conduct compliance inspections and investigate complaints and (2) generally enforce the bill once the producer responsibility 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:

- pursuant to current law, MDE staffs the advisory council;
- 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 producer responsibility 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 2026</u>	<u>Fiscal 2027</u>	<u>Fiscal 2028</u>	<u>Fiscal 2029</u>
Positions (New)	3.0	1.0	0.0	2.0
Salaries and Fringe Benefits (Total)	\$189,737	\$318,130	\$332,494	\$516,261
Vehicle Purchase	0	0	0	34,650
Other Operating Expenses	<u>23,106</u>	<u>12,004</u>	<u>5,509</u>	<u>21,411</u>
Total MDE Administrative Costs	\$212,834	\$330,134	\$338,003	\$572,322

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. As noted above, it is assumed that all costs incurred by MDE are covered with special funds.

Special Fund Revenues from Fees: In fiscal 2026, special fund revenues from a certain fee, which total an estimated \$667,000, are higher than MDE’s estimated costs in that year. In fiscal 2027 and annually beginning in fiscal 2029, fee revenues are assumed to increase correspondingly to MDE’s administrative costs in each year (as estimated above). In fiscal 2028, fee revenue cannot be reliably estimated, as discussed below; nevertheless, MDE will have sufficient fund balance remaining from its fiscal 2026 revenues to cover its costs in that year. The relevant fee provisions – and resulting fiscal effects – are described in more detail below.

The bill authorizes MDE’s Office of Recycling to set a fee to cover the costs associated with conducting the statewide needs assessment required pursuant to Chapter 465. MDE advises that those costs totaled approximately \$667,000. While the bill does not specify the timing of when this fee is to be imposed, MDE advises that it plans to collect this fee from the approved producer responsibility organization in fiscal 2026. Accordingly, special fund revenues increase by an estimated \$667,000 in fiscal 2026.

Beginning July 1, 2026 (fiscal 2027), and annually thereafter, the producer responsibility organization must pay an annual registration fee that is set by MDE in an amount sufficient to cover (in each year) record keeping costs (not to exceed \$1,000) and the costs of developing and updating a statewide list of covered materials determined to be recyclable or compostable through curbside recycling programs. Additionally, in 2026 only (fiscal 2027), the fee must cover the costs of developing and implementing the regulations MDE is required to adopt to carry out the program.

Beginning in calendar 2028 (fiscal 2029), the registration fee paid by the producer responsibility organization must also cover the costs of registering service providers. In addition, in fiscal 2029, each entity that submits a producer responsibility plan to MDE for review and approval (*i.e.*, each producer individually or as part of a producer responsibility organization) must pay MDE for its plan review costs and the estimated costs to administer, oversee, and enforce the plan between the initial date of approval and the initial annual report submission (July 1, 2029). In future fiscal years, when submitting their annual reports, a producer or producer responsibility organization must pay to MDE the

department's estimated costs to administer, oversee, and enforce the plan for the *following year*. MDE may also recoup any additional plan review costs associated with amended producer responsibility plans and any related supplemental work.

Based on the fee provisions as described above, it appears that in every fiscal year except fiscal 2028, MDE is likely able to collect sufficient fees to fully cover its administrative costs. In fiscal 2028, because the annual registration fee paid by the producer responsibility organization is only required to cover record keeping costs (not more than \$1,000) and costs to develop and update the statewide covered materials list, it is unclear if MDE can set the fee at a level to fully cover its costs in that year. Nevertheless, because MDE will have remaining fund balance (from its fiscal 2026 revenues), sufficient special funds are available to cover its costs in that year.

State Agencies as Consumers of Affected Products

State expenditures (multiple fund types) could increase, likely not until fiscal 2029, due to any increase in the price to purchase covered materials that may result from the bill. However, the magnitude of any such increase in costs is unknown and depends largely on the specifics of the approved producer responsibility plans.

Penalty Provisions

Special fund revenues to the State Recycling Trust Fund may increase minimally, likely not before fiscal 2029, from any penalties collected for violations of the bill. The application of existing criminal penalty provisions to violations of the bill is not anticipated to materially affect State incarceration expenditures.

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 producer responsibility plans, which cannot be predicted. Local governments may benefit from the diversion of covered materials from landfills and an increase in recycling rates, which assists counties in meeting their mandatory recycling rates under MRA.

For local governments that register as service providers – which must happen by January 1, 2029, and annually thereafter in order to be eligible for reimbursement – local revenues increase from reimbursements for covered services for covered materials (*i.e.*, costs collect, transfer, transport, sort, process, recover, prepare, or otherwise manage covered materials that are listed under a producer responsibility plan).

Local governments may further benefit from investments in capital improvements to improve reuse, composting, and recycling in the State. The bill specifies that funding that

will be used for improving reuse, composting, and recycling must include investment in market development and existing and future reuse, including, among other things, (1) installing or upgrading equipment to improve the sorting of materials at existing sorting and processing facilities and (2) capital expenditures for new technology, equipment, and facilities, based on the results of the most recent statewide recycling needs assessment.

Similar to the impact described above at the State level, expenditures for local governments as consumers of covered materials may increase, likely not until fiscal 2028.

The application of existing criminal penalty provisions to violations of the bill is not anticipated to materially affect local incarceration expenditures.

Small Business Effect: Although it is anticipated that the bill’s provisions relating to producers primarily affect larger businesses that meet the applicable minimum gross revenue and tonnage of covered materials (specified under the definition of “producer”), the bill results in significant additional operational responsibilities, and potentially significant costs, for affected producers that are small businesses to develop and implement producer responsibility plans for covered materials.

The bill’s changes could incentivize the development of small businesses in the State that recycle or reuse covered materials or that supply raw materials used to manufacture covered materials. Similar to the impact described above at the local level, any small business that registers with MDE as a service provider benefits from the ability to be reimbursed to provide covered services for covered materials.

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 covered materials. However, to the extent that the bill improves reuse, composting, and recycling in the State, small businesses consumers of covered materials benefit from having additional opportunities for managing the materials.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 222 and HB 284 of 2023; and HB 307 and SB 292 of 2022.

Designated Cross File: None.

Information Source(s): Baltimore City; Calvert, Howard, and Prince George’s counties; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; City of Annapolis; Maryland Municipal League; Maryland State Commission on Criminal

Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of the Environment; Maryland Environmental Service; Department of General Services; Department of Legislative Services

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