ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1978

STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 2020

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1978.

This committee substitute would prohibit the provision or sale of single-use plastic carryout bags, single-use paper carryout bags, and polystyrene foam food service products, and limit the provision of single-use plastic straws.

Specifically, beginning 18 months after the effective date of the bill, a store or food service business would be prohibited from providing or selling a single-use plastic carryout bag to a customer, and a grocery store would be prohibited from providing or selling a single-use paper carryout bag to a customer. The prohibitions in the bill would not apply to: (1) a bag used solely to contain or wrap uncooked meat, fish, or poultry; (2) a bag used solely to package loose items such as fruits, vegetables, nuts, coffee, grains, baked goods, candy, greeting cards, flowers, or small hardware items; (3) a bag used solely to contain live animals, such as fish or insects sold in a pet store; (4) a bag used solely to contain food sliced or prepared to order, including soup or hot food; (5) a laundry, dry cleaning, or garment bag; (6) a bag provided by a pharmacy to carry prescription drugs; (7) a newspaper bag; and (8) any similar bag, as determined by the Department of Environmental Protection (DEP). The prohibitions would also not apply to a reusable carryout bag, which is a bag that is made of polypropylene, PET nonwoven fabric, nylon, cloth, hemp products, or other machine washable fabric; has stitched handles; and is designed and manufactured for multiple reuses.

Beginning 18 months after the effective date of the bill, a person would be prohibited from selling or offering for sale in the State any polystyrene foam food service product, and a food service business would be prohibited from providing or selling any food in a polystyrene foam food service product. However, the following items would be exempt from the prohibition on polystyrene foam food service products for a period of two years after the prohibition takes effect: (1) disposable, long-handled polystyrene foam soda spoons when required and used for thick drinks; (2) portion cups of two ounces or less, if used for hot foods or foods requiring lids; (3) meat and fish trays for raw or butchered meat, including poultry, or fish that is sold from a refrigerator

or similar retail appliance; (4) any food product pre-packaged by the manufacturer with a polystyrene foam food service product; and (5) any other polystyrene foam food service product as determined necessary by the DEP. The DEP would be authorized to extend any exemption listed above for additional periods not to exceed one year upon a written determination that there is no cost-effective and readily available alternative for the item.

Additionally, the DEP would be authorized, upon written application by a person or food service business, to waive the prohibitions on polystyrene foam food service products for the person or food service business for a period of up to one year if: (1) there is no feasible and commercially available alternative for a specific polystyrene foam food service product; or (2) the person or food service business has less than $500,000 in gross annual income and there is no reasonably affordable, commercially-available alternative to the polystyrene foam food service product. The DEP would prescribe the form and manner of an application for a waiver.

Beginning one year after the effective date of the bill, a food service business would only be permitted to provide a single-use plastic straw to a customer upon the request of the customer. A store would be permitted to provide other types of straws, such as paper or reusable metal straws, without limitation. The bill would require a food service business to maintain an adequate supply of single-use plastic straws to provide at the request of customers. Nothing in the bill would prohibit a store from selling packages of single-use plastic straws to customers, or from providing or selling a beverage pre-packaged by the manufacturer with a plastic straw.

A municipality or county would be prohibited from adopting any rule, regulation, code, or ordinance concerning the regulation or prohibition of single-use plastic carryout bags, single-use paper carryout bags, polystyrene foam food service products, and single-use plastic straws after the effective date of the bill. Beginning when the respective prohibitions described above take effect, the bill would supersede and preempt any municipal or county rules, regulations, codes, or ordinances concerning the regulation or prohibition of single-use plastic carryout bags, single-use paper carryout bags, polystyrene foam food service products, and single-use plastic straws that were enacted prior to the effective date of the bill.

The DEP, a municipality, and any entity certified pursuant to the "County Environmental Health Act," P.L.1977, c.443 (C.26:3a2-21 et seq.) would have the authority to enforce the provisions in the bill; with the exception that the Department of Health would enforce the provisions of the bill concerning single-use plastic straws. Any person or entity that violates the provisions of the bill would be subject to a warning for a first offense, a fine of up to $1,000 for a second offense, and a fine of up to $5,000 for a third or subsequent offense. If the violation is of a continuing nature, each day during which it continues

would constitute an additional, separate, and distinct offense. Any penalty collected under the bill would be remitted to the State Treasurer for deposit in the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217). However, a municipality or entity certified pursuant to the "County Environmental Health Act would be permitted to retain 30 percent of any penalty it collects under the bill.

The bill would also establish the Plastics Advisory Council in the DEP to monitor the implementation of the bill, and evaluate its effectiveness in reducing single-use plastics and plastic waste in the State. The council would be required, each year, to report to the Governor and the Legislature on the implementation and effectiveness of the bill. The council would also study and report on the environmental and public health impacts of single-use plastics and micro-plastics; healthy and environmentally-friendly alternatives to single-use plastics; strategies and policies to increase the recyclability of plastics and reduce the amount of plastic entering the environment; the technological feasibility of increasing recycled content of consumer plastics and expanding the types of plastics that may be manufactured from recycled material; and ways to enhance the development and expansion of markets of post-consumer recycled plastic, including State and local purchasing and procurement practices.

Under the bill, the Department of State, in consultation with DEP, would be required to establish a program to assist businesses in complying with the provisions of the bill, including, but not limited to, developing and publishing on its Internet website guidance on compliance with the bill, and establishing an online clearinghouse of vendors who provide environmentally sound alternatives to single-use plastic carryout bags, single-use paper carryout bags, polystyrene foam food service products, and single-use plastic straws.

The bill would require the organization that is under contract with the Department of Environmental Protection (DEP) pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) (for implementation of certain components of the Clean Communities Program) to develop and implement a Statewide public information and education program concerning the provisions of the bill. The program would include educational programs, public service announcements, and the distribution of free reusable carryout bags throughout the State.

Finally, the bill would amend section 5 of P.L.2002, c.128 (C.13:1E-217) (concerning the Clean Communities Program Fund) to provide that, in each of the first three years after the effective date of the bill, $500,000 of the estimated annual balance of the Clean Communities Program Fund would be appropriated to the DEP and made available to the organization under contract with the DEP pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) to develop the Statewide public information and education program required under this bill.

As reported the Assembly Committee Substitute for Assembly Bill No. 1978 is identical to Senate Bill No. 864 (2R) which was amended and reported from the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) determines that the bill would lead to an indeterminate annual increase in State and local government expenditures. The largest increase would likely result from the provision of the bill that requires food service businesses, including those operated by or on behalf of the State or local governments, such as cafeterias in schools, hospitals, and prisons, to cease using polystyrene foam food service products. This provision will likely necessitate the use of more expensive alternative food service products.

The OLS also determines that the bill would lead to an increase in State expenditures due to provisions that increase the administrative workload of several State departments. The DEP would be required to perform new administrative tasks under the bill, including processing requests for exemptions from the bill's provisions concerning polystyrene food service products, enforcing many of the bill's provisions, and assisting a new council created by the bill. These tasks will likely require new full-time employees at the DEP.