

LEGISLATIVE FISCAL ESTIMATE

[Fourth Reprint]

SENATE, No. 864

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: SEPTEMBER 28, 2020

SUMMARY

- Synopsis:** Prohibits provision or sale of single-use plastic carryout bags, single-use paper carryout bags, and polystyrene foam food service products; limits provision of single-use plastic straws; appropriates moneys from Clean Communities Program Fund for public education.
- Type of Impact:** Annual increase in State and local expenditures.
- Agencies Affected:** Department of Environmental Protection, Department of Health, Department of State, Department of Corrections, local governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditure Increase		Indeterminate	
Local Expenditure Increase		Indeterminate	

- 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 Department of Environmental Protection (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.

- In addition, the OLS notes that the Department of Health (DOH) may require additional staff and resources, indeterminate in amount, to enforce the provision of the bill that prohibits food service businesses from offering plastic straws except upon request. The bill also requires the Department of State to develop a program to assist businesses in complying with the bill's provisions, which may require additional staff or a contract with a third-party firm.

BILL DESCRIPTION

This bill 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.

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 bag to a customer, and a grocery store would be prohibited from providing or selling a single-use paper bag to a customer. Beginning one year after the effective date of the bill, a food service business would be prohibited from providing a single-use plastic straw to a customer, except upon request.

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 contained in a polystyrene foam food service product. 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 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, a municipality, and any entity certified pursuant to the County Environmental Health Act would have the authority to enforce the bill's provisions; with the exception that the DOH 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. 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 various issues related to single-use plastics.

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 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.

Finally, the bill would appropriate \$500,000 per year, for three years, from the Clean Communities Program Fund to the DEP. Resources in this fund are currently used to provide State aid to municipalities for programs of litter pickup and removal and a small portion is used for a State program of litter pickup and removal, as well as enforcement of litter-related laws. The DEP would use these additional funds to contract with a non-profit organization 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not submitted a formal fiscal note for this bill. However, the DEP has informed the OLS that it estimates that seven new full-time employees (one supervisory and six staff-level) will be required to appropriately manage the new workload. The DEP estimates the new staff members will require an additional expenditure of approximately \$800,000 annually. The DEP also notes that these resources will assist the Solid Waste program in implementing the bill, and that more resources will be needed to address enforcement.

OFFICE OF LEGISLATIVE SERVICES

The 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 cause some State and local entities to switch to alternative food service products (e.g. compostable food trays), which are more costly. For example, according to information provided by the New Jersey Association of School Business Officials, one school district reported that compostable school lunch trays cost an additional \$0.06 per tray, leading to an annual cost increase of \$6.84 per student. A similar cost increase for the approximately 19,970 prisoners in the charge of the Department of Corrections would represent an expenditure increase of approximately \$1,312,000 annually for that department (assuming a cost increase of \$0.06 per tray and three trays needed per day). State or local entities may also choose to purchase reusable food service products. This option would likely represent a higher up-front cost, but a lower cost over time. Raritan High School, for example, recently switched to reusable trays at a cost of approximately \$10.97 per student (this cost did not include large-capacity dishwashers, which can cost tens of thousands of dollars). The OLS cannot quantify the total State and local expenditure increase because it depends on the exceptions allowed by the DEP under the bill, the business decisions made by State and local food service businesses (e.g. whether to invest in reusable products and dishwashers), and the actual cost of alternative food service products, which may change over time.

The OLS also determines that the bill would lead to an increase in State expenditures due to provisions in the bill that increase the administrative workload of several State departments. As noted above, the DEP has estimated that it would require seven new full-time employees with total compensation of approximately \$800,000 annually to implement the bill's provisions, not including the cost of enforcement. The DEP's costs also depend on how many resources they choose to allocate to enforcement.

In addition, the DOH may require additional staff and resources, indeterminate in amount, to enforce the provision of the bill that prohibits food service businesses from offering plastic straws except upon request. The bill also requires the Department of State to develop a program to assist businesses in complying with the bill's provisions, which may require additional staff or a contract with a third-party firm.

The OLS notes that State and local revenue may increase by a marginal amount as a result of the imposition and collection of penalties for violations of the bill's provisions. The bill provides that any penalties collected would be remitted to the State Treasurer for deposit into the Clean Communities Program Fund, but that municipalities and certain other entities may retain 30 percent of any penalties they collect. The bill allows for penalties of up to \$5,000 for recurring offenses. On the other hand, the bill preempts local ordinances. Thus, counties and municipalities that currently have a prohibition on plastic or polystyrene products, and are generating revenue from fines associated with the prohibition that are greater than what they would collect under the bill, may see a marginal decrease in revenue under this bill.

Finally, the OLS notes that the bill allocates \$500,000 annually for the first three years after the date of enactment from the Clean Communities Program Fund toward a Statewide public information and education program concerning the provisions of this bill, including public service announcements and the distribution of free reusable carryout bags throughout the State. Currently the DEP allocates \$375,000 annually from the fund to maintain a Statewide public information and education program concerning anti-littering activities. This fund had a balance of \$3.4 million in FY 2019. The DEP currently contracts with the New Jersey Clean Communities Council, a non-profit organization, to maintain the anti-litter program. Under this bill, the DEP would allocate an additional \$500,000 annually for three years to the New Jersey Clean Communities Council to develop a public information campaign concerning the provisions of this bill.

Section: Environment, Agriculture, Energy, and Natural Resources

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).