

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: ~~Michael~~ Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope

Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope, sponsored by Councilmembers Berliner, Floreen, Rice, and Leventhal, was introduced on April 23, 2013. A public hearing was held on June 18.

Bill 10-13 would limit the excise tax on carryout bags, enacted in Bill 8-11, to those used at food stores. (See ©2, lines 18-23.) A food store is defined as any retail store where food consists of more than 2% of gross sales by dollar value. The tax would continue to cover bags dispensed for non-food items at food stores. Bill 10-13 would also repeal the tax on plastic food takeout bags (see ©2, lines 13-14).¹

Public hearing

At the Committee's hearing on this Bill, held on June 18, the County Executive (represented by Department of Environmental Protection Director Bob Hoyt) and various environmental and civic organizations (such as the League of Women Voters), as well as the District of Columbia Department of the Environment, opposed any scaling back of the current bag tax, which took effect in January 2012. They emphasized that a bag is a bag and poses the same environmental hazards no matter its origin, and that the relatively new bag tax law should be given time to prove its worth before its scope is substantially cut back.

Local Chambers of Commerce and other retailer and business organizations (except the Montgomery County Chamber of Commerce; see ©19) generally supported the modifications to the tax in this Bill, although some would repeal the tax altogether. They argued that bags from non-food stores, such as department stores, electronics stores, or pet stores, tend not to be thrown away and make up a relatively small part of roadside and stream litter, and anecdotally that the current law has resulted in increased shoplifting and customer resistance at non-food stores.

See selected testimony on ©10-37.

¹Because the advertised scope of Bill 10-13 was limited to the law governing the bag tax, any amendment to prohibit the use of certain kinds of bags or otherwise regulate them would not be in order without another public hearing.

Issues

1) Should the carryout bag tax be restricted to “food” stores? How much would limiting this tax to bags dispensed at “food” stores undercut the goals of the tax?

The goals of the carryout bag tax, articulated by the Executive and other sponsors when Bill 8-11 was enacted, are primarily to reduce environmental litter and contamination from carryout bags and incentivize the increasing use of reusable bags, and secondarily to raise revenue for the Water Quality Protection Fund.

Available data from the County Finance Department indicates that the large majority of taxed carryout bags are dispensed at “food” stores, as this Bill would define that term. (Bear in mind that, if a store, such as a department store with a significant food section, meets the 2%-of-gross-sales-by-dollar-value threshold, the tax would apply to *all* bags dispensed at that store, not just those that contain food.) As the table of incomplete FY13 data on ©41-45 shows, of the top 34 stores that dispensed the greatest number of bags, shown on ©41, we would classify all but 8 as food stores under this Bill.² While the fiscal impact statement on ©5 estimated that the number of bags taxed would be reduced by 38%, that number is not particularly convincing when one looks at the raw data on ©41-45 and notes the large numbers of bags dispensed at the many food stores, broadly defined. Thus we conclude, without authoritative data, that the number of carryout bags taxed if this Bill becomes law would be reduced measurably but not hugely.³

Since the tax yields a flat 4¢ per bag taxed, the revenue loss to the County would be directly proportional to the reduction in the number of bags taxed. The fiscal impact statement submitted in June estimated that loss at \$1.832 million in FY14 (see ©5). The accuracy of that number depends, of course, on the accuracy of the 38% estimate in the preceding paragraph, of which we are somewhat skeptical.

We have no hard data on the number of bags from non-food stores (as defined in this Bill) found in streams or elsewhere in the environment, but anecdotal information suggests that they are much less common than bags from food stores and restaurants.

2) If the tax is so limited, is 2% the correct food sales threshold? How difficult would it be to calculate whether a store meets the 2% threshold?

While Bill 10-13 does not expressly refer to it, it assumes the definition of “food” in the state sales tax law, Maryland Code Tax-General Article §11-206(a) (shown on ©38-40). Bill 10-13 does not exclude snack foods from the term “food”, as the state law defines it, so they would be

²We did not classify the one Walmart in the County as a food store because according to Walmart’s web site it does not have a separate grocery section. We did classify the Target stores as food stores because they all have separate grocery sections and each almost certainly would meet the 2% threshold.

³This memo need not repeat the ongoing discussion of whether the County vastly underestimated the number of plastic bags used in the County before this tax took effect. Council Senior Legislative Analyst Keith Levchenko’s memo to this Committee for its March 21 worksession on the broader issue of disposable bags delves into that issue.

counted for purposes of the 2% floor (other than soft drinks and candy, which the state sales tax law excludes from the definition of “food”).⁴

The Council did not receive any testimony or evidence regarding which specific stores would and would not fit under the 2% floor, which was adapted from a similar Boulder, CO law. Based on Council staff’s observations, if this Bill is enacted, a typical Macy’s or Nordstrom’s store would likely be exempt from the carryout bag tax, but a Walmart or Target with a separate food section ordinarily would not be unless the owner can show, for that store, that food sales represent less than 2% of the store’s gross sales by value.

Parts of Mr. Hoyt’s testimony at the June hearing seemed to overstate the difficulty of applying the distinction between food stores and non-food stores, where the tax wouldn’t apply. His testimony argued:

Bill 10-13 would cause confusion among our residents, retailers, and those of us charged with its implementation. For residents, knowing whether to bring a carryout bag to any given store such as a Target, CVS or 7-11 would be very difficult; for retailers, keeping track of percentages of food sales would be burdensome especially since the Bill fails to identify which food items must be considered in the calculation; and, for the Departments of Finance and Environmental Protection, knowing which stores must submit the taxes will be impossible to independently verify, which creates significant administrative and enforcement problems.

Council staff disagrees with that conclusion; we so advised Mr. Hoyt at the time, and he has not offered any rebuttal to our reasoning or any further basis for his conclusion. Because food is exempt from the state sales tax, stores already have to keep track of how much food they sell. Because Bill 10-13 sets the threshold for a food store at a relatively low level -- 2% or more of the gross sales, by dollar value, of all items sold – that threshold could be easily verified for any given store by reference to the state sales tax data for that store, which the management would have readily available. Stores will not have to “keep track of” their percentage of food sales unless that percentage frequently moves above or below the 2% level, which is generally unlikely. For most stores such as any CVS or 7-11, or a Target with a stand-alone grocery department, the result should be obvious. For residents’ information, the stores where the tax is still charged will no doubt continue to post signs notifying customers of that fact, and most customers will know whether the store they are shopping in sells any significant quantity of food.

3) Should plastic bags used for takeout food still be taxed while paper bags are not?

Bill 10-13 would repeal the tax on plastic food takeout bags (see ©2, lines 13-14). Under the current law, paper bags used for takeout food or leftover food (“doggie bags”) are not taxed, but plastic bags used for the same purposes are taxed. The Restaurant Association of Maryland (see testimony, ©37) supported this provision.

⁴The state sales tax law excludes alcoholic beverages from its definition of “food” (see ©38). This means that a store which primarily sells alcoholic beverages, such as a County liquor store or an independent beer and wine store, is not likely to exceed the 2% threshold to qualify as a food store unless it also stocks and sells a large quantity of food. Thus the carryout bag tax would still apply in such a store, as it does now.

The bases for this distinction in the current bag tax law were the relative ubiquity and persistence in the environment of plastic restaurant bags and the need to incentivize restaurants to use paper takeout bags (which seems to be the general trend among fast-food restaurants). But this distinction is not otherwise recognized in the carryout bag tax law or the County trash and recycling laws generally.

Some critics (see Kominers testimony, ©32) suggested that restaurants often don't observe the paper/plastic distinction in this context and either charge for both or more likely don't charge for either. Whether that confusion, even if it's widespread, is a persuasive reason to amend the law is doubtful. Mr. Kominers also noted that plastic bags are often necessary to contain certain kinds of easily-spilled foods. That is no doubt an accurate observation, but arguably irrelevant to the underlying policy decision whether to tax those bags.

| This packet contains: | <u>Circle #</u> |
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Bill No. 10-13
Concerning: Taxation – Excise Tax –
Disposable Carryout Bags - Scope
Revised: 4-16-13 Draft No. 3
Introduced: April 23, 2013
Expires: October 23, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Berliner, Floreen, Rice, and Leventhal

AN ACT to:

- (1) modify the scope of the excise tax on certain disposable carryout bags; and
- (2) generally amend the law governing the excise tax on certain disposable carryout bags.

By amending

Montgomery County Code
Chapter 52, Taxation
Section 52-101

| | |
|-------------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

LEGISLATIVE REQUEST REPORT

Bill 10-13

Taxation – Excise Tax – Disposable Carryout Bags - Scope

| | |
|---|---|
| DESCRIPTION: | Limits the excise tax on carryout bags to those used at food stores. Food store is defined as any retail store where food consists of more than 2% of gross sales by dollar value. The tax would continue to cover bags used at food stores for non-food items. Also repeals the tax on plastic food take-out bags. |
| PROBLEM: | Consumers find it inconvenient to carry reusable bags to non-food stores, such as department stores. Non-food bags make up small amounts of bag litter. |
| GOALS AND OBJECTIVES: | To focus the tax on disposable bags on those which create most of the litter problem. |
| COORDINATION: | Department of Environmental Protection, Department of Finance |
| FISCAL IMPACT: | To be requested. |
| ECONOMIC IMPACT: | To be requested. |
| EVALUATION: | To be requested. |
| EXPERIENCE ELSEWHERE: | To be researched. |
| SOURCE OF INFORMATION: | Michael Faden, Senior Legislative Attorney, 240-777-7905 |
| APPLICATION WITHIN MUNICIPALITIES: | To be researched. |
| PENALTIES: | Class A for failure to remit tax by retailer. |

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ROCKVILLE, MARYLAND

MEMORANDUM

May 14, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *JAH*
 Joseph F. Beach, Director, Department of Finance *JFB*

SUBJECT: Council Bill 10-13, Taxation - Excise Tax - Disposable Carryout Bags - Scope

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:a2a

- c: Kathleen Boucher, Assistant Chief Administrative Officer
- Lisa Austin, Offices of the County Executive
- Joy Nurmi, Special Assistant to the County Executive
- Patrick Lacefield, Director, Public Information Office
- Joseph F. Beach, Director, Department of Finance
- Michael Coveyou, Department of Finance
- David Platt, Department of Finance
- Robert Hagedoorn, Department of Finance
- Robert G. Hoyt, Director, Department of Environmental Protection
- Gladys Balderrama, Department of Environmental Protection
- Alex Espinosa, Office of Management and Budget
- Matt Schaeffer, Office of Management and Budget
- Ayo Apollon, Office of Management and Budget

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Fiscal Impact Statement

Bill 10-13 Taxation - Excise Tax - Disposable Carryout Bags - Scope

1. Legislative Summary.

Bill 10-13 amends Bill 8-11 which established an excise tax on certain disposable carryout bags. Under the proposed legislation, retail establishments that sell goods or any retail establishment where the sale of food does not exceed 2 percent of the gross sales of all items sold would no longer be required to collect the 5 cent tax and remit it to the County, less 1 cent per bag that the retailer may retain to offset the administrative cost of collecting the tax.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Based on data from the Department of Finance, approximately 38 percent of the total carryout bags subject to the 5-cent tax under current Bill 8-11 would no longer be subject to the tax under Bill 10-13. The FY14 recommended operating budget for the Watershed Management Program includes \$1,832,000 in Bag Tax revenue. If Bill 10-13 takes effect on July 1, 2013, the 38 percent reduction in carryout bags would result in a revenue reduction of \$696,160 (38 percent) in FY14. If implementation of Bill 10-13 were to take effect November 1, 2013, the revenue reduction would be \$464,110 in FY14 due to the four additional months of revenue (see attached chart below).

| Bag Tax Revenue | | |
|--|-------------|---------------------|
| | FY14 | 6 Year Total (est.) |
| Current Bag Tax Revenue | \$1,832,000 | \$6,758,760 |
| Revenue under Bill 10-13 | | |
| Projected % Loss of Revenue | 38% | 38% |
| <i>Effective July 1</i> | | |
| Projected Revenue Loss | (\$696,160) | (\$2,568,330) |
| <i>Total Revenue</i> | \$1,135,840 | \$4,190,430 |
| <i>Effective November 1*</i> | | |
| Projected Revenue Loss | (\$464,110) | (\$2,336,280) |
| <i>Total Revenue</i> | \$1,367,890 | \$4,422,480 |
| <small>*Revenue Estimates have been adjusted to note the 4 months of additional revenue as a result of the later effective date in the first year.</small> | | |

The FY14 recommended operating budget assumes a level of Bag Tax revenue needed for the Water Quality Protection Fund (WQPF) to administer the County's stormwater management program and comply with the County's MS4 permit. As shown above, Bill 10-13 reduces the projected Bag Tax revenue.

Due to the fact that the Water Quality Protection Charge (WQPC) is set at \$88.40 for FY14, a reduction in Bag Tax revenue under Bill 10-13 may result in a reduction in total revenues needed to support programmed expenditures. This may require a reduction or

delaying programmed expenditures in order to maintain established debt service coverage ratio requirements.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Bill 10-13 would create a permanent revenue decrease. The estimated lost revenue over the six-year period varies depending on when the new law takes effect. Beyond FY14, the revenue lost as a result of Bill 10-13, will need to be offset by an increase in the WQPC to support programmed expenditures required by the County's MS4 permit.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill.

No change in staff time is expected (currently, 1 FTE is budgeted to administer the program). However, the Department of Environmental Protection (DEP) expects inquiries regarding whether particular entities are covered by the bag tax law to increase. DEP also expects enforcement cases to increase as some covered entities may mistakenly believe they are now not subject to the bag tax law.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

Not applicable.

9. A description of any variable that could affect revenue and cost estimates.

A variable that could affect the revenue impact is the criteria used in the identification of qualifying an entity under the bag tax law. Some retailers sell food along with other merchandise and any adjustment to the definition of a qualifying entity would affect revenues and future implementation costs.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

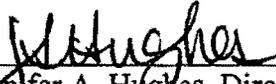
13. The following contributed to and concurred with this analysis:

Gladys Balderrama, Department of Environmental Protection

Matt Schaeffer, Office of Management and Budget

Robert Hagedoorn, Department of Finance

David Platt, Department of Finance



Jennifer A. Hughes, Director
Office of Management and Budget

5/15/13
Date

Economic Impact Statement
Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope

Background:

This legislation would limit the excise tax on carryout bags, enacted in Bill 8-11, to those used at food stores. A food store is defined as any retail store where the food consists of more than 2 percent of gross sales by dollar value. The tax would continue to cover bags used at food stores for non-food items. This legislation would repeal the tax on plastic food take-out bags.

1. The sources of information, assumptions, and methodologies used.

The source of information and data is from the Department of Finance, Treasury Division. The latest data cover actual collections through March 2013 which is used as a basis for these estimates:

- Of the estimated total 1,100 retailers that pay the bag tax, approximately 120 retailers or 11 percent of all retailers are food stores.
- The food stores represent an estimated 62 percent of all collections from the bag tax.
- Among the food stores:
 - 72 percent of all bags are provided by the top five food stores
 - 82 percent of all bags are provided by the top ten food stores
 - The remaining estimated 110 food stores provide less than 18 percent of all bags issued by food stores.
- Under Bill 10-13, therefore, only 11 percent of the retail establishments would be required to collect the bag tax and 89 percent of the retail establishments would be excluded from collecting the tax.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact is the identification of food establishments. Large grocery outlets are easily identified under the criterion of gross sales by dollar value, however, some retail establishments such as Wal-Mart Stores, Inc. (Walmart) have sales other than food items, and total food sales may comprise less than 2 percent of gross sales by dollar value. Therefore the economic impact will depend on the number of retail establishments in the County that are defined as food stores. The estimate of the economic impact is based on data collected by the Department of Finance that clearly identify food stores under the criterion of gross sales by dollar value.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

There is a modest positive economic impact from Bill 10-13 on Montgomery County due to increased disposable income resulting from reduced expenses for retail

Economic Impact Statement
Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags - Scope

shoppers (i.e., 5 cents per bag). However, while shoppers benefit from the reduced taxation which limits the bag tax to retailers that sell primarily food items, there is a partially offsetting cost for retailers who no longer receive a reimbursement of 1 cent per bag even though it is assumed that they will continue to provide bags to customers at no cost.

The CE Recommended Budget assumed a 20 percent reduction in the number of bags provided county-wide between fiscal years 2013 (FY13) and 2014 (FY14) reducing the estimated net bag tax revenues from \$2,290,000 in FY13 to \$1,832,000 in FY14. The economic impact from Bill 10-13 consistent with the CE Recommended Budget estimated assumption for FY14 would be \$696,000 which represents a positive impact for retail shoppers of \$870,000 but a partially offsetting increase in cost for non-food retailers of \$174,000 assuming Bill 10-13 is effective July 1, 2013.

Although the long-term estimate for the bag tax program is a gradual reduction in the number of bags provided, if there is no near-term reduction, the number of bags provided in FY14 may be similar to FY13. Under that scenario, the economic impact for FY14 would be \$870,000 which represents a positive impact for retail shoppers of \$1,088,000 but a partially offsetting increase in cost for non-food retailers of \$218,000 assuming Bill 10-13 is effective July 1, 2013.

4. If a Bill is likely to have no economic impact, why is that the case?

N/A. The legislation will have an economic impact as noted in item #3.

5. The following contributed to and concurred with this analysis: Rob Hagedoorn, David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

5/15/13
Date

Bob Hoyt, Department of Environmental Protection
Testimony on Bill 10-13 Excise Tax on Disposable Carryout Bags
June 18, 2013

Good evening. My name is Bob Hoyt. I am the Director of the Department of Environmental Protection and I appreciate the opportunity to testify on behalf of the County Executive in opposition to Bill 10-13.

After only 18 months since the Bag Tax took effect, Bill 10-13 would eliminate an estimated 75% to 85% of stores from the requirement to collect 5 cents for disposable bags provided by cashiers and remove the incentive for consumers to substitute almost 2 million disposable bags monthly with reusable carryout bags. The Bag Tax overwhelmingly passed Council and had, and continues to have, the support of many retailers, environmentalists and other County residents. It has helped us comply with our State water quality requirements and has successfully focused attention on the need to reduce litter, clean up our waterways, and improve our quality of life. Consumers who do not want to bring carryout bags to certain stores have been free to pay the five cents and have four cents go to water quality programs. Retreating now in any form would be a mistake; but doing so as proposed by Bill 10-13 would be especially ill-advised.

Bill 10-13 would cause confusion among our residents, retailers, and those of us charged with its implementation. For residents, knowing whether to bring a carryout bag to any given store such as a Target, CVS or 7-11 would be very difficult; for retailers, keeping track of percentages of food sales would be burdensome especially since the Bill fails to identify which food items must be considered in the calculation; and, for the Departments of Finance and Environmental Protection, knowing which stores must submit the taxes will be impossible to independently verify, which creates significant administrative and enforcement problems.

To the State and our residents, the bill would signal a retreat in our efforts to clean up our streams and meet our regulatory requirements. Now is not the time to back off after we have spent the last 3 years rigorously pursuing the obligation to address stormwater pollution and the last 2 years significantly increasing our litter control efforts.

The message to retailers would be equally unfortunate. Stores that delayed complying with the law would be rewarded while those that invested in the software and other implementation tools would suffer financially for their compliance.

Our stream restoration efforts would also be undermined with dollars that previously funded state mandated water quality requirements shifting to cover increased administrative costs.

The Bill uses Boulder City's law as a model even though that law has not yet gone into effect. The Law was described by the City Council as only a first step in the effort to reduce litter, and charges 10 cents per bag to cover costs of administration, covers a much smaller geographic area and fewer stores, and relies on one-on-one outreach from the City to each store potentially covered.

This attempt to scale back the Bag Tax is reminiscent of the early years of our recycling program as described in the Gazette's Earth Day editorial: "Montgomery County launched its first major recycling initiative 20 years ago....[Critics]....were certain that the wave of recycling...was just a fad. Residents wouldn't sort their trash. Curbside pickup would be too expensive. No one would want the discarded items.... It was all just another government boondoggle. Supporters were able to silence the critics, and recycling grew. [Today] Montgomery County recycles nearly 58 percent of its trash, the highest rate in the state...." We urge Council to once again silence the critics and provide the leadership necessary to stay the course.

The Departments of Environmental Protection and Finance look forward to discussing this bill in greater detail at the T&E work session.



3

THE LEAGUE OF WOMEN VOTERS

of Montgomery County, MD, Inc.

Testimony on Bill 10-13
[Taxation-Excise Tax Disposable Carryout Bags-Scope]
to the Montgomery County Council
June 18, 2013

The League of Women Voters of Montgomery County was proud of the County Council for its leadership in passing the comprehensive bag tax that took effect on January 1, 2012. This act recognized that local governments can play an important role in protecting and managing our natural resources -- including streams, rivers, and the Chesapeake Bay.

Consequently, the League was quite disappointed to learn of the submission of Bill 10-13, which would dramatically narrow the scope of the bag tax and reverse some benefits of the original bill. Here are some of our concerns:

- We hope that the County Council will recognize that taking such action would be extremely premature. The bag tax has been in effect for a little more than one year. County residents are still becoming accustomed to its requirements and may need more time and publicity to achieve more thorough compliance and to become comfortable bringing their own reusable (and washable) bags whenever and wherever they shop, while accepting such simple routines as laundering reusable bags.
- Narrowing the scope will conflict with and contradict the farsighted Climate Action Plan approved by the County Council -- plastic is a petroleum product that in both its production and destruction emits carbon dioxide (increasing our carbon footprint) and other air toxins. Narrowing the scope could also result in more costs for cleaning up trash, maintaining facilities, and possibly requiring additional staff to do so.
- Despite rumors to the contrary, visual and physical pollution of county paths, roads, byways, and streams -- particularly with plastic bags -- continues. We have even seen them entangled in the tops of county trees. These bags also clog our stormwater management infrastructure, are costly to remove, and are hazardous to our wildlife.
- In addition, the 5-cent charge serves as a reminder of the negative environmental and economic impacts plastic bags have, thus inculcating an awareness of these problems (albeit at a far lower cost than in Ireland, where in 2009 the charge was 35 cents). Maybe we should consider charging more.

We ask the County to join the League in supporting and retaining this sensible and important control over the pollution of our resources and in promoting more policies that protect our resources by reducing pollution. The League has long supported the County Council's "reduce-reuse-recycle" hierarchy and hopes that the County will continue to promote and strengthen these efforts -- rather than weaken them, which is what Bill 10-13 will do. The future is in your hands. Your children, theirs, and the children in Montgomery County must live with the examples and legacy you now leave for them.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

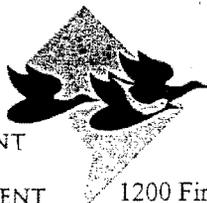
District Department of the Environment



MONTGOMERY COUNTY COUNCIL

DISTRICT DEPARTMENT OF THE ENVIRONMENT TESTIMONY
BILL 10-13 TAXATION – EXCISE TAX – DISPOSABLE CARRYOUT BAGS – SCOPE

JUNE 18, 2013 AT 7:30 PM
MONTGOMERY COUNTY COUNCIL
COUNCIL HEARING ROOM
100 MARYLAND AVENUE
ROCKVILLE, MD 20850



Good evening Council President Navarro and fellow councilmembers. My name is Kate Judson and on behalf of the District of Columbia Department of the Environment (“DDOE”), I would like to weigh in on the proposed changes to Montgomery County’s bag bill.

The District of Columbia’s bag law, formally known as the *Anacostia River Cleanup and Protection Act of 2009*, was the first of its kind in the nation and is now more than three years old. When Montgomery County began drafting its bag legislation, DDOE was asked to share some of the lessons learned from implementing its own law. DDOE encouraged Montgomery County to pass a law that would cover all retailers, not simply businesses that sell food and alcohol, in order to avoid confusion within the citizenry and business community over who should and should not be charging a bag fee. What resulted is a comprehensive and easy to understand law.

Despite some of the challenges with the District’s bag law, the law is effectively changing behavior. Almost immediately after the law took effect, businesses began seeing a drastic reduction in bag usage, and environmental clean-up groups witnessed fewer bags polluting District waterways. Most recently, DDOE completed a Census balanced survey of 600 residents across the entire city and found strong public acceptance of the law and an overwhelming reduction in bag use amongst residents. The survey found that compared to three or four years ago, 67 percent of residents reported seeing fewer plastic bags as litter around the District, and that an overwhelming 80 percent of District residents reported that they have reduced their usage of disposable bags since the law went into effect. In addition, on average, residents estimate their household has moved from using ten disposable bags a week before the law to four bags a week today – a 60 percent

decrease. Also, over 80 percent of residents either support or have not been bothered by the implementation of the bag law. If Montgomery County were to conduct a similar survey, we anticipate similar findings.

Montgomery County's current law is simple and easy to understand from a resident's perspective, a business' perspective, and from an enforcement perspective. The proposed amendments to the law would add unnecessary confusion amongst the regulated community and make it difficult for the government to enforce. This confusion could result in inconsistent compliance and an unlevel playing field for regulated businesses that comply relative to regulated businesses who fail to comply either intentionally or unintentionally. It could also increase bag litter in communities and waterbodies in Montgomery County, including those waterbodies that flow downstream to the District of Columbia.

Overall, the District's experience implementing the Bag Law has shown it to be a practical, administratively feasible, and cost-effective way to reduce the consumption of disposable bags, thereby reducing litter in our waterways. We have found that retailers that sell mostly non-food items, such as hardware stores, department stores, and specialty sporting goods stores have not opposed the bag law and have come into compliance easily.

The District views Montgomery County as an important environmental partner working with us to reduce the amount of disposable bag litter from entering the Anacostia watershed. Together with effective bag law legislation, we can meet our mutual goal of making the Anacostia River fishable and swimmable.



**Testimony of
The Greater Silver Spring Chamber of Commerce
Public Hearing – Bill 10-13
Taxation-Excise Tax-Disposable Carryout Bags - Scope
Montgomery County Council
Tuesday, June 18, 2013**

Council President Navarro, members of the Council, good evening. For the record, my name is Jane Redicker and I am the President of the Greater Silver Spring Chamber of Commerce. I speak here today on behalf of almost 400 businesses – mostly small businesses – the owners and employees of which either operate a retail establishment in Montgomery County or are the customers of retail operations in Montgomery County.

I am here speaking in favor of Bill 10-13, which would modify and limit the scope of the County excise tax on disposable carryout bags.

When the original “bag tax” was passed and our members realized that it applied to more than just the plastic bags used in grocery stores, we heard many complaints, primarily complaints from our members in their role as customers. Most were incredulous that the county expected them to have their own reusable bags for oversized items, couldn’t understand why the tax applied to paper bags, which are obviously recyclable, were annoyed that now they would have to pay for the department store shopping bags they were accustomed to receiving.

So, when we learned of Bill 10-13, we went back to our members. Some responded as customers; others as shopkeepers and business owners. In my few moments here, I’ll share a sample of what we heard.

- One of our member said she has no problem with the tax on plastic bags from grocery stores, but believes taxing the bags you get “when you stock up on school clothes for your children is more than a bit of overkill. After all,” she said, “it wasn’t those kinds of bags that were mucking up our environment. In fact, it’s those bags that we should be encouraging people to use because if they are like me, they can always find a use for a shopping bag, even if its next life is only as a trash can liner.”
- Another member has been boosting the economy of businesses in neighboring Howard County. She told us she has been shopping there “on numerous occasions just to avoid the bag tax....not because of the cost, but the principle. . .I realize this is taking business away from Montgomery County, but it is just a bad law. . .isn't this a case of punishing the masses for a few ‘bad apples’ who do not dispose of refuse properly? Can't we think up some other way....a more positive way of improving the bad behavior of littering?”
- One retail member mentioned that many of the store’s customers decline bags for their purchases, and are often very vocal about their reasons for doing so. “They say they just refuse to give Montgomery County even one cent for a (expletive) shopping bag,” she said.
- Another member that manages a location with multiple stores said his merchants’ concerns about shoplifting have increased since the tax took effect. “We really have to keep an eye on certain people, now,” he said.
- Restaurants complain that they have never been clear on what their responsibilities are, and customers echo this, saying that some charge for plastic carryout bags, some for paper, some for both, and others ignore the law and don’t charge anything, saying customers just complain when they try to charge for any bag.

- And finally, one member opined that he didn't know whether the tax was having any positive impact on the environment, but he did think there were people who are risking illness by using reusable bags to carry home food. "Those reusable bags are perfect for growing bacteria and cross-contaminating food. And who out there is really washing out their bags...precious few," he thinks. "A good recycling program for disposable bags would be a better approach."

According to the original "bag tax" introduction packet, "Disposable bags handed out by retail businesses are among the top items persistently found in the litter and trash stream in County neighborhoods and rivers. Litter is a public health nuisance, degrades property values, pollutes our rivers, and drives up taxpayer-funded cleanup costs." Most would agree with this sentiment. And, when the County Executive met with businesses once the tax was enacted, he said that it was never meant to be a revenue source. Its purpose was to limit the use of bags and keep plastic bags from becoming litter. In fact, we recall him saying that his goal was to reduce the use of these plastic bags to the point that it was not necessary to collect a tax.

So, we ask, why wasn't it originally limited to those bags that were littering our streams and neighborhoods? Why was its scope extended so broadly? Extended far beyond the types of bags most agreed were creating the litter problem? Has it resulted in a decrease in the numbers of these bags being found in our streams and neighborhoods? Has anyone done the research to quantify this? Or has it simply become another source of revenue that our County is now reluctant to relinquish.

Our membership is split on what should be done now. Some want us to advocate for eliminating the tax altogether. Others think the scope should be modified and narrowed to address the so-called "problem bags," those that were the real source of the litter. They are willing to support modifications that would give the original intent a chance to work. That's why I'm here this evening to urge your support of Bill 10-13.

And I thank you for your consideration.



THE GREATER BETHESDA-CHEVY CHASE CHAMBER OF COMMERCE

7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T: (301) 652-4900
F: (301) 657-1973
staff@bccchamber.org
www.bccchamber.org

Your Business Is
Our Only Business

TESTIMONY OF GINANNE M. ITALIANO REGARDING BILL #13-10, TAXATION-EXCISE TAX-DISPOSABLE CARRYOUT BAGS-SCOPE BEFORE THE MONTGOMERY COUNTY COUNCIL – June 18, 2013

Good evening. My name is Ginanne Italiano and I am the President and CEO of The Greater Bethesda-Chevy Chase Chamber of Commerce, which is comprised of over 600 area businesses employing over 45,000 people.

I am here to testify in support of Bill 13-10, Taxation – Excise Tax – Disposable Carryout Bags. We want to thank the sponsors of this legislation for listening to the concerns of Montgomery County citizens and businesses alike on an issue that will help us to be more business and consumer friendly, if passed. We understand the bag tax offsets the costs of the County's stormwater management program, and primarily as a detriment to the widespread use of plastic bags, mostly from grocery stores. Since the bag tax was implemented, we have seen a major increase in people walking into grocery stores with cloth and/or reusable bags. This is obviously a good thing. Good for the environment, good for keeping plastic bags out of our waterways and ultimately good for the County's budget.

But how often do we remember to bring those same reusable bags when we go to the local beer/wine store or to the shopping mall? The tax for department stores and others has caused a number of issues frustrating to customers and owners alike. I'd like to provide a few examples given by members of our Chamber.

First, a local small retailer in downtown Bethesda said, "We have a number of customers who get angry with us, the store owner, for a law that Montgomery County is imposing. They leave very frustrated not because of the 5 cents but more because of a law that makes us charge 5 cents for a paper bag, when it is the plastic bags that are causing the pollution."

The manager of a hardware store that has stores in both Bethesda and Silver Spring has had issues not only because of the complaints but also due to shoplifting. People bring their bags in and when going up and down the aisle shopping, they use their bag to collect items instead of the baskets the store provides. This store manager said that "It's hard to question some and not others without sounding accusatory. We have caught people red-handed walking out of the store without having paid first – the bag tax made it pretty easy for those people."

Finally, the owner of a beer and wine store, says that he is facing the same issue with frustrated customers. It's not about the 5 cents, he says it's "just another barrier to doing business in Montgomery County when others can get the same product across the river or in Prince George's County without this hassle." His customers who most times forget to bring a bag to his store, also don't want to walk down the street carrying a bottle of wine or 6-pack of beer without a bag and feel pressured (not by him) to buy the bag.

In reaching out to some of our shopping centers, we received a few more quotes from retailers regarding the tax - they can be found on the back of my testimony. We thank you for realizing the negative impact the bag tax has on retail stores that do not primarily sell food and improving the law for the betterment of our County, businesses and consumers.

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Results From Quick Survey of Retailers in Bethesda-Chevy Chase

“I really do think that it is a great idea! As a boutique store, we have gotten a lot of flack for charging our customers this fee.”

Antonio, the manager at Rangoni Shoes

“It is our understanding there is a hearing to discuss amending the current plastic bag fee in Montgomery County. We are VERY much in favor of repealing this fee as soon as possible.”

Mirella Levinas, Manager at Cartier:

“Customers who shop in luxury stores are offended by ANY charge of a shopping bag. They feel that the bag is the final part of an expected sales ceremony. We have also have customers say they would not purchase if there is a bag charge.”

Andrea Mitchell, manager of Bulgari:



THE VOICE OF MONTGOMERY COUNTY BUSINESS

Bill 10-13 Disposable Carry-Out Bags - Scope

Montgomery County Council
June 18, 2013

OPPOSE

The Montgomery County Chamber of Commerce, as the voice of Montgomery County business, supports Montgomery County's Bag Tax program, which imposes a 5 cent tax on paper and plastic bags in retail stores and opposes the changes to the program proposed in Bill 10-13.

A program similar to Montgomery County's has been very successful in the District of Columbia, resulting not only in significant revenue, but also a reduction in bag usage of approximately 80 percent. Most importantly for our members, in a recent survey, 78 percent of business owners in D.C. reported either no change to their business or a positive impact on their business.

In Montgomery County, the Bag Tax helped reduce the number of plastic bags in streams. And, unlike the Energy Tax, the Bag Tax revenue is actually applied to a related problem: the mitigation of litter in our water and waste streams.

But the Chamber recognizes that there is controversy associated with the inconvenience of implementing the Bag Tax. We recognize that the County Council is on the receiving end of complaints from many who oppose any Bag Tax.

However, there was at least this much controversy about the restaurant smoking ban which you enacted almost ten years ago. Even then we supported the need for you to take action to move the county forward. We believe that, though controversial, it falls to you again to move the County forward on this issue, too.

For these reasons, we oppose Bill 10-13.

Gigi Godwin, President and CEO
Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800 Rockville, MD 20850
301-738-0015
www.montgomerycountychamber.com



Clean Land, Safe Water, Healthy Lives



**Testimony for Bill 10-13 Taxation Excise Tax - Disposable Carryout Bags - Scope
OPPOSE**

**Tuesday, June 18, 2013
Montgomery County Council**

Laura Chamberlin, Program Manager, Alice Ferguson Foundation

Thank you for conducting this important public hearing on Bill 10-13 concerning the amendment to the successful bag fee legislation that has been in place for the past year. The Alice Ferguson Foundation, an environmentally focused nonprofit, has been working with our partners in communities around the Potomac Watershed to end the litter and trash problem through our Trash Free Potomac Watershed Initiative. We organize cleanups but also pursue policies and actions to end litter at its source.

In April 2013, over 14,000 volunteers trudged through mud and dodged cars, to pull **574,000 pounds of trash** from 616 sites during our Potomac River Watershed Cleanup across four states and the District of Columbia. But we don't need to remind you of the litter. You already know about that, that's why you passed this legislation two years ago. This legislation has been an important step in solving the litter problem by creating a **five cent incentive on single-use plastic and paper bags** to encourage people not to use single-use bags.

In both the first and second year of the bag fee, 2012 and 2013, Montgomery County Cleanup sites have recorded more than a 50% decrease in plastic bags than in previous years. Similar results have been seen in the District of Columbia since the implementation of their similar legislation. Behavior has changed and we are seeing less plastic bags littered, which is the intent of the legislation.

Even with these successes, we understand that there are concerns. Innovative legislation like this warrants review and we are ready to work with the County Council and Department of Environmental Protection (DEP) to help make the current legislation effective. But the changes suggested in this amendment, will negatively impact the success of this bag law and further create confusion. There are several points that are of particular concern:

- 1) **Exempting businesses that have less than 2% of their sales coming from food.** From what we can tell, businesses don't currently report by percentage of product type sold. So how could this exemption be meaningful and enforceable? And what about the extra reporting burden for businesses? We can also see this resulting in some businesses demanding exemption when they don't qualify and other businesses demanding that they be allowed to implement since they are able to save money. An exemption of this kind will further confuse and anger consumers and weaken the impacts of the bill.

2001 Bryan Point Road
Accokeek, Maryland 20607
Phone 301.292.5665
Fax 301.292.1070

1255 23rd Street NW, Suite 275
Washington, DC 20036
Phone 202.292.8203
Fax 202.292.8206

www.fergusonfoundation.org

- 2) **Department stores, hardware stores, electronic stores, just to name a few, are the stores that are most likely to be exempt under the new amendment.** It's argued that these stores don't contribute to the litter volume. But in fact, I have seen many of these bags on my litter cleanups. Additionally, there is a concern that it is difficult to bring a reusable bag to these stores. But I know from first-hand experience that many of these types of stores sell reusable bags to encourage their consumers to use, which reduces the store's overhead costs
- 3) **What is the definition of food?** Does it include liquor or beverages? We know that bags from the purchase of these products are commonly littered and they must be included.
- 4) **Carryout exclusion.** The struggle to address restaurants and carry-outs is not an easy one, but restaurant bags are a common source of plastic bag litter and so they must be considered. If a consumer needs a bag and pays five cents for it, the bag will have value, and will hopefully not be littered. There is also the opportunity to refuse the bag, as I usually do.

The District of Columbia has experience implementing a similar bill, but with more exemptions, and they continue to recommend fewer exemptions. Their reason is simple: the more exemptions, the more confusing the law is and thus the more difficult it is to implement and enforce. Rather than making drastic changes to the law, we strongly recommend a comprehensive evaluation of the law's implementation. A true evaluation might yield other solutions such as a focus on improving enforcement and education. This will ensure that residents understand the purpose of the legislation and that implementation is occurring across all businesses as it should.

The Alice Ferguson Foundation recognizes that legislation is not the only solution, just as Cleanups are not the only solution. They are each but one piece of the puzzle. We know that policies like this challenge residents to change their behavior. Getting people to wear safety belts in cars and to not smoke in public are examples of challenging behavior changes. It may not be easy to change behavior, but it is necessary. And it takes strong, committed leadership to foster this change. We urge you to not abandon success. We urge you to not amend the law, but rather to improve enforcement and education and to undertake a comprehensive evaluation, which can help better inform future efforts.

TESTIMONY BY THE MONTGOMERY COUNTY REPUBLICAN CENTRAL
COMMITTEE ON BILL 10-13

TAXATION-EXCISE TAX DISPOSABLE CARRYOUT BAGS-SCOPE

MONTGOMERY COUNTY COUNCIL

JUNE 18, 2013

THANK YOU FOR THIS OPPORTUNITY TO PRESENT THE POSITION OF THE MONTGOMERY COUNTY REPUBLICAN CENTRAL COMMITTEE (MCGOP) REGARDING THE PROPOSED MODIFICATIONS TO THE COUNCIL'S COMPREHENSIVE PLASTIC AND PAPER BAG TAX. WE COMMEND THE COUNCIL FOR CONSIDERING ACTION ON A TAX ISSUE WHICH HAS RAISED MUCH CONCERN ACROSS THE COUNTY, REGARDLESS OF PARTY AFFILIATION, SINCE ITS IMPLEMENTATION JANUARY 1, 2012.

FOR A COUNTY THAT PRIDES ITSELF ON RECYCLING, THIS ANNOYING AND BURDENSOME BAG TAX MAKES A MOCKERY OF MONTGOMERY COUNTY RESIDENTS WHO RELIGIOUSLY RECYCLE PLASTIC, METALS, PAPER AND MORE AND OF HARD-WORKING COUNTY EMPLOYEES WHO COLLECT, SORT AND RECYCLE THESE PRODUCTS.

WE THINK COUNCILMAN BERLINER SAID IT BEST WHEN RECENTLY QUOTED IN THE MONTGOMERY COUNTY SENTINEL, "...TO BRING IN A REUSABLE BAG AT HOME DEPOT IS NOT SOMETHING THAT IS ON MOST PEOPLE'S CONSCIOUSNESS AND I DON'T THINK IT EVER WILL BE. MY CONCERN IS THAT IT BREEDS RESENTMENT."

BUT THE ISSUE AND RESIDENT FRUSTRATION EXTENDS BEYOND HOME DEPOT OR NORDSTROMS. ONE ONLY HAS TO VISIT THE LOCAL GIANT OR SAFEWAY TO SEE THE RESENTMENT - SLOWER CHECKOUT LINES, BROKEN AND UNSANITARY BAGS BEING USED, SENIOR CITIZENS WALKING OUT OF STORES WITHOUT BAGS BALANCING DELICATE GOODS IN THEIR OVEREXTENDED ARMS, SHOPPERS HAPHAZARDLY TOSSING UNBAGGED GOODS INTO THE BACK OF THEIR VEHICLES.

LET'S NOT FORGET THE BURDEN ON BUSINESSES WHO ARE REQUIRED BY LAW TO COLLECT AND COUNT THE NICKELS, FILL OUT THE PAPERWORK, MAKE PAYMENTS TO THE COUNTY COUNCIL, OR THE BURDEN ON TAXPAYERS STUCK WITH THE SALARY AND PENSION OF UNNEEDED COUNTY EMPLOYEES WHO MAIL THE PAPERWORK, COLLECT THE NICKELS AND

RELENTLESSLY POLICE THE BUSINESS COMMUNITY FOR BAG TAX VIOLATIONS.

BILL 10-13 IS A GOOD FIRST STEP BUT IT DOES NOT GO FAR ENOUGH. THE MCGOP IS CALLING FOR AN IMMEDIATE CESSATION OF THE NICKEL TAX ON ALL PAPER BAGS. CLEARLY RECYCLABLE, WE NOTE THAT PAPER BAGS ARE REQUIRED BY THE COUNTY COUNCIL FOR THE HOME COLLECTION OF ALL GRASS CLIPPINGS AND YARD WASTE.

WITH REGARD TO PLASTIC BAGS, WE RECOMMEND A ONE- YEAR PHASEOUT OF THE CURRENT LAW. DURING THAT YEAR, THE COUNTY COUNCIL COULD DEVELOP AND IMPLEMENT A COMPREHENSIVE EDUCATION PROGRAM ON RECYCLING THE BAGS AT GROCERY STORES (MANY STORES ACTUALLY HAD PLASTIC BAG RECYCLE BINS (HDPE 2) BEFORE THE TAX WAS IMPLEMENTED) AND AT HOMES/BUSINESSES WITH OUR CURRENT BLUE RECYCLE BINS.

THE COUNTY COUNCIL IS ALREADY SPENDING TAX DOLLARS "TEACHING" RESIDENTS HOW TO SAFELY CROSS THE STREET AND HOW TO PLANT TREES AND SHRUBS TO FILTER RAIN WATER (AS PART OF THE COMING RAIN TAX). TRAINING OUR HIGHLY EDUCATED RESIDENTS ON RECYCLING PLASTIC BAGS SHOULD NOT BE A PROBLEM.

IN CLOSING, THROUGH THE EFFORTS OF COUNCILMEN BERLINER, THE COUNTY COUNCIL HAS A UNIQUE OPPORTUNITY TO HIGHLIGHT TO ALL COUNTY RESIDENTS THAT THE NICKEL BAG TAX WAS A MISTAKE AND THAT THROUGH EXPANDED EDUCATION AND RECYCLING EFFORTS, THE MONTGOMERY COUNTY BAG TAX IS NO LONGER NECESSARY. LET BILL 10-13 BE THE FIRST OF MANY BILLS TO COME THAT WILL ELIMINATE UNNECESSARY AND BURDENSOME TAXES AND REGULATIONS ON MONTGOMERY COUNTY RESIDENTS. THANK YOU.

JAMES F. SHAUVECK
SPEAKING FOR:

MARK UNCAHER, CHAIRMAN

MONTGOMERY COUNTY REPUBLICAN CENTRAL COMMITTEE

15833 CRABBS BRANCH WAY

DERWOOD, MD 20855

**Testimony on Bill 10-13 –
Position: OPPOSE**

June 18, 2013
Montgomery County Council

Good evening. My name is Julie Lawson. I am the Director of the Trash Free Maryland Alliance, a network of 60 organizations, businesses, and activists working to reduce litter in the state through public policy. I am here on behalf of our members to oppose Bill 10-13.



I have been working on disposable bag bills in the mid-Atlantic for five years, starting with working to pass the bag law in DC in 2009. Since then, I have studied these laws as they pass around the nation, and worked with the DC government and other partners to assess the effectiveness of the program there. This experience tells me that Montgomery County's law is a leader in the nation, a model for other jurisdictions to emulate.

The trend has been for cities to start with a law that applies to a limited number of stores, and after some number of years and a thorough review process, they expand the scope to include more stores. They generally don't scale back.

It's troubling to me that the Council is reconsidering a program that is having the desired effect—reducing disposable bag use, reducing litter, and reducing trash pollution in our streams. This is particularly troubling because the County generally does not tweak programs until they are three to five years old, and the bag law is not quite 18 months old. Behavior change takes time; I urge the Council to give County residents and businesses that time.

Certainly there are ways for the program to be more effective. But what is "effective" in this case? It's reducing bag use. If people aren't taking their reusable bags to the mall, does it really accomplish the goal to just exempt those stores? Just because people anecdotally don't seem to have changed doesn't mean we should just give up on them. Instead, we should find out what they are really doing. The County has not conducted any scientific studies to measure behavior change or public opinion—so do we really know what's happening?

The County should also step up its outreach and education, to both businesses and residents. Webinars for businesses helped educate them in the first few months, and there were some terrific ads out over the winter holidays reminding people to take their bags with them for holiday shopping. This work needs to be a sustained, year-round endeavor. A survey could also highlight gaps in the outreach.

There is little enforcement of the law, either. A business can decide that it's too much of a hassle to charge the fee, and nothing happens to them. Again we are not accomplishing the intent of the law. The delay in enforcement was by design, under the premise that a full review of the program would be several years away.

Revising a program so early in its existence will set a precedent for future programs. I strongly encourage the Council, and the County, to redouble efforts to implement the bag law we have, scientifically assess its effectiveness now and in a few years, and only then consider changes. Thank you.

Contact:

Julie Lawson
Trash Free Maryland Alliance
202-347-0412
jlawson@anacostiaws.org

TESTIMONY OF KATHERINE SCHINASI, BOARD MEMBER,
ROCK CREEK CONSERVANCY

At the Public Hearing on Bill No. 10-13
Modifying the Excise Tax on
Certain Disposable Carryout Bags
Montgomery County Council
June 18, 2013

Rock Creek Conservancy is a nonprofit organization working to protect the lands and waters of Rock Creek and revitalize Rock Creek Park. Rock Creek is the second largest watershed in Montgomery County, with 168 miles of stream, including Rock Creek and its 20-plus tributaries. We directly reach more than 1,000 constituents in Montgomery County.

Since our founding in 2005, we have mobilized over 30,000 hours in volunteer service to protect Rock Creek. Our projects include tree planting, storm drain marking, cutting invasive plants, and installing rain gardens. One of our major efforts has been to field volunteers for several hundred trash cleanups. As a consequence, “we know trash.”

We would like to first thank the Council for its leadership in passing the bag tax in 2011. That action marked the county—not just in Maryland but across the country—as one of the foremost future-leaning jurisdictions by establishing the priority of environmental sustainability. And it has had a real and positive impact. However, we must now oppose passage of Bill 10-13. This bill would weaken the progress already made in cleaning up the county by exempting plastic food take-out bags. We have found these to be a significant source of trash in Rock Creek.

Trash is a problem the entire length of Rock Creek. Since 2009, Rock Creek Conservancy has held an annual “Rock Creek Extreme Cleanup” with trash pickups at over 50 locations. This year, more than 1,800 volunteers participated and worked at 71 sites. Over the past five years, the Extreme Cleanup has yielded 12,224 bags of trash, 68 tons of junk too large or too heavy to fit in a bag, and 803 tires.

Our volunteers have also pulled more than 35,000 plastic bags from Rock Creek’s streams and parks. The pictures below give you an indication of how disturbing this is and where bags are found.

Bill 10-13--OPPOSE

Most of the plastic bags we find are caught in snags in two places: along a road or in or near a creek. Along the roads, the main source is litter. Plastic bags are often found with food containers and wrappers, chip bags, candy wrappers, bottles, and cans. It appears that people buy a take-out meal or snack and clean out their cars by tossing the remains out the window.

Bags found in and near the creeks generally come from trash and litter in the surrounding neighborhoods. During heavy rains, lightweight plastic bags, bottles, and balls wash into the street gutters and then move through the storm drain system to the nearest creek. Some of the bags catch on rocks in the stream or on snags on the stream bank. You can easily see the high water mark of storms by noting how high plastic bags can be seen on the stream bank or hang in tree branches by the creek. Those are the ones our volunteers pick up. The bags that are not caught flow with the high water downstream to the Potomac, the Chesapeake Bay, and the ocean.

There is a correlation between take-out food and drink and the plastic bags that become trash in our parks, waterways, and oceans. Last fall, 18 of our volunteers spent two hours picking up trash as part of the Ocean Conservancy's International Coastal Cleanup and did an inventory of what they found. Of the 556 items gathered, most of the top 10 were food related.

| | |
|---------------------------------|-------------------------|
| 91 food wrappers | 45 caps & lids |
| 77 cigarette butts | 38 cans |
| 67 plastic bags (+7 paper bags) | 26 cups, plates & forks |
| 58 glass bottles | 22 straws |
| 45 plastic bottles | |

These were the same top 10 items found by the other 550,000 volunteers who participated in the Ocean Conservancy's 2012 coastal cleanup.

Our data indicate that for Rock Creek, the Montgomery County bag tax is working. In 2011, before the bag tax was passed, our volunteers reported gathering 5,274 plastic bags. The following year—after enactment of the tax—the number dropped to 3,957. In 2013, it dropped again to 3,722. This is a decrease of 29% from 2011 levels.

There are still, however, far too many plastic bags in Rock Creek. Changing behavior often takes a long time—I still forget to take my bags now and then—but we see the positive impact Montgomery County's bag tax has had after just two

Bill 10-13--OPPOSE

years. Residents are more attuned to the cost of plastic bags and the value of reusable ones. Businesses have even capitalized on the bag tax, as evidenced by the advertising logos sported on reusable bags and the sale of fashionable ones.

We urge the Council to vote against Bill 10-13 and continue the bag tax as it is. Ideally, even more could be done by the Council to reduce plastic bag pollution and trash in the creek. Adding exemptions to the excise tax would be taking a large step backwards. At a minimum, people should pay for all food-related bags, as those far too frequently end up as trash, but a fee on all bags is even easier to remember and can be easily avoided by using a reusable bag or no bag at all.

Thank you.



A few of the 35,000 bags collected by
Rock Creek Conservancy volunteers



of the Anacostia River

*P.O. Box 4314
Silver Spring, MD
20914-4314*

*Anne Ambler
President*

*James Graham
Vice President*

*John Fay
Secretary*

*Larry Husb
Treasurer*

Suzanne Donohue

Jim Fary

Kimberley Knox

Glenn Welch

Tiffany Wright

*Edward Murtagh
Liaison, Friends of
Sligo Creek*

*Elaine Lamirande
Chair, Woodmoor
Green Team*

www.neighborsnwb.org

10

**Testimony in Opposition to Bill 10-13,
Excise Tax, Disposable Carryout Bags, Scope
June 18, 2013**

Neighbors of the Northwest Branch of the Anacostia River strongly opposes Bill 10-13, the partial roll-back of our far-sighted carryout bag fee.

Neighbors of the Northwest Branch is an all-volunteer organization dedicated to restoring the health of the Northwest Branch. Among our activities is removing the litter of our throw-away culture from the stream banks and water.

When Bill 10-13 was proposed, **excluding from the bag fee 89% of retailers currently covered**, I reread our 2011 testimony supporting the fee. It applauded the at-the-source, market approach, the wide and fair coverage, and the conservation resources the fee would generate initially while having a neutral or positive effect on county businesses. Has something changed since 2011?

Not the threat to wildlife and water quality that litter poses. Not our MS4 trash reduction requirements for the Anacostia watershed. Certainly not our need to reduce our use of petroleum and forest products in light of diminishing resources and climate change.

Indeed, some things **HAVE** changed: we find many fewer plastic bags and shreds hung up on trees and stream banks, many fewer of those fast food and nonfood store bags that this bill would exempt. And although the bag fee was not established for revenue, it has provided our Dept. of Environmental Protection with needed funds to seriously address our Clean Water Act requirements.

All the sponsors of this bill signed the pledge for a Trash Free Potomac by 2013. You were wise to sign this pledge and wise to institute the bag fee. The Council has demonstrated that it wants to make Montgomery County a model of environmental sustainability.

Some councilmembers have suggested that people relieved of this fee will then be ready to accept deep changes to their lifestyle on behalf of environmental protection. But realistically, what large inconvenient behavior change on behalf of environmental protection do you expect people to accept in exchange for such a minor inconvenience as taking a bag along to buy toothpaste or batteries, or paying 5 cents for a department store bag large enough for pillows or a winter coat?

And will property owners be pleased to make up the missing \$700,000 annually with another increase in the Water Quality Protection Charge?

We urge you to preserve the gains we've already made in reducing environmentally and economically damaging bag litter. Wouldn't it be far more embarrassing to miss our MS4 requirements than to carry a reusable bag into an upscale store? Please proudly carry one of our beautiful logo bags that will advertise your concern for our threatened waterways. No embarrassment there!

You made the correct decision in 2011. Please hold the course. Vote NO to Bill 10-13. Thank you.

Anne Ambler
12505 Kuhl Road, Silver Spring

Testimony of Maurie Kathan
re: Bill 10-13, Disposable Carryout Bags
Montgomery County Council
Hearing on 6/18/2013
Position: Opposed

My name is Maurie Kathan, Chevy Chase, MD

I am here to in opposition to changes to the current bag bill.

I would like to tell you about my experience with the bag fee in DC as it speaks to some of the concerns I have heard expressed.

I work at Hudson Trail Outfitter in DC. Though we are not a department store we sell very expensive items including clothing. It is not unusual for me have at least one 1000 plus dollar sale a day. Though we are in DC where stores that do not sell food are exempt we sell camping food so we are required to charge for bags. I rarely have a customer object to paying for the bag as it is a very little fee on top of a big purchase.

I know that my store has had to purchase fewer bags since this fee has been in place. We provide printed paper bags which are not cheap. I am sure this has been a help to the company as a small local corporation.

I find that the simple question "do you want a bag" makes a huge difference. People take the time to think about it and often come to the conclusion that they don't need one.

Having the bag fee will not only benefit the environment and take millions of bags out of the trash stream, but it will benefit businesses. In this tight economy, even little savings to a business can be the difference between staying in business and having to close your doors.

Thank you for your consideration

Testimony of Celia Martin
re: Bill 10-13, Disposable Carryout Bags
Montgomery County Council
Hearing on 6/18/2013
Position: Opposed

You are to be congratulated on the Council's adoption of the environmental protection fee attached to plastic bag usage. The Council has followed the example of other leading cities and counties, and acted as a model for its own state. When a product causes significant economic and environmental damage on a large scale, it is the responsibility of government to protect the greater good; our County Council has responded and it is to be congratulated.

As you undoubtedly understand, the current legislation allows usage of plastic bags, but recognizes that the cost to the environment for that choice must be borne by the user. In some cities throughout the world, plastic bags are banned altogether because the governments prefer to spend tax dollars elsewhere, rather than for the cost associated with plastic bag cleanup and the damage these bags cause to recycling equipment, and the flooding they cause when they damage storm drains. Based on an October, 2012 Wall Street Journal article, San Francisco estimates that to clean up, recycle and landfill plastic bags costs as much as 17 cents a bag. On this basis, bag users receive a discount to the more true costs of usage, and all taxpayers are making up the difference. This should be considered as a significant concession to plastic bag users.

Let's remember the economic arguments which were presented when the environmental fee legislation was approved. It saves businesses the cost of providing bags. It presents entrepreneurs new opportunities to create alternatives, and we have seen restaurants such as Sweet Green rise to the challenge with success. As the Wall Street Journal article points out, companies that manufacture reusable bags will continue to grow and diversify their product lines, and will create more green jobs. The sale of reusable bags will also generate sales-tax revenue.

So rather than weaken the environmental protection fee on bag usage, I hope that Montgomery County will continue its forward looking tendencies and join the 10 cities which have banned plastic bags entirely, and the number of cities and counties which are addressing dry cleaning plastic. I hope that the Council will agree that it is important to keep perspective on the cost versus the benefit. The environmental fee levied on a garment bag is not even 1 basis point on the cost of a \$200 outfit; on a \$50 restaurant meal, the cost is 10 basis points, still not even close to 1%. Protecting our environment and saving and redirecting tax dollars to benefit those same consumers is worth far more than 5 cents per bag. And in terms of constituent pushback and political capital being expended, remember that complainers are generally more motivated to share their opinion than the supportive majority. I have an anecdote to illustrate the majority's support.

I was shopping at the outlets in Delaware and watched the parking lot to see who was carrying their own bags. Delaware has no environmental fee on bags. The Delaware shoppers generally used plastic and paper when loading their cars with their purchases. The Maryland shoppers were generally using their own reusable bags. Why would they do that when there was no charge associated with plastic usage? Please consider that they do so because they agree with the County Council's message at home of the benefits to society of using an alternative to plastic. So not only has the Montgomery County Council modeled a policy which has created a better environment for its own County tax payers, but has leveraged the quality of life in other places as well.

Please stand firm in your support of the environmental protection fee levied on all plastic bags, and consider that the majority of your constituents support the original bill. Thank you for all you do to serve our County.

Respectfully submitted,
Celia Martin
5326 Falmouth RD., Bethesda, MD 20816
Bethesda resident, weekend weed warrior volunteer, donor to Montgomery County Parks Foundation

Testimony of Sarah Morse
re: Bill 10-13, Disposable Carryout Bags
Montgomery County Council
Hearing on 6/18/2013
Position: Opposed

I'm Sarah Morse, Co-President of the Little Falls Watershed Alliance, an all-volunteer environmental stewardship group for lower Montgomery County. Our creek is the Little Falls branch and we engage neighbors in Bethesda and Chevy Chase as stewards for our fragile natural environment. We have over 900 members and we run more than 40 events a year including monthly creek clean-ups. Since we started in 2008, we have removed some 400 large bags of trash from the creek and surrounding parkland using all volunteer labor.

Last year, the County gave us a huge gift. They recognized that even with hundreds of volunteers helping us, we can't keep up with the litter. So, the Council passed a bag law and engaged another million residents in the problem. With a simple 5 cent fee, the Council took thousands of bags out of the trash stream and made every resident of Montgomery County a participant in saving the Bay and keeping plastic bags off the roadways. One million volunteers joined us in keeping the creek clean. We noticed the difference immediately. We rarely find bags anymore. In our last big creek clean-up, one group picked up only 4 plastic bags. The Bag Law works and we are so grateful to the County for taking this strong stand for the environment.

Today, the Council is considering weakening the Law and allowing some bags back into the trash stream. They say that some residents find it burdensome to bring their own bag and it's too expensive to pay a nickel for one. They say that it doesn't make sense to have to bring your own bag to high end stores like Joseph Bank or Macy's. They feel that people who get take-out food from delis and restaurants shouldn't have to deal with bag issues.

The Little Falls Watershed Alliance is opposed to this new effort. What we think is burdensome is picking up bags out of the creek. What we think is expensive is having to run monthly trash pick-ups - - even volunteer efforts cost money. What we don't want to deal with is other people's bags on the side of the road and in the creek.

We believe that all bags are created equal. The creek doesn't know where the bags come from; the Bay doesn't care if it's from a department store, a grocery store or a deli. A bag in the creek is an environmental problem no matter where it comes from.

We ask the Council to remember back to 2011 when the Bag Law was put in place. It took vision and strong leadership to enact that Bill and it worked. It's a simple question - "Do you need a bag?" - but it has a big impact. At all types of stores, I see people bringing their bags. And those that forget their bag are often just carrying the item or putting it in their purse or briefcase. Every month, we see fewer and fewer bags when we clean the creek. With your help, we can continue on this trajectory until our volunteers have no bags to pick up. Won't that be a great day! Please help us get there and vote NO on Bill 10-13.

Thank you for your time on this.

TESTIMONY ON BILL 10-13,

AMENDMENT TO THE BAG TAX

Good evening members of the Council, my name is Bill Kominers. I am here this evening speaking as an individual in support of Bill 10-13.

This Bill takes a major step in reining in the overbroad application of the Bag Tax. I believe that this Bill brings the Bag Tax program closer to what people originally expected it to be—dealing primarily with the purchase of food, that is not already prepared for immediate consumption. I still have concerns about the health issues associated with reusable bags during repeated trips to the grocery. I also still believe that paper grocery bags should be exempt, since they are recyclable and biodegradable. But nevertheless, this Bill is progress; and I applaud the sponsors for taking this step.

Even I have adapted to the bag tax for groceries. Let me demonstrate. I have reusable bags for the grocery. Here is the bag that I use at the Giant. Here is another bag that I use when going to the Safeway. But still, try as I might, I can't fit into these reusable bags those pillows from Bed Bath & Beyond, or that new 19 inch computer monitor from Best Buy (which I need so that I can better watch the Council, of course). So I applaud this Bill, which will remove the tax from bags to hold those products.

I like to this of this Bill as a sort of "car seat preservation bill." Because now I can safely bring home Chinese food on Sunday night. The take-out restaurant will now be able to put the paper bag holding the food containers into a plastic bag. That plastic bag is very important, because, as you may have noticed, every once in a while, those food containers leak into the paper bag just a little bit...

If this Bill is adopted, I suggest that you do some serious educational outreach about the requirements of the law. This education would be especially valuable to small lunch shops. Like the ones where I buy a sandwich for lunch each day. I've tried to do this educational campaign for you, telling the sellers that "paper is okay; you only have to collect the tax for plastic." But they just don't seem to listen to me. Educating them would be a good use of the revenue that the tax generates.

Speaking of revenue. I was disappointed to read the economic analysis for the Bill. This tax was presented originally as one designed to "fade away" as behavior was modified and people used fewer bags. So it seems to display little faith in the effectiveness of the legislation to now budget significant operating expenses that must be supported by revenue from the tax. If the tax is as successful as was planned, the

revenue will disappear. Do not be dissuaded from this refinement of the Bag Tax by a desire to satisfy this newly-created, because-it-is-there revenue need.

In summary, with apologies to Robert Frost:

Whose bags these are, I do not know.
They bear a grocery logo though.
A nickel was paid for each of them.
I'll use them till I don't know when.

Each store I use must find it queer
when I spurn a bag for goods so dear.
But a nickel seems a lot to pay,
for a paper bag to take them away.

Thank you for your consideration of my comments.

Frances B. Maane
7806 Honeybee Ct
Bethesda, MD 20817
June 18, 2013

DO NOT AMEND CURRENT BAG TAX BILL 8-11

It is lovely to see all the members again, both new and old. My name is Frances Maane, and I support retaining our county bag tax Bill 8-11 as is, and ask the council to reject the Bill 10-13. I will provide the levity and entertainment for the discussion this evening. As usually I will be politically incorrect, but morally right.

Let's consider Ms. Fancy Pants who likes to shop at Needless Markup at the Must Have it all Galleria. Do we really believe that she can't afford a nickel to protect our waterways? Do we really think Mr. Gotta Lot of Bucks is not going to purchase a new shirt because of the nickel tax? Do we really think these citizens will drive to Virginia or PG County to purchase these items? The cost of gas will far exceed the nickel tax. Let's consider for a moment the amount of SAVINGS to the retailers, who no longer have to provide these bags! At their board meetings, they are probably thankful for this indirect increase in profits due to a reduction in shopping bag expenditure costs.

Saturday, I shopped at Macy's – please note the beautiful plastic bag that I willingly paid a nickel to obtain. Please note its remarkable similarity to a grocery bag. In fact, it is probably better quality than the grocery bags, and thus more indestructible, so it will last longer as trash in our county parks, streets and water ways. Nordstrom's was more amusing, in that I asked the man next to me what he planned to do with his clothing bag when returned home. He replied, "I suppose I'll recycle it." Wonderful! More trash expense for the county! Please note, I was not charged for the bag at Nordies.

I completely and thoroughly embrace the county bag tax. In my perfect world, it would be a national law with NO exceptions to ANY retailer. I'll demonstrate my bag collection, my freezer bag from Trader Joes, complete with a zipper, to keep food cold or warm cost \$ 10. I've given these as gifts. The larger version from Costco, for those big items cost \$ 1, the beautiful bag from Izaak Walton League free, and the "Oh my favorite" bag from Captain Whites Seafood, also free, as I spent \$ 50 there. I even have my George Leventhal bag, which has been used a lot. I enjoy using my bags, and encourage our county citizens to partake in the entertainment value of displaying the various bags while shopping. If the council members were clever, you could figure out a way to actually market the bags as a fashion statement, or a politically correct statement supporting reduction in waste and simultaneously protecting the environment. Perhaps we just need a horse or alligator adornment? Pink and green are quite lovely too! How about large flowers or a pretty tan, red and black plaid print?

Our storm drains are crumbling. We need to improve or even replace our water management system, cutting a nickel bag tax which will merely cause the need to increase the WQPF tax is merely a smoke a mirror approach to governing. This proposed legislation clearly shows a reluctance by the council to stand up for what is right, rather than cow-towing to special interests, or perhaps donors like Ms. Fancy Pants and Mr. Gotta Lotta Bucks who can't be bothered to take a bag into Needless Markup but complains about paying the nickel tax. Clearly, they can afford the nickel tax.

If you closely read Bill 10-13, which of course I did, [Sec 1, Section 52-101 is amended, Subsection (5)] it stipulates as **exempt** "a bag used to package a bulk item or to contain or **wrap a perishable item.**" The last time I checked, food was considered perishable, except perhaps a Twinkie. So, if a person goes to the grocery, and puts one perishable item in each bag will that exempt the bag from the tax? Clearly, this wasn't well thought out, or written concisely.

Here is another "fuzzy math" issue. Fiscal Impact Statement: Current bag tax revenues \$ 1.8 Million rounded, county 6 year revenue estimate is \$ 6.7 million. Is this assuming a decrease in requested bags over the 6 year period, or does someone not know how to multiple \$ 1.8 x 6 years equals \$ 10.8 Million in revenue? Is the projected nonlinear increase in revenue due to a decrease in requested bags? **Isn't this our goal with the bag tax, reduce bag usage?**

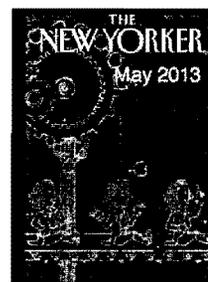
Leave the bag tax as is... if a few complain, then suggest they pay the nickel tax as a user tax – which is what it is - then emphasis to them that the bag tax revenue is being used to replace our water management system, so when they enjoy their \$ 100 dollars worth of Maryland Blue crabs this summer, they may consider that their waterways and seafood they consume are just a "bit cleaner" now, due to the nickel bag tax they paid at the department store for the bag they threw into the recycle bin. It's that circular thing ... kind of like Karma. We have only one environment; it is your responsibility to protect it.

Congratulations to the Council. Our September Sligo Creek cleanup yielded 1,400 fewer plastic bags than in previous years. Thanks to the bag bill, plastic bags are no longer the most abundant trash item, a position now held by plastic bottles. The bag bill is working in the stores, on the ground and in our watershed—a resounding success. So why does Roger Berliner wish to tamper with a good thing?

The reason, he says, is confusion and anger. A shopper buying sheets at Macy’s is unsure whether to bring a reusable bag. Someone purchasing a \$150 sheet set may become angry about paying 5 cents more for a bag. I agree, there is much confusion over the plastic bag, which in the ocean look like jellyfish and are ingested by confused and angry sea turtles.

Another argument is that retailers and constituents are angry with overreaching government. I remind the Council its job to protect the vulnerable and the voiceless, such as our wildlife and waterways. I remind the Council that Montgomery County is home to the Chesapeake Bay watershed. Instead of sabotaging a success story, the challenge is to promote the benefits of a cleaner environment.

But bags are big business. Both plastic and paper bags are made with energy and raw materials such as petroleum, and giving them away encourages waste and the perception of worthlessness. Instead of rewarding this behavior, I ask the Council to focus instead on becoming a leader that encourages innovation that benefits both business and the environment. In this year’s May New Yorker is a story about biodegradable packaging material made with agricultural byproducts and mushrooms which together mimic Styrofoam. Imagine this packaging made with Montgomery County agricultural scraps. Imagine Montgomery County contributing to the replacement of the environmental nightmare that is Styrofoam.



Form and Fungus, by Ian Frazier

Let us keep the momentum in Montgomery that has made the bag bill a success. Let us remember our challenge to preserve the planet for our children. Mistrs Berliner, Rice, Leventhal and Ms. Floreen, we ask you to remember the voiceless who don’t vote: our waterways and our wildlife. We are watching.

Marty Ittner
Friends of Sligo Creek
www.fosc.org



Photos of Sligo Creek by Marty Ittner, taken in March 2013





June 26, 2013

Chairman Roger Berliner
Transportation, Infrastructure, Energy
& Environment Committee
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850

RE: BILL 10-13 - TAXATION - EXCISE TAX-DISPOSABLE CARRYOUT BAGS - SCOPE

Dear Chairman Berliner:

On behalf of the Montgomery County members of the *Restaurant Association of Maryland*, we support the provision of Bill 10-13 that exempts from the tax carryout bags that a restaurant provides to customers to take prepared or leftover food or drink from the restaurant. This exemption recognizes that bags used for this purpose do not generate the volume of litter that the original bag fee sought to address. This exemption is also consistent with language in multiple bills proposed (not passed) in the Maryland General Assembly in recent years, which defines "*disposable carryout bag does not include a bag that a restaurant provides to a customer to take food or drink away from the restaurant.*"

We also support such an exemption because we discourage the use of reusable bags for foodservice use because of sanitation reasons. For example, if such reusable bags were previously used to carry a leaky package of raw poultry or other raw meats from a grocery store, a restaurant risks potential cross contamination if ready-to-eat foods are placed into the same bag.

Finally, we support the exemption because the volume of bags used by our industry generally falls significantly below the threshold of \$100 in cumulative bag fee collections before remittance of the tax is required. It would take a long time for most restaurants to use the 2,500 bags on which this threshold is based. It is particularly frustrating to explain to customers that we must still charge the bag fee even though our industry does not generate the volume of bags that the law was intended to address.

For these reasons, we support this provision of Bill 10-13 that effectively exempts restaurants from the carryout bag tax.

Sincerely,

Melvin R. Thompson
Senior Vice President
Government Affairs & Public Policy

organization, or other nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code if:

- (i) the sale is made at an auction sale; and
- (ii) the proceeds of the sale are used to carry on the exempt purposes of the church or organization.

(c) *Exemption certificate required.* — To qualify as an organization to which a sale is exempt under subsection (a)(3) or (5) of this section, the organization shall file an application for an exemption certificate with the Comptroller.

(d) *Determination letter.* — The Comptroller may treat the possession of an effective determination letter of status under § 501(c)(3) or (13) of the Internal Revenue Code from the Internal Revenue Service as evidence that an organization qualifies under subsection (a)(3) or (5) or (1) of this section, respectively.

(e) *Exemption for certain portion of auction sale proceeds.* — For a sale described under subsection (b)(6) of this section that is not otherwise exempt under this section, only that part of the sale price that qualifies for a deduction under the federal income tax as a charitable contribution under the regulations and guidelines of the Internal Revenue Service is exempt from the sales and use tax under this section. (An. Code 1957, art. 81, §§ 326, 375; 1988, ch. 2, § 1; ch. 110, § 1; 1989, chs. 676, 733; 1994, chs. 664, 711; 1997, chs. 382, 509; 1998, ch. 612; 2006, chs. 210, 217, 218; 2009, ch. 506; 2010, ch. 72, § 5; ch. 509, § 1; ch. 510, § 1; 2012, chs. 452, 453.)

Effect of amendments.

Chapters 452 and 453, Acts 2012, effective June 1, 2012, made identical changes. Each added “§ 501(c)(4) or” in (a)(8); deleted (a)(9); and made related changes. Chapters 452 and 453, Acts 2012 deleted a prior abrogation.

Editor’s note. — Section 2, chs. 217 and 218, Acts 2006, as amended by ch. 506, Acts 2009, and by chs. 452 and 453, Acts 2012, provides “this Act shall take effect July 1, 2006.”

§ 11-206. Food.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) “Facility for food consumption” does not include parking spaces for vehicles as the sole accommodation.

(3) (i) “Food” means food for human consumption.

(ii) “Food” includes the following foods and their products:

1. beverages, including coffee, coffee substitutes, cocoa, fruit juices, and tea;
2. condiments;
3. eggs;
4. fish, meat, and poultry;
5. fruit, grain, and vegetables;
6. milk, including ice cream; and
7. sugar.

(iii) “Food” does not include:

1. an alcoholic beverage as defined in § 5-101 of this article;
2. a soft drink or carbonated beverage; or
3. candy or confectionery.

(4) “Food for immediate consumption” means:

(i) food obtained from a salad, soup, or dessert bar;
(ii) party platters;
(iii) heated food;
(iv) sandwiches suitable for immediate consumption; or
(v) ice cream, frozen yogurt, and other frozen desserts, sold in containers of less than 1 pint.

(5) "Premises" includes any building, grounds, parking lot, or other area that:

(i) a food vendor owns or controls; or
(ii) another person makes available primarily for the use of the patrons of 1 or more food vendors.

(6) "Substantial grocery or market business" means a business at which at least 10% of all sales of food are sales of grocery or market food items, not including food normally consumed on the premises even though it is packaged to carry out.

(b) *Sale of food stamp items.* — The sales and use tax does not apply to a sale of food stamp eligible food, as defined in 7 U.S.C. § 2012, bought with a food coupon issued in accordance with 7 U.S.C. § 2016.

(c) *Sale by food vendor.* — (1) Except as provided in paragraph (2) of this subsection, the sales and use tax does not apply to a sale of food for consumption off the premises by a food vendor who operates a substantial grocery or market business at the same location where the food is sold.

(2) The exemption under paragraph (1) of this subsection does not apply to:

(i) food that the vendor serves for consumption on the premises of the buyer or of a third party; or
(ii) food for immediate consumption.

(d) *Sales by certain organizations or to certain individuals.* — The sales and use tax does not apply to:

(1) a sale of food:
(i) to patients in a hospital when the food charge is included in the regular room rate;
(ii) by a church or religious organization;
(iii) by a school other than an institution of postsecondary education, including sales at a school by a food concessionaire that is under contract with the school or with its designated contract agent, but not including sales at events that are not sponsored by the school or are not educationally related;
(iv) to students at an institution of postsecondary education if the food charge is for a meal plan or is included in the regular charge for room and board; or
(v) by a nonprofit food vendor if there are no facilities for food consumption on the premises, unless the food is sold within an enclosure for which a charge is made for admission;

(2) if the proceeds of the sale are used to support a bona fide nationally organized and recognized organization of veterans of the armed forces of the United States or auxiliary of the organization or 1 of its units, a sale of food or meals for consumption only on the premises, served by the organization or auxiliary;

(3) if the proceeds of the sale are used to support a volunteer fire company or department or its auxiliary or a volunteer ambulance company or rescue squad or its auxiliary, a sale of food served by the company, department, squad, or auxiliary; or

(4) a sale of food, bottled water, soft drink or carbonated beverage, or candy or confectionery by a nonprofit food vendor at a youth sporting event or 4-H youth event for individuals under the age of 18 years if there are no facilities for food consumption on the premises, unless the sale is within an enclosure for which a charge is made for admission.

(e) *Sale in interstate commerce.* — The sales and use tax does not apply to a sale of food or any beverage in a vehicle that is being operated in the State while in the course of interstate commerce.

(f) *Sale of seafood.* — The sales and use tax does not apply to a sale for consumption off the premises of:

(1) crabs; or

(2) seafood that is not prepared for immediate consumption.

(g) *Sale of snack food.* — (1) In this subsection, “snack food” means:

(i) potato chips and sticks;

(ii) corn chips;

(iii) pretzels;

(iv) cheese puffs and curls;

(v) pork rinds;

(vi) extruded pretzels and chips;

(vii) popped popcorn;

(viii) nuts and edible seeds; or

(ix) snack mixtures that contain any one or more of the foods listed in items (i) through (viii) of this paragraph.

(2) The sales and use tax does not apply to the sale of snack food through a vending machine.

(h) *Vending machine sales.* — The sales and use tax does not apply to the sale through a vending machine of milk, fresh fruit, fresh vegetables, or yogurt. (An. Code 1957, art. 81, §§ 324, 326, 375; 1988, ch. 2, § 1; 1989, ch. 787; 1990, chs. 3, 4; ch. 6, § 2; 1991, ch. 671, § 1; 1992, 1st Sp. Sess., ch. 1, § 2; 1995, ch. 641; 1996, chs. 85, 86, 115; 1999, ch. 406; 2001, ch. 29, § 1; 2011, ch. 364; 2012, ch. 66, § 1.)

Effect of amendments. — Chapter 364, Acts 2011, effective July 1, 2011, reenacted (a)(4) without change; and added (d)(4) and made related changes.

Section 1, ch. 66, Acts 2012, enacted April 10, 2012, and effective from date of enactment, redesignated (a)(2) through (a)(4) to maintain alphabetical order.

§ 11-207. Fuel.

(a) *Residential use and residential and domestic rate.* — The sales and use tax does not apply to:

(1) a sale of electricity, steam, or artificial or natural gas for use in residential condominiums;

(2) a sale of electricity, steam, or artificial or natural gas that is delivered

Registered Retailers who Remitted the Bag Tax

| Bag Tax \$0.04 | Number Bags | Vendor Name |
|---------------------------|------------------------|---|
| \$ 675,741.56 | 16,893,539 | Giant of Maryland, LLC |
| \$ 377,959.92 | 9,448,998 | Safeway, Inc. |
| \$ 160,524.16 | 4,013,104 | Target Corporation |
| \$ 136,017.44 | 3,400,436 | Whole Foods Market Group Inc |
| \$ 112,975.24 | 2,824,381 | Maryland CVS Pharmacy, L.L.C. |
| \$ 100,661.56 | 2,516,539 | Shopper's Food Warehouse |
| \$ 70,314.44 | 1,757,861 | Harris Teeter |
| \$ 64,358.80 | 1,608,970 | Trader Joe's Company |
| \$ 53,925.28 | 1,348,132 | DOS FRIENDS INC. |
| \$ 48,954.28 | 1,223,857 | Wal-Mart Stores Inc |
| \$ 39,180.08 | 979,502 | MONTGOMERY COUNTY DEPT. OF LIQUOR CONTROL |
| \$ 39,133.36 | 978,334 | Macy's Retail Holdings, Inc. |
| \$ 30,924.52 | 773,113 | HAR WHEATON, INC. |
| \$ 29,995.04 | 749,876 | Home Depot USA.,INC. |
| \$ 28,715.64 | 717,891 | FOR MY CHILDREN, INC. |
| \$ 28,334.08 | 708,352 | Apogee Retail LLC |
| \$ 26,088.92 | 652,223 | FOOD LION LLC |
| \$ 24,217.68 | 605,442 | Village Super Market of Maryland, LLC |
| \$ 24,180.56 | 604,514 | Balducci's Maryland LLC |
| \$ 23,347.24 | 583,681 | EVERLU FOOD, INC. |
| \$ 20,012.20 | 500,305 | Ross Dress For Less Inc |
| \$ 19,670.96 | 491,774 | Germantown Lotte, LLC |
| \$ 19,315.20 | 482,880 | H MART GAITHERSBURG, INC. |
| \$ 18,965.48 | 474,137 | Great Wall Supermarket of MD Inc |
| \$ 17,674.60 | 441,865 | magruders of gaithersburg inc |
| \$ 17,478.92 | 436,973 | Korean Korner Inc |
| \$ 16,884.04 | 422,101 | Green Castle International, Inc. |
| \$ 15,764.56 | 394,114 | LUCKY WORLD GAITHERSBURG, INC. |
| \$ 14,919.44 | 372,986 | J. C. PENNEY CORPORATION INC |
| \$ 13,967.76 | 349,194 | Kohl's Department Stores, Inc. |

| | |
|--------------|--|
| \$ 13,944.48 | 348,612 Nordstrom Inc. |
| \$ 13,768.64 | 344,216 Marshalls of MA, Inc |
| \$ 13,314.56 | 332,864 Rite Aid of Maryland, Inc. |
| \$ 12,942.44 | 323,561 Gap Inc |
| \$ 12,794.64 | 319,866 Sears Roebuck & Co |
| \$ 12,670.88 | 316,772 H&M, Hennes & Mauritz LP |
| \$ 11,501.68 | 287,542 Forever 21 Retail Inc. |
| \$ 11,102.20 | 277,555 Kmart Corporation |
| \$ 10,998.44 | 274,961 GLOBAL FOOD INC |
| \$ 10,680.68 | 267,017 chevy chase supermarket |
| \$ 10,615.36 | 265,384 Lotte Plaza |
| \$ 10,426.68 | 260,667 Bloomingdale's, Inc. |
| \$ 10,283.96 | 257,099 The TJX Companies, Inc |
| \$ 10,067.88 | 251,697 Weis Markets Inc |
| \$ 9,714.12 | 242,853 Walgreen Co. |
| \$ 8,996.08 | 224,902 SNIDERS SUPER FOODS |
| \$ 8,825.12 | 220,628 AFRICAN & CARIBBEAN FOOD CORP |
| \$ 8,262.80 | 206,570 Victoria's Secret Stores, LLC |
| \$ 8,202.24 | 205,056 Pollo Campero of Maryland, LLC |
| \$ 8,057.28 | 201,432 Grosvenor Market |
| \$ 7,744.32 | 193,608 Solano Family Restaurant, LLC |
| \$ 7,711.88 | 192,797 BED BATH AND BEYOND INC |
| \$ 7,698.44 | 192,461 Dollar Tree Stores, Inc. |
| \$ 7,489.44 | 187,236 Big Ernie;s Inc |
| \$ 7,156.44 | 178,911 Michaels Stores, Inc. |
| \$ 6,904.20 | 172,605 BATH & BODY WORKS, LLC. |
| \$ 6,802.08 | 170,052 Dave West Indian Product Corp DBA The Caribbean Market |
| \$ 6,779.40 | 169,485 DSW SHOE WAREHOUSE INC |
| \$ 6,589.92 | 164,748 LA MART INC |
| \$ 6,584.84 | 164,621 Rodmans Discount Food |
| \$ 6,369.28 | 159,232 LORD & TAYLOR, LLC |
| \$ 6,337.72 | 158,443 MORAZAN GROCERY III, INC. |
| \$ 6,155.04 | 153,876 The Fresh Market, Inc. |
| \$ 5,951.28 | 148,782 Shalom Strictly Kosher Meats, Inc. |

| | |
|-------------|---|
| \$ 5,644.88 | 141,122 Adad, LLC |
| \$ 5,306.00 | 132,650 PetSmart Inc |
| \$ 5,073.24 | 126,831 PANDA EXPRESS |
| \$ 4,887.52 | 122,188 Organic Foods Express, Inc |
| \$ 4,877.72 | 121,943 Five Below, Inc. |
| \$ 4,739.20 | 118,480 HomeGoods, Inc |
| \$ 4,709.40 | 117,735 Eckerd Corporation |
| \$ 4,503.32 | 112,583 Toys R Us Delaware, Inc. |
| \$ 4,440.08 | 111,002 Don Pollo Inc |
| \$ 4,436.32 | 110,908 Pizza Brothers East II, Inc |
| \$ 4,408.68 | 110,217 Roots Olney LLC |
| \$ 3,885.76 | 97,144 SAR WHITE MARSH FOOD INC |
| \$ 3,808.96 | 95,224 Payless ShoeSource, Inc. |
| \$ 3,777.28 | 94,432 MORAZAN GROCERY II, INC. |
| \$ 3,743.60 | 93,590 Takoma Park Silver Spring Cooperative Inc. |
| \$ 3,727.24 | 93,181 Yekta Deli & Imported Grocer |
| \$ 3,514.32 | 87,858 Foot Locker |
| \$ 3,493.04 | 87,326 Big Lots Stores, Inc. |
| \$ 3,485.36 | 87,134 Strosniniders Hardware |
| \$ 3,347.08 | 83,677 WHZ Inc |
| \$ 3,280.40 | 82,010 7-eleven/11713A/2541 |
| \$ 3,037.24 | 75,931 The Childrens Place Retail Stores Inc |
| \$ 3,033.04 | 75,826 AEROPOSTALE, INC. |
| \$ 2,988.72 | 74,718 FLAMAS |
| \$ 2,915.00 | 72,875 AnnTaylor Retail, Inc. |
| \$ 2,910.60 | 72,765 COUNTRY BOY MARKET |
| \$ 2,797.04 | 69,926 Starbucks Corporation |
| \$ 2,785.52 | 69,638 Americana Grocery of MD |
| \$ 2,760.72 | 69,018 Potomac Conference Corporation of SDA |
| \$ 2,680.88 | 67,022 CalTort Development Corporation |
| \$ 2,675.40 | 66,885 Kam Sam Supermarket |
| \$ 2,629.84 | 65,746 Lowe's Home Centers |
| \$ 2,629.44 | 65,736 Boolteena, Inc. |
| \$ 2,609.36 | 65,234 Sarku SL White Oak Inc |

| | |
|-------------|---|
| \$ 2,563.56 | 64,089 ASADO MD |
| \$ 2,554.24 | 63,856 Ulta Salon Cosmetics & Fragrance, Inc. |
| \$ 2,544.84 | 63,621 Angkor Supermarket Inc |
| \$ 2,512.48 | 62,812 A.C. Moore Incorporated |
| \$ 2,508.48 | 62,712 GALIZ CORPORATION |
| \$ 2,508.08 | 62,702 Asian Supermarket Inc. |
| \$ 2,471.72 | 61,793 7-Eleven, Inc. |
| \$ 2,413.40 | 60,335 Lerner New York, Inc |
| \$ 2,389.96 | 59,749 Amia Corp |
| \$ 2,374.68 | 59,367 J.M. Hollister LLC |
| \$ 2,346.64 | 58,666 7/11/2013 (SEVEN ELEVEN) |
| \$ 2,315.44 | 57,886 Hari Corporation. |
| \$ 2,297.04 | 57,426 Don Pollo of Bethesda, Inc. |
| \$ 2,227.88 | 55,697 American Pollo Langley Park LLC |
| \$ 2,212.72 | 55,318 Abercrombie & Fitch |
| \$ 2,198.76 | 54,969 KUMAR ENTERPRISES, INC. |
| \$ 2,181.92 | 54,548 TSA Stores Inc. |
| \$ 2,180.76 | 54,519 P.N.ENTERPRISES,LLC |
| \$ 2,165.08 | 54,127 LONG BRANCH BEER AND WINE, INC. |
| \$ 2,161.32 | 54,033 Chevy Chase Marketing, Inc |
| \$ 2,147.56 | 53,689 SHOE SHOW, INC |
| \$ 2,136.28 | 53,407 Riverfalls Seafood Market, Inc. |
| \$ 2,134.44 | 53,361 subwaywhiteoak |
| \$ 2,089.12 | 52,228 The Container Store |
| \$ 2,078.76 | 51,969 7-eleven |
| \$ 2,057.08 | 51,427 BUY BUY BABY INC |
| \$ 2,049.52 | 51,238 DELIGHT FOODS INC |
| \$ 2,033.24 | 50,831 Michael Kors Retail, Inc |
| \$ 2,030.84 | 50,771 JAI HO FRESH INC |
| \$ 1,993.72 | 49,843 CHARLOTTE RUSSE, INC |
| \$ 1,985.32 | 49,633 Rugged Wearhouse, Inc |
| \$ 1,977.24 | 49,431 Best Buy Stores, LP |
| \$ 1,934.20 | 48,355 Grape & Grain, Inc. |
| \$ 1,920.04 | 48,001 GALLARDO REYES, INC. |

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| | | |
|-------------|--------|---|
| \$ 1,888.76 | 47,219 | AB AND SONS CORPORATION |
| \$ 1,875.64 | 46,891 | Maxim Supermarket, Inc. |
| \$ 1,839.64 | 45,991 | Taste of Europe |
| \$ 1,837.16 | 45,929 | Rodmans Gourmet |
| \$ 1,806.20 | 45,155 | Gymboree Retail Stores, Inc. |
| \$ 1,781.56 | 44,539 | AE Outfitters Retail Co. |
| \$ 1,752.28 | 43,807 | Party City - Rockville Inc. |
| \$ 1,730.52 | 43,263 | The Salvation Army |
| \$ 1,728.00 | 43,200 | Huezo's Management Group |
| \$ 1,665.00 | 41,625 | MODELL'S MARYLAND II, INC. |
| \$ 1,653.44 | 41,336 | RED APPLE FARM INC. |
| \$ 1,622.04 | 40,551 | 7/11/2013 (SEVEN ELEVEN) |
| \$ 1,620.48 | 40,512 | Sanaie Corporation |
| \$ 1,607.08 | 40,177 | GREAT WALL SUPERMARKET OF MD INC. |
| \$ 1,597.84 | 39,946 | BRASAS INC |
| \$ 1,591.48 | 39,787 | Patchara Inc. |
| \$ 1,553.20 | 38,830 | Micro Center Sales Corporation |
| \$ 1,552.08 | 38,802 | FASHION GALLERY, INC. |
| \$ 1,549.76 | 38,744 | jskholding inc (7-eleven) |
| \$ 1,549.56 | 38,739 | 7-11 #22921A |
| \$ 1,539.92 | 38,498 | LEBANESE TAVERNA CAFE-CONGRESSIONAL INC |
| \$ 1,525.12 | 38,128 | VIE DE FRANCE YAMAZAKI. INC |
| \$ 1,523.16 | 38,079 | whiteoak convenience store |
| \$ 1,515.32 | 37,883 | Saks and Company |
| \$ 1,486.24 | 37,156 | Cost Plus World Market |
| \$ 1,484.72 | 37,118 | LA CASITA, INC. |
| \$ 1,478.36 | 36,959 | YAMAS LLC |
| \$ 1,467.44 | 36,686 | RRC Enterprises, Inc. |
| \$ 1,461.36 | 36,534 | WHEATON BSC, INC. |
| \$ 1,457.04 | 36,426 | khunya Inc./7-Eleven |
| \$ 1,455.12 | 36,378 | Petco Animal Supplies Stores, Inc. |
| \$ 1,440.00 | 36,000 | Gregg Appliances Inc |
| \$ 1,432.32 | 35,808 | USK INC. T/A LAKESIDE BEER WINE CHEESE SB |
| \$ 1,405.84 | 35,146 | OFFICE DEPOT, INC. |

T&E ITEM 1
November 4, 2013
Worksession

Supplementary Packet

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 10-13, Taxation – Excise Tax – Disposable Carryout Bags -
Scope

The attached executive branch answers to Council staff's questions were received after original packet was prepared.

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Bill 10-13, Carryout Bags

QUESTIONS FROM COUNCIL LEGAL STAFF

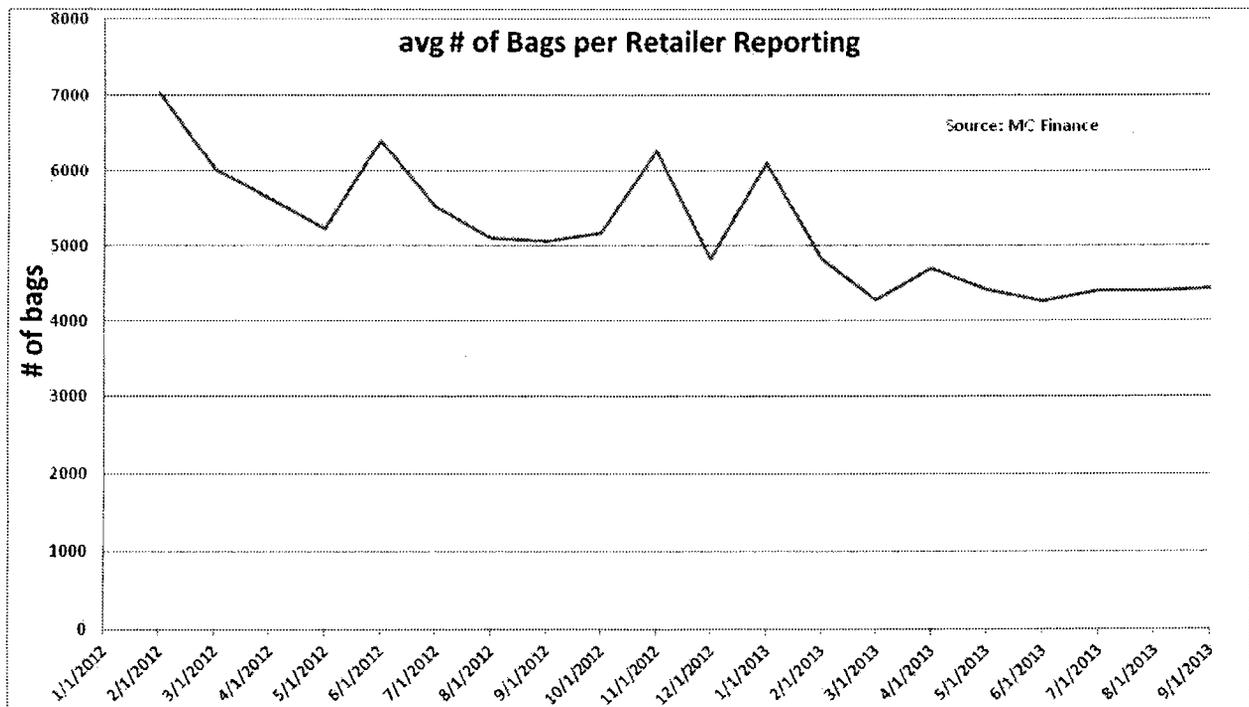
QUESTION 1

How has the usage of carryout bags, and the revenue from the tax, changed since the hearing on this Bill in June? What are the final numbers for FY 13?

Executive Staff Response

Total revenue collections for FY13 were \$2.39 million for 59.7 million. For the first two months of FY14, collections are ahead of the pace for the first two months of FY13. In July and August of 2012, collections totaled \$375,500, for 9.39 million bags. In July and August of 2013, collections totaled \$389,000 for 9.73 million bags.

Although the number of reported bags has increased, the number of vendors reporting collections has also increased. In August 2012, 928 vendors participated in reporting collections. In August 2013, 1119 vendors participated in reporting collections. The number of bags reported is impacted by new vendors reporting bags for the first time as well as vendors intermittently reporting only when they hit the \$100 threshold under current law. The chart below shows that there has been a steady decline in the average number of bags reported per retailer from January 2012 through August 2013.



QUESTION 2

What do we know – both anecdotally and statistically – about litter from carryout bags? Has it shown any decline since this tax took effect? Can we distinguish litter from food stores, restaurants, and other retailers?

Executive Staff Response

An Earth Day Cleanup was organized by DEP on April 20, 2013 through the Anacostia Watershed Society with the help of the Parks Department and the Eyes of Paint Branch watershed group, and was attended by over 50 volunteers from various local community groups and non-profit organizations. At this cleanup, volunteers removed 15.1 lbs. of plastic bags and plastic bag pieces from a stream in the White Oak neighborhood. In addition to grocery store bags, there were bags with logos from other “non-food” stores including Sears, Sprint and Wal-Mart.. There were also plastic bags from restaurants such as Subway – which are taxed under current law but would be exempted under Bill 10-13.

In testimony at the June 18, 2013 public hearing on Bill 10-13, the Rock Creek Conservancy (RCC) reported that between April 2011 and April 2012, the number of plastic bags collected in Montgomery County dropped from 5,274 to 3,957 – a decline of 25% just a few months after the bag law went into effect. In 2013, it dropped again to 3,722, a decrease of 29% from 2011 levels.

The Alice Ferguson Foundation reported that data collected by volunteers in 2012 compared to that collected in 2011 showed a 50% reduction in the number of bags removed from sites in Montgomery County.

In an article in the Capital Gazette on February 2, 2013:

The Parks department stated that data from volunteers at 78 sites showed a decline in the number of bags removed from the 2012 Earth Day Cleanups on parkland.

Craig Muckle, Manager of Public Affairs for Safeway, reported that “In Montgomery County, Safeway saw a 70 percent drop in plastic bags’ use at the checkouts from 2011 to 2012.” He noted that Safeway experienced similar results in the District of Columbia after the carryout bag law took effect.

Source for points above:

http://www.capitalgazette.com/news/region/montgomery-waterways-show-results-from-bag-tax/article_61cb5676-1abf-5130-b478-fa5e2e3c88ad.html#.UQ1MMAced1w.gmail

The DEP trash monitoring data for the Montgomery County portion of the Anacostia does not show a similar trend in reduction of plastic bags or other trash. All of this data is collected in the streams and on the streambanks, over varying seasons, and would need to be evaluated

relative to rainfall and weather events prior to the actual collection dates before a trend can be documented.

The best statistical data is included in a report soon to be released by DDOE on their bag bill, which has been in place for over two years. That report will show that:

- Two-thirds of residents (67%) are seeing fewer littered plastic bags compared to three or four years ago.
- An overwhelming number of D.C. residents (80%) said they have reduced their usage of disposable bags since the law went into effect.
- On average, residents estimated their household has moved from using ten disposable bags a week before the law to four bags a week in 2013.
- Four out of five D.C. residents (80%) are carrying reusable bags with them when they shop; 58% are carrying them “always” or “most of the time.”
- A majority of residents (53%) support the disposable bag fee law, compared to only 16% who said they are “bothered” by it. Almost one-third (30%) said they have no feelings about the law either way.
- Businesses reported, on average, a 50% reduction in disposable bags actually being used based on bag numbers, boxes, or costs.

QUESTION 3

What have other jurisdictions done lately, and what has been the effect? Have any adopted a tax like ours? Did Los Angeles prohibit plastic bags but not paper?

Executive Staff Response

Eight carryout bag laws have passed since June 2013. All of these laws ban plastic bags and charge a fee for paper bags. Additionally, one city in California updated its law to include restaurants, and one city increased the charge for paper bags.

Two other jurisdictions have adopted bag laws similar to ours, including Washington, DC, and Boulder, CO. Brownsville, TX charges a flat fee of \$1 per transaction for non-reusable paper bags (thin plastic bags are banned) and consider very thick and strong plastic and paper bags to be reusable.

Los Angeles has banned plastic bags and is requiring a 10 cent charge for paper bags. The stores that are required to adhere to the law are retail stores with over \$2,000,000 gross annual sales, stores of at least 10,000 sq ft of retail space, or a drug store, pharmacy, supermarket, grocery store, convenience store, food mart, or other entity engaged in the retail sale of goods that include milk, bread, soda and snack foods, including those stores with a Type 20 and 21 license issued by the Department of Alcoholic Beverage Control.

Links to nationwide bag law info:

http://www.cawrecycles.org/issues/plastic_campaign/plastic_bags/national

<http://www.surfrider.org/pages/plastic-bag-bans-fees>

Link to info on Los Angeles law:

http://dpw.lacounty.gov/epd/aboutthebag/FAQ_stores.cfm

Links to summary of Boulder, CO law:

[Boulder steps to law implementation.docx](#)

[Boulder, CO bag law staff discussion.docx](#)

QUESTION 4

Does the Executive branch still believe, as you contended in your testimony, that stores will have difficulty knowing whether they have to pay the tax or are exempted? I will forward my email to you from June, where I questioned that conclusion; no one from the Executive branch replied to that email.

Executive Staff Response

We believe that the current law is now widely understood but that there are probably some stores that still do not know whether they should be collecting the tax. We believe that broadening the types of stores who are exempt from the tax to include retail stores that do not meet the 2% food sales threshold could cause confusion among County residents regarding which stores/purchases allow them the choice of avoiding the bag tax by using a reusable carryout bag.

The bill does not define “food”. You have suggested using the State’s definition of “food” for the sales tax (Tax General Article, Section 11-206). Does that definition make sense in this context? State law excludes the following types of food from the sales tax: (1) alcoholic beverages; (2) soft drinks or carbonated beverages; (3) candy; (4) food to be consumed off premises that is sold by a food vendor who operates a substantial grocery or market business at the same location where the food is sold; (4) crabs or seafood that is not prepared for immediate consumption. Why should these types of food sales be excluded from the categories of food sales that are counted towards the 2% threshold that triggers the bag tax? If these types of food are placed in plastic bags, what is the difference between them and other types of food for purposes of make policy decisions relating to the bag tax?

The bill does not specify the reporting period for the 2% food sale threshold. Does the 2% food sale threshold apply to weekly sales? Monthly sales? Annual sales?

The 2% food sales threshold could lead to enforcement issues – and more public confusion -- because there is no way for the department to know if a retailer meets the threshold. If the bill moves forward, one option is to amend the bill to allow retailers to “opt in” to an exemption from the bag tax by filing with the department an affidavit (or on-line form or something similar) which shows foods sales as a percent of gross sales for the appropriate reporting period.