

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 44 (Delegate Vitale)
Environmental Matters

Environment - Maryland Clean Water Fund - Uses

This bill requires the Maryland Department of the Environment (MDE) to use any civil or administrative penalty or fine paid into the Maryland Clean Water Fund to restore the area associated with the penalty or fine or an area that is similar in biological function and in close proximity. The bill also restricts the amount of any penalty or fine that can be used by MDE for administrative purposes to no more than 1% of the amount paid into the fund.

Fiscal Summary

State Effect: Overall finances of the Maryland Clean Water Fund are likely not affected. However, the bill may significantly alter the water pollution control activities of MDE and constrain resources available for addressing existing priorities and other uses of the fund specified by law. To the extent that the term “administrative purposes” is interpreted broadly, additional general fund and/or special funds may be needed to address the reduction in penalty and fine revenue available to support administrative expenses under the bill’s restriction.

Local Effect: None. The bill does not directly affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law/Background: There is no requirement to dedicate fines or other revenue sources of the Maryland Clean Water Fund for use in specific geographic areas, although there are requirements for the use of funds for specified activities. Several other statutes

within the Environment Article impose geographic restrictions on the use of fines or other revenue sources, however. For example, a local government that recovers penalties for a sediment control violation must deposit them in a special fund to be used solely for correcting the failure to implement or maintain erosion and sediment controls. Additionally, the Surface Mined Land Reclamation Fund law specifies that, among other purposes, money be used to rehabilitate the area from which the liability arose. However, in each of these examples, funds may also be used for general administration of the statute by MDE.

The Maryland Clean Water Fund consists of all application fees, permit fees, renewal fees, funds, and civil and administrative penalties collected under specified water pollution control laws. Traditionally, MDE has used the fund for various activities including identifying, monitoring, and regulating the proper discharge of effluent into State waters, as well as for the management, conservation, protection, and preservation of the State's groundwater and surface water. State law also requires that, in determining the use of money from the fund, priority be given to activities relating to the water quality of the Chesapeake Bay and its tributaries.

MDE advises that money in the Maryland Clean Water Fund is used where it is needed most, in accordance with operating procedures designed to achieve the greatest environmental benefit, and in compliance with State and federal laws. Because the fund is comprised in significant part of fees from applicants for federally required permits and from fines associated with violations of those permits, much of the money from the fund supports permit-related administration, inspection, and enforcement activities.

State Fiscal Effect: Assuming the term “administrative purposes” is construed narrowly to mean overhead and indirect costs, then the bill’s restriction on the use of fines for such purposes does not likely affect the overall finances of the Maryland Clean Water Fund, as fee revenue is likely sufficient to replace any penalty and fine revenue previously used to support administrative expenses. In fiscal 2012, the Maryland Clean Water Fund received about \$1.38 million in fee revenues.

To the extent that the term “administrative purposes” is construed more broadly to include salaries, equipment, and other resources used to administer the programs that the fund supports, then the bill’s restriction on the use of penalty and fine revenue may result in the need for additional general and/or special funds to cover the decrease in penalty and fine revenue available for such purposes. However, this fiscal and policy note assumes that the term “administrative purposes” is construed narrowly.

Notwithstanding the interpretation of the bill’s restriction on the use of penalties and fines for administrative purposes, by limiting the use of penalties and fines for certain activities, the bill may interfere with MDE’s ability to efficiently carry out existing water

pollution control requirements under State and federal law. To the extent that additional resources are directed to restoration activities, as directed by the bill, fewer funds are available for other program activities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Legislative Services

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mc/lgc

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