

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 834

(Delegates Frush and Hubbard)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Water Pollution Control - Penalty

This bill increases, from \$5,000 to \$10,000, the maximum administrative penalty for each violation of the Water Pollution Control subtitle of the Environment Article. The bill also increases, from \$50,000 to \$100,000, the maximum total penalty that may be imposed on a person for such violations.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, beginning in FY 2015 due to the collection by the Maryland Department of the Environment (MDE) of additional penalties. MDE workloads increase to the extent that the bill results in additional enforcement work. However, it is assumed that expenditures are not materially affected.

Local Effect: Local government expenditures may increase, potentially significantly, to pay additional penalties for water pollution control violations. Most wastewater treatment plants are owned by local governments, and a large majority of sewer overflows occur at wastewater treatment plants. Revenues are not affected.

Small Business Effect: Potential meaningful impact to the extent that small businesses violate the law and are subject to increased penalties. Assuming compliance with the law, however, small businesses are not affected.

Analysis

Current Law/Background: The Water Pollution Control subtitle generally pertains to the regulation of point source discharges to waters of the State. In addition to being

subject to an injunctive action, a person who violates the State's water pollution control laws, or any regulation, order, or permit issued under these laws is subject to a maximum penalty of \$10,000 to be collected in a civil action brought by MDE. Each day a violation occurs is a separate violation. MDE may also impose a maximum administrative penalty of \$5,000 per violation and \$50,000 total for a violation of any water pollution control law, regulation, order, or permit. Each day a violation occurs is a separate violation. Administrative penalties must be assessed with consideration given to specified factors. Chapter 258 of 2009 increased the administrative penalty from \$1,000 to \$5,000 per violation. Penalties are paid into the Maryland Clean Water Fund.

Criminal (misdemeanor) penalties may also be imposed, with a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. Each day on which a violation occurs is a separate violation. Additional criminal penalties apply for making false statements in required documents.

Chapter 222 of 2013 requires MDE to annually publish on its website the total amount of sewage overflow, in gallons, from sewerage systems into the Chesapeake Bay and its tributaries during the previous year, as well as the fines collected as a result of the sewage overflows. According to the MDE website, there were 101 sewage overflows that resulted in the imposition of penalties (not necessarily just administrative penalties) totaling \$87,450; only two of these violations resulted in total penalties of more than \$5,000, and the largest amount assessed was \$15,000.

Chapter 502 of 2013 requires MDE to report to specified legislative committees by January 15 each year on the status of the Maryland Clean Water Fund, including a detailed description of all revenues and expenditures of the fund for the previous year. As of February 4, 2014, the report had not been submitted.

State Revenues: Special fund revenues to the Maryland Clean Water Fund increase beginning in fiscal 2015 due to the collection of additional administrative penalties. Any such increase cannot be reliably estimated due to the variability of water pollution control administrative penalties assessed each year and because many penalties are not assessed at the maximum amount authorized in statute. However, for contextual purposes, about \$4.2 million in civil and administrative penalties were collected in 1,001 actions under the water pollution control laws in fiscal 2013, although this bill applies only to administrative penalties. While it is unlikely that the amount of administrative penalties collected doubles under the bill, as many enforcement actions result in a settlement or the assessment of less than the maximum penalty, the increase in special fund revenues may exceed \$100,000 annually.

Additional Information

Prior Introductions: SB 289 of 2013 received a favorable report from the Senate Education, Health, and Environmental Affairs Committee, but was recommitted to the committee by the full Senate and no further action was taken. Its cross file, HB 799, received an unfavorable report from the House Environmental Matters Committee.

Cross File: SB 564 (Senator Simonaire) - Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 6, 2014
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