

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 509

(Delegate McMillan, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

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**Environment - Statute of Limitations - Administrative Penalties**

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This bill establishes a five-year statute of limitations applicable to an action for an administrative penalty brought by the Maryland Department of the Environment (MDE). Thus, MDE must bring an action for an administrative penalty for violation of any provision of the Environment Article, or any associated regulation, order, or permit, within five years of the date that MDE knew, or reasonably should have known, of the violation. For an ongoing violation, the limitations period begins when the violation ceases. The bill does not affect MDE's authority to use administrative orders or seek injunctive relief.

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**Fiscal Summary**

**State Effect:** General and/or special fund revenues may increase, likely minimally, between FY 2016 and 2020 as enforcement actions that would otherwise be brought in future years are accelerated to meet the bill's statute of limitations. General and/or special fund revenues may also decrease beginning in FY 2016 to the extent that the limitations period results in the expiration of any MDE enforcement actions without the assessment and collection of penalties. Expenditures are not affected, but the bill may affect MDE inspection and enforcement workloads.

**Local Effect:** Local government expenditures may decrease to the extent that the establishment of a five-year statute of limitations period reduces the number of administrative penalties assessed against a jurisdiction for violation of State environmental laws. Revenues are not affected.

**Small Business Effect:** Potential meaningful benefit to the extent that the statute of limitations period reduces the number of penalties assessed against small businesses for violations of State environmental laws, except to the extent that the increased use of administrative orders and injunctive relief results in an increase in compliance costs.

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## Analysis

**Current Law/Background:** MDE must bring a criminal prosecution or a suit for a civil penalty for violation of any provision of the Environment Article, or any regulation, order, or permit, within three years of the date that MDE knew, or reasonably should have known, of the violation.

Generally, a prosecution for a misdemeanor under State law must be brought within one year after the date the offense was committed. However, there are more than two dozen exceptions to this general statute of limitations; of these exceptions, the most common alternative limitations period is three years. Additionally, the general statute of limitations in Maryland for civil actions provides a three-year limitations period.

The relevant statute of limitations period under federal environmental laws, including the Clean Water Act and Clean Air Act, is typically five years, which is the generally applicable statute of limitations established by the U.S. Congress for civil actions, suits, and proceedings.

According to the most recent MDE annual enforcement report, the department collected about \$3.6 million in civil and administrative fine revenues in fiscal 2014. The annual enforcement report does not account for civil and administrative fine revenues separately, although the number of civil and administrative enforcement *actions* taken is reported separately. While the vast majority of enforcement actions involving the assessment of penalties are administrative, penalties collected in civil suits are often much greater than the penalties collected in administrative actions.

**State Revenues:** A reliable estimate of any change in penalty revenues collected by MDE cannot be made, as it is dependent on future MDE enforcement decisions. However, general and/or special fund revenues may increase for several years beginning in fiscal 2016 to the extent that MDE accelerates the enforcement of administrative actions to comply with the reduced limitations period. General and/or special fund revenues may also decrease each year, beginning in fiscal 2016, to the extent that MDE is unable to undertake enforcement actions within the five-year limitations period established by the bill that would otherwise result in the collection of administrative fines. The net effect on the collection of administrative penalty revenues is unclear.

**Small Business Effect:** While some small businesses may realize a meaningful savings from the imposition of fewer administrative penalties, any reduction in overall environmental enforcement and compliance costs may be partially or fully offset to the extent that MDE relies to a greater extent on the use of administrative orders or injunctive relief in enforcement actions when administrative penalties are no longer an option due to the application of the bill's statute of limitations.

## **Additional Information**

**Prior Introductions:** HB 1073 of 2014 passed the House with amendments but received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 22, 2015  
md/lgc Revised - Enrolled Bill - April 13, 2015

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