

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1057 (Delegate Taylor, et al.)
Environmental Matters

Environmental Audits - Voluntary Disclosure

This bill provides that a “regulated entity” may conduct a voluntary “environmental audit.” If this audit is properly conducted and all environmental law violations are reported and addressed, the entity receives immunity from civil and administrative penalties. The “environmental audit report” is then deemed inadmissible and not subject to discovery in any civil or administrative proceedings.

Fiscal Summary

State Effect: Indeterminate effect on general and special fund revenues and expenditures.

Local Effect: None.

Fiscal Analysis

Bill Summary: Regulated entities that establish an environmental audit program must develop a written policy on how such audits are to be conducted. The Maryland Department of the Environment (MDE) may not impose civil and administrative penalties for a violation of an environmental law if the regulated entity:

- ° discovers the violation as a result of an environmental audit;
- ° discloses the nature and date of the violation discovery;
- ° submits a complete environmental audit report to MDE;
- ° corrects the condition and remedies damages within a certain time;
- ° takes appropriate steps to prevent the recurrence of the violation;
- ° cooperates with MDE in ensuring remediation and compliance; and
- ° submits a processing fee of \$100 (small business) or \$500.

On receipt of the environmental audit report, MDE must promptly verify if the conditions

have been met and if the facility is granted immunity. Once verified, the audit report is deemed inadmissible and not subject to discovery in any civil or administrative proceedings.

Immunity and privileged information status do not apply in specified situations; a circuit court or administrative law judge must conduct a hearing if a challenge is made. Anyone who discovers a violation through an environmental audit and fails to take action may be subject to a penalty of \$25,000 per day. There is a Voluntary Disclosure and Environmental Audit Fund which consists of all fees and penalties and is to be used for administrative expenses.

State Effect: MDE would receive an indeterminate increase in special fund revenues through processing fees and penalties. The amount of such fees would depend upon the number of facilities that decide to submit environmental audit reports; the amount of penalties would depend upon the number of facilities that conduct voluntary audits but do not address violations. These special fund revenues would at least partially offset the expenditures discussed below. However, since facilities that receive immunity through the audit program would not have to pay any civil or administrative penalties, revenues due to those penalties would decrease.

MDE reports that it would need indeterminate additional resources to:

- review the environmental audit report;
- verify that the regulated entity meets the conditions of immunity;
- process the request for immunity; and
- defend legally any immunity/privilege denials.

The Department of Fiscal Services (DFS) advises, however, that the amount of additional resources would depend upon the number of regulated entities that decide to file environmental audit reports and the complexity of the findings involved. DFS further advises that in the out-years other inspection activities conducted by MDE may decrease under this bill. Many of MDE's inspections are in response to specific complaints regarding facilities or situations. To the extent that these facilities may conduct environmental audits and voluntarily address the situations discovered, complaints about these facilities could decrease. Resources currently dedicated to these activities could be reallocated to verifying the validity of environmental audit report findings. In the out-years, expenditures due to inspection activities could feasibly decrease under certain circumstances.

Additional expenditures could be incurred due to hearings before administrative law judges. The Office of Administrative Hearings (OAH) receives reimbursable funds from the various agencies depending upon the portion of time spent on cases for that agency. Any such increase in hearings will be realized as additional expenditures by MDE; however, no estimate can be made at this time as to the number of challenges that might be made.

Information Source(s): Maryland Department of the Environment, Office of Administrative Hearings, Department of Fiscal Services

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