

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

Senate Bill 686 (Senator Della, *et al.*)
Economic and Environmental Affairs

Toxics Safety Information Act

This bill establishes a comprehensive program for the disclosure of information concerning hazardous substances. It establishes an 11-member Toxics Safety Advisory Council, and creates a toxic or hazardous substance list which must be adjusted yearly by the council. The Maryland Department of the Environment (MDE) may add up to ten chemicals per year beginning in 1998.

As of 1998, each large quantity toxics user must provide an annual report for each affected substance. Users at these facilities must maintain valid documentation on the quantity of the toxic or hazardous substance used in each production unit and quantities generated as by-products.

The bill declares that the goal of the State is to achieve by October 1, 2007 a 50% reduction in the quantities of toxic or hazardous by-products generated in Maryland in 1998. MDE must issue a report in 2003 and 2009 detailing progress towards this goal. The bill repeals the existing Public Access to Information on Hazardous or Toxic Chemicals subtitle.

Fiscal Summary

State Effect: Indeterminate but significant increase in general fund expenditures; indeterminate increase in general fund revenues due to the bill's penalty provisions.

Local Effect: Potential indeterminate increase in expenditures; indeterminate increase in revenues due to the bill's penalty provisions.

Small Business Effect: Potential meaningful impact on small businesses as discussed below.

Fiscal Analysis

Bill Summary: The bill exempts facilities with less than ten full-time employees and laboratories from the annual reporting requirement. In addition, pilot plants, pilot product units, and start-up production units qualify for certain exemptions. MDE must, to the extent practicable, require the reporting and recording of the report data through magnetic media and make this information available to the public.

If any affected party believes that disclosing information on annual reports will reveal a trade secret, a claim may be filed with MDE at least 90 days prior to the report's due date of April 1. MDE must determine the validity of a trade secret claim and inform the person of the outcome by certified mail. Rejected MDE claims may be appealed to an Administrative Law Judge. Approved or pending reports containing trade secret claims must be released to the general public with that information concealed; the subject of any trade secret claim pending or approved must be treated as confidential information. These provisions do not apply to the disclosure of information concerning emissions.

MDE must produce a summary report of the annual reports submitted under this bill by September 1 of each year. This report must include the types and quantity of chemicals used, and the by-product and emissions reduction indices by facility and production unit. This information must be made available to the public through electronic media and in writing. MDE must notify all citizens and community associations located adjacent to certain "water quality limited segments"; public notices must also be posted in these areas. MDE must develop an informational pamphlet on all water quality limited segments within the State and ensure that this pamphlet is distributed with each fishing and boating license issued.

Penalty provisions apply to anyone who violates the provisions of this bill; a fine of up to \$25,000 per day may be imposed. MDE may also impose a civil penalty of up to \$25,000 for each trade secret claim that is determined frivolous.

State Effect: MDE reports that general fund expenditures would increase by \$355,000 in fiscal 1998 due to the bill's requirements. The department's estimate is based on the following workload increases:

- expansion of the chemical list;
- Toxic Safety Advisory Council staffing;
- company reports: data management, review, and industry outreach and training;
- trade secret determinations;
- MDE summary report;

- notification of individuals living adjacent to an impaired body of water;
- compliance inspections for penalty provisions; and
- program administration.

In order to accomplish these tasks, MDE's estimate includes nine additional personnel: four Environmental Specialists, two Data Processing Programmers, two Public Health Specialists, and one Office Secretary.

The Department of Fiscal Services (DFS) advises that actual expenditures could vary widely depending upon a number of factors. For instance, MDE has allocated one and a half positions to reviewing company submissions and compliance activities. Personnel needs would decrease if no such actions were taken, and MDE merely reported company data in its yearly report. On the other hand, if a large number of complaints were lodged against reported violators, MDE inspections activities could necessitate additional personnel.

MDE has allocated two environmental specialists to the notification and posting requirements for persons living adjacent to an impaired body of water. Should this provision be fulfilled by placing ads in newspapers rather than through direct mail, personnel needs would decrease, though some additional advertising costs would be incurred. In addition, posting notices at every public access point affected could be quite expensive and labor intensive, at least initially. The amount of data processing activity needed would depend upon the number of companies reporting, the number of chemicals that are reported on, and the percentage that use electronic submissions. Should even greater numbers of businesses be affected than MDE anticipates, more personnel might be needed. However, should a large percentage of businesses file forms through consistent electronic submissions, data processing needs would decline.

In addition, MDE has allocated one-half of a public health engineer to making determinations on trade secret claims. If very few such claims are made, this task could be handled by other listed personnel. However, the number of such claims cannot be anticipated at this time, and could be significant given the reporting requirements that ask for process information. In this case, additional personnel might be needed for determinations, as well as legal staff to handle appeals. Any such appeals would increase costs for the Office of Administrative Hearings, depending upon the number of cases and level of complexity involved.

General fund revenues could increase under the bill's monetary penalty provisions for those cases heard in the District Court, depending upon the number of convictions and fines imposed.

Local Effect: The bill's reporting requirements affect such utilities as water and sewer

systems. To the extent that local governments would have to comply with these requirements, local expenditures would increase. Local expenditures could increase minimally due to filing needs for the report information.

Revenues could increase under the bill's monetary penalty provisions for those cases heard in the circuit courts, depending upon the number of convictions and fines imposed.

Small Business Effect: The bill would impact small businesses to the extent that the reporting requirements for hazardous substances are more expansive than under current federal and State law. Currently, general manufacturing businesses that qualify as large toxics users report on chemicals by facility and any release information. According to MDE, for each chemical reported this can cost approximately \$3,000 initially and \$1,500 in subsequent years. Under this bill, businesses would have to report on chemical use by process, not just by facility. This could significantly increase the cost of reporting to these businesses.

The bill also expands the types of businesses that would be considered large quantity toxics users and would have to report. Rather than just applying to general manufacturing businesses, these requirements would apply to a much expanded list of businesses, including (but not limited to):

- mining;
- service industries;
- transportation (railroad, water, air, transportation services);
- pipeline companies;
- utilities (gas, electric, sanitary systems, water supplies);
- wholesale trades for durable and nondurable goods;
- personal services (laundry, beauty shops);
- communications;
- business services; and
- miscellaneous repair services.

A specific exclusion is made for petroleum products. The impact on small businesses would depend upon the number of businesses included in the expanded industry list that would qualify as large toxics users and would be small businesses. Increased costs to affected businesses could be substantial, depending upon the number of chemicals and the complexity of the processes involved. The bill's allowance for expanded chemical listings due to the inclusion of those listed in CERCLA as well as the additional allowed each year, could also greatly increase the number of businesses affected by the reporting requirements, as well as increase the number of chemicals for which currently impacted businesses would have to account.

Information Source(s): Maryland Department of the Environment, Chesapeake Bay Foundation, Maryland Chamber of Commerce, Department of Fiscal Services

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Analysis by: Kim E. Wells-McDonnell

Reviewed by: John Rixey

Direct Inquiries to:

John Rixey, Coordinating Analyst

(410) 841-3710

(301) 858-3710