

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 409 (Delegates Guns and Taylor) (Administration)
Environmental Matters

Brownfields - Voluntary Cleanup and Revitalization Programs

This emergency bill creates a Voluntary Cleanup Program (VCP) within the Maryland Department of the Environment (MDE). The purpose of this program is to encourage the investigation of eligible brownfields properties known or perceived to be contaminated by controlled hazardous substances, to protect public health and the environment, to accelerate cleanup of eligible properties, and to provide predictability and finality to the cleanup process.

The bill further creates a Brownfields Revitalization Incentive Program within the Department of Business and Economic Development (DBED). The purpose of this program is to provide financial incentives for the redevelopment of targeted properties, to prevent urban sprawl, to encourage economic revitalization, and to expand employment opportunities.

Fiscal Summary

State Effect: The Governor's proposed budget for a brownfields program at MDE is \$389,980 for FY 1998. Indeterminate additional expenditures could be incurred for administrative activities at both MDE and DBED. Additional indeterminate expenditure increase for loans and grants at DBED. Special fund revenue increase due to repayments of loans and local contribution of tax revenues. Indeterminate increase in State tax revenues from increased economic development. Potential federal fund revenue increase.

Local Effect: Potential minimal increase in expenditures. Indeterminate effect on tax revenues.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. However, the Department of Fiscal Services (DFS) has determined that there is a potential meaningful impact on small businesses as discussed below.

Fiscal Analysis

Bill Summary: The bill establishes a Voluntary Cleanup Program at MDE that will provide the owners or purchasers of a contaminated site liability relief if cleanup goals are met. In addition, a Brownfields Revitalization Incentive Program is established at DBED to provide financial incentives for the cleanup and redevelopment of both “brownfields” sites and properties contaminated with oil. Under the bill, lenders are designated non-responsible parties under specified circumstances. This liability relief applies to sites contaminated by either oil or controlled hazardous substances (brownfields).

Voluntary Cleanup Program

Eligible parties that want to participate must submit an application describing a proposed voluntary cleanup project that specifies the proposed cleanup criteria for a contaminated site and the future use of the site. The bill establishes a voluntary cleanup fund as a nonlapsing, revolving special fund; all application fees (\$6,000) are to be paid into this fund. MDE must notify the applicant in writing within 60 days of the receipt of the application whether the application is approved, denied, or that the department has no further requirements regarding controlled hazardous substances at the property.

A participant must develop a response action plan on cleanup activities and meet public participation requirements. MDE must notify the applicant in writing if the plan has been approved or rejected within 120 days after receiving the plan. The response action plan approval letter must state that no further action is required on the property other than the actions described in the plan, and that the participant will receive a certificate of completion once the plan is carried out. This letter may include a limitation on permissible uses of the property. A person may withdraw from the program at any time, so long as specified conditions are met.

Once notified of a project’s completion, MDE must determine if the response action plan has been completed satisfactorily. A requirement for long-term monitoring and maintenance in the response action plan may not delay issuance of a certificate of completion. A response action plan approval letter or certificate of completion does not restrict MDE’s ability to take action in certain instances, such as if public health or the environment is imminently threatened or if new contamination is discovered. A response action plan approval letter or certificate of completion is transferrable. If a certificate of completion is conditioned on the permissible use of the property, this must be recorded in the land records of the local jurisdiction or the certificate is void.

Brownfields Revitalization Incentive Program

DBED must develop a program of financial incentives, including low-interest loans and grants, to assist persons in the program. There is a Brownfields Revitalization Incentive Fund, which is a nonlapsing, revolving special fund. To be eligible for the program, a property owner must have applied to the Voluntary Cleanup Program (hazardous controlled substance) or be cleaning up an oil contaminated site through a corrective action plan. The property must be located in a taxing jurisdiction that has elected to participate in the Brownfields Revitalization Incentive Program. Property that is owned or operated by a responsible person does not qualify for the program.

DBED must notify an applicant within 30 days if the applicant is eligible for financial incentives (conditional on participation in the Voluntary Cleanup Program or a corrective action plan). Eligibility is based on whether the property is located in a densely populated urban center and is substantially underutilized or if the property is an existing or former industrial or commercial site that poses a threat to the public health or environment. DBED may consider criteria such as the feasibility of redevelopment, the public benefit of redevelopment, the existing threat posed by the site, the potential to attract employers, and the absence of responsible persons. DBED must consult with MDE, community groups, and environmental and public health experts.

Property Tax Credits

In order for properties in a local jurisdiction to be eligible for the financial incentives from DBED, the jurisdiction must elect to participate. This obliges the jurisdiction to set aside certain tax revenues from affected sites and contribute part of this amount to the State incentive fund and grant another part as a tax credit to the property owner. A proportional share of a taxing jurisdiction's contribution to the Brownfields Revitalization Incentive Fund must be designated for financial incentives provided to sites in that jurisdiction. A jurisdiction may grant a tax abatement against the overdue county or municipal property taxes imposed on real property that is designated as a brownfields site.

Background: MDE has been receiving federal funds for site assessment activities related to brownfields sites. In federal fiscal 1996, the department received \$205,000 and conducted 24 site assessments. The department plans to conduct 33 site assessments over the next 16 months with \$383,600 in federal funds.

State Effect: The fiscal impact of this legislation is largely dependent on the number of sites that enter the two programs. The total number of potential sites and accompanying acreage in the State is not known at this time. There are currently 452 sites actually on the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), of which 380 to 420 may be eligible for the brownfields program. The total

number of sites eligible for the program throughout the State could easily be double or triple that amount.

Voluntary Cleanup Program

The Governor's proposed budget for fiscal 1998 includes \$389,980 in general funds for the brownfields program within MDE. This amount includes funding for eight personnel, of whom two are permanent and six are contractual. These employees will be utilized to establish standards and criteria, develop forms and applications, conduct legal reviews, and assess potential sites across the State. MDE advises that to actually start-up and administer the program in the next few months, additional contractual personnel would be needed for application review and other such activities.

The total amount that MDE estimates will be needed in fiscal 1998 is approximately \$440,500 based on receiving 50 applications; 90 applications are expected in the subsequent years. Additional funds are expected to come from application fees; contractual personnel would allow the department to adjust staffing levels to the actual amount of applications received and resulting revenues and workload. The applicant must pay an application fee of \$6,000. If the direct costs to review the application and oversee the response action plan exceed this amount, MDE must require the applicant or participant to pay the additional amount. Should the direct costs be less than \$6,000, then MDE must refund the difference.

The Department of Fiscal Services advises that while MDE's personnel estimate seems reasonable based on projected application levels, the actual number of applications received is difficult to predict at this time. While a great number of property owners and potential developers may be waiting for the incentives involved in this program, the actual number that enter in the first year may be less than expected. Individuals may wait until the regulations are drafted and a few "test cases" go through the process. In addition, the amount of financial incentives available through DBED initially is expected to be fairly limited. On the other hand, particularly in the out-years, demand could be higher than expected.

A participant must file a performance bond or other security with MDE within ten days after receiving the department's approval of a response action plan; the amount of the bond must be what MDE determines is necessary to secure and stabilize the site. The obligation of the bond ceases once the participant receives a certificate of completion, or, if the participant withdraws from the program, 16 months after the date of withdrawal. The amount of this bond is expected to vary greatly, depending upon the condition of the site. However, MDE advises that the amount will be set at what is required to stabilize and secure the site rather than to conduct a full-scale cleanup.

Brownfields Revitalization Incentive Program

DBED advises that it will submit a supplemental budget request for \$500,000 to be transferred from the general fund to the Brownfields Revitalization Incentive Fund for fiscal 1998. An additional \$3 million will be requested in fiscal 1999, and \$1 million in fiscal 2000. Special fund revenues will begin to accrue due to the property tax provisions of the legislation. The first \$100,000 accruing to the fund through property tax contributions must be transferred to the existing State Hazardous Substance Control Fund to be used by MDE for the oversight and administration of cleanup activities. However, the accrual of funds could take a few years, as discussed below under the Local Effect section.

In addition, DBED predicts that it will receive approximately \$500,000 in federal funds in fiscal 1999 and 2000 due to the recently announced federal brownfields initiative. While the amount and timing is unknown, it is likely that federal funds will be available for this purpose. In the budget just introduced by the President, the proposed Superfund portion increased from \$1.3 billion last year to \$2.1 billion. This money is being dedicated to cleaning up 2/3 of National Priorities List sites by the year 2000, and to cleanup brownfields sites. Additional funds are expected to be available through other federal agencies, such as Housing and Urban Development (HUD).

DBED anticipates that approximately \$99,400 will be needed in administrative expenditures for fiscal 1998; this would be used for one additional employee, contractual expenses, and other operating costs. This amount could be accurate for the first year of the program, with the additional employee drawing up all relevant applications and contracts. It is assumed that contracts would be drawn up to demand accountability from the companies on issues such as cleanup and redevelopment; some legal costs could be incurred.

However, if program demand is at the level predicted by MDE or higher, this level of personnel may be insufficient to deal with demand. The DBED program is designed to provide incentives for oil-related sites as well as brownfields. It is unclear if participants cleaning up oil contaminated sites through a corrective action plan will benefit from the financial incentives as the bill is currently drafted. MDE reports that all 1,100 current participants in this program are responsible persons, but not as the term is defined under the financial incentives provision. If this segment of the population is eligible, then demand for DBED's program could be greatly increased.

The staffing issue is particularly critical since the legislation requires DBED to respond to an application within 30 days. This is not necessarily indicative of the average turnaround time for established DBED financing programs. For a new program, it could be difficult to fulfill with the staffing level indicated, unless the demand for the program is lower than anticipated,

or financial provisions and company accountability are cursory.

State Tax Revenues

The State property tax is paid to the Annuity Bond Fund, and is used to pay the State's general obligation bonds. The tax rate is set by the Board of Public Works, and is currently set at \$.21 per \$100 of assessed value. Under the terms of the bill, the State could participate in the program by passing implementing legislation and notifying DBED that it wishes to participate. If the State decided to participate, the Annuity Bond Fund would lose \$.16 to \$.21 per \$100 of increased assessment, depending upon the amount of credit granted to the property owner. At the end of the five-year credit provision, State property tax revenues are expected to increase from any increased assessment values.

To the extent that this legislation spurs economic and employment development, State tax revenues would increase.

Local Effect: If the jurisdiction elects to participate, for each of the five taxable years immediately following the first revaluation of an eligible property, the jurisdiction:

- Must grant a property tax credit of 50% of the property tax attributable to the increase in assessment (including improvements to the site).
- Must contribute 30% of the property tax attributable to the increase in assessment to the Brownfields Revitalization Incentive Fund.
- May grant a property tax credit up to an additional 20% of the remaining property tax attributable to the increase in assessment.

Due to this distribution of funds, local governments could incur a minimal expenditure increase in their property tax collection activities. The tax credit may be extended an additional five years if the site is located in a designated enterprise zone.

Should the local jurisdiction elect to participate, local revenues will be affected to the extent that brownfields sites are located in their jurisdiction. Local property tax rates vary from \$1.39 to \$3.236 per \$100 of assessed value for the 23 counties in fiscal 1997; Baltimore City's rate is \$5.85 (see Exhibit 1). Within municipal corporations, rates varied from \$.08 to \$2.62 in fiscal 1997 and are in addition to county rates. The amount of tax credit and fund contribution would vary depending upon the local property tax rate and the prevailing market value of real estate in the area.

For illustrative purposes, Baltimore City reports that it has approximately 20 to 25 sites comprising roughly 500 acres that are known or believed to be contaminated and vacated.

(There are many more sites in the city that could potentially qualify for the program that are in some type of use.) Baltimore City officials believe it possible that ten sites comprising 150 acres would be cleaned up in the first five years under this program. Assuming that new industrial properties are valued at \$30 per square foot and one-third of the acreage is covered, \$67.5 million in increased value is affected. The assessed value of these properties would be 40% of the cash value, or \$27 million. At Baltimore City's local property tax rate of \$5.85 per \$100 of assessed value, this equates to property tax revenues of \$1,579,500 that would have been collected. Instead, \$789,750 would be taken as mandatory tax credits by the property owner; \$315,900 may be kept by Baltimore City or granted as an additional tax credit; and \$473,850 would go to the Brownfields Revitalization Incentive Fund. This represents the amount in the fifth year after all the properties have been cleaned up; in the first year only a few of these sites would be eligible.

However, a number of factors will influence the actual credit amounts. The example listed above only takes into account entirely new development; in fact, some properties may be renovated. Renovated industrial sites have a value of approximately \$20 per square foot in Baltimore City rather than the \$30 per square foot attributed to new development. In addition, even though these sites are considered contaminated and vacant, they would still have an existing market value that must be subtracted out. This amount could range up to \$9 per square foot depending upon if there are buildings currently on the site and the condition of the site and any buildings.

It is expected that most of the increased assessment amount will be due to new construction or renovations. Cleaning up the site itself is not expected to have a significant impact since in many cases the Department of Assessments and Taxation is unaware of contamination. In addition, while both land and buildings are reassessed in cases of new construction, only the buildings are reassessed if renovations are completed. However, it is expected that most property owners that enter the program and are willing to incur the cost of cleanup have substantial redevelopment planned.

Any improvements made in an enterprise zone receive tax credits against local property taxes already. These credits are for 80% of the increase in value for the first five years, 70% for year six, 60% for year seven, 50% for year eight, 40% for year nine, and 30% for year ten. Baltimore City advises that roughly half of the 500 acres cited could be located in an enterprise zone. The amount of increased assessment that would be eligible for this credit and available for the Brownfields Revitalization Incentive Fund could be minimal for these properties.

In any event, it is expected that funds due to the tax provisions would not begin to accrue to the incentive fund for a few years. Local jurisdictions must elect into the program,

companies must apply and begin cleanup, and construction or renovations would need to be completed before reassessments are conducted.

The bill's provision that the property must be assessed based on market value rather than use value is not expected to affect a large number of properties. This primarily applies to agricultural use properties, most of which would not be in the program. It also applies to certain planned developments that are assessed based on agricultural use; it cannot be estimated at this time how many of the properties in the program would fall under this category. In most cases, the use value of the property is much lower than the market value.

Once the five-year credit period is completed (up to ten in an enterprise zone), local revenues would increase by the amount of tax derived from the increased value of the property after cleanup. Additionally, to the extent that this legislation spurs employment and economic development, tax revenues would increase.

Small Business Effect: It is not known at this time exactly how many properties will be served through these two programs or how much funding will be available for financial incentives. This will depend in large part on the marketability of eligible properties, projected cleanup costs, and which local jurisdictions elect into the program. To the extent that properties enter the program that are owned by small businesses, these small businesses will directly benefit from the liability relief and financial incentives provided in the bill. Small businesses that own surrounding properties could see increased property values if currently contaminated sites are cleaned up. Other businesses that rent properties in the future that are cleaned up through this program will benefit from the availability of these sites, as will real estate professionals.

Small businesses that engage in environmental cleanup activities and site assessments will directly benefit from the increased volume of cleanup activities, as will any consultants in the field. In addition, any firms that engage in subsidiary activities, such as hauling debris from sites, will also benefit.

It is unclear if participants subject to a corrective action plan (oil) will benefit from the financial incentives as the bill is currently drafted. MDE reports that all 1,100 current participants in this program are responsible persons, but not as the term is defined under the financial incentives provision. Of these 1,100 participants, approximately 20% are small businesses.

Information Source(s): Maryland Department of the Environment, Department of Business and Economic Development, Department of Assessments and Taxation, Baltimore City, Department of Fiscal Services

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Exhibit 1 - Property Tax Rates in Maryland's Jurisdictions

County	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
Allegany	2.48	2.50	2.50	2.48	2.47
Anne Arundel	2.46	2.38	2.35	2.38	2.38
Baltimore City	5.90	5.90	5.85	5.85	5.85
Baltimore	2.865	2.865	2.855	2.855	2.855
Calvert	2.23	2.23	2.23	2.23	2.23
Caroline	2.49	2.49	2.49	2.48	2.48
Carroll	2.35	2.35	2.35	2.35	2.62
Cecil	2.50	2.45	2.45	2.45	2.45
Charles ²	2.44	2.44	2.44	2.44	2.44
Dorchester	2.24	2.24	2.24	2.24	2.21
Frederick	2.27	2.26	2.26	2.26	2.26
Garrett	2.24	2.24	2.24	2.34	2.59
Harford	2.73	2.73	2.73	2.73	2.73
Howard ³	2.79	2.80	2.80	2.82	2.82
Kent	2.33	2.33	2.33	2.33	2.33
Montgomery ⁴	2.523	2.528	2.574	2.586	2.597
Prince George's ⁵	3.275	3.262	3.248	3.243	3.236
Queen Anne's	2.17	2.17	2.17	2.17	2.35
St. Mary's	2.32	2.27	2.18	2.13	2.11
Somerset	2.15	2.15	2.15	2.15	2.15
Talbot	0.66	0.65	0.65	0.95	1.39
Washington	2.21	2.21	2.21	2.21	2.21
Wicomico	2.15	2.15	2.15	2.25	2.25
Worcester	1.62	1.68	1.68	1.68	1.68

¹Tax rates listed above reflect the levies imposed on all properties in nonmunicipal areas of the subdivision.

²Rate includes fire district tax.

³Includes additional levies for fire services of (.20) in 1993; (.21) in FY 1994 and 1995; and (.23) in FY 1996 and 1997.

⁴Includes additional levies for transit tax, fire service, the Maryland National Capital Parks and Planning Commission (MNCPPC), recreation, and storm drainage.

⁵Includes additional levies for MNCPPC, storm drains, and WSTC.

Source: Department of Fiscal Services Annual Property Tax Survey.