

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 62 (Chairman, Economic and Environmental Affairs Committee)
(Departmental - Environment)

Economic and Environmental Affairs

Air Quality - Administrative Civil Penalty

This departmental bill increases the maximum administrative civil penalty for an air pollution violation that the Maryland Department of the Environment (MDE) may assess to \$10,000 per day per violation with a \$200,000 limit for any single administrative hearing.

Fiscal Summary

State Effect: Potential increase in special fund revenues due to an increase in administrative civil penalty limits. Under one set of assumptions, based on penalty data provided by MDE, special fund revenues could increase by up to \$1 million in FY 2001 and up to \$1.4 million annually beginning in FY 2002.

Local Effect: None.

Small Business Effect: MDE has determined that this bill will have minimal or no impact on small business (attached). Legislative Services concurs with this assessment to the extent that small businesses comply with current air pollution laws. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: MDE may administratively assess a civil penalty for an air pollution violation of up to \$2,500 per day per violation with a \$50,000 limit for any single administrative hearing. MDE may also go through the judicial process to collect civil penalties of up to \$25,000 per day per violation with no limit.

Background: MDE has had the authority to assess administrative civil penalties for air pollution violations since July 1, 1985. On July 1, 1991, the penalty limits were raised from \$1,000 for each violation with a \$20,000 maximum limit for each administrative hearing to the current penalties.

According to MDE, \$520,143 in penalties were collected in fiscal 1999, distributed as follows:

<u>Range of Penalty</u>	<u>Percent of Total</u>
\$0 - \$10,000	45%
\$10,000 - \$20,000	33%
\$20,000 - \$30,000	5%
\$30,000 - \$40,000	16%

Of the total amount of penalties collected in fiscal 1999, MDE advises that \$352,380 were collected administratively. Under the Clean Air Act (CAA), the United States Environmental Protection Agency (EPA) has the administrative authority to assess penalties of up to \$27,500 per day per violation with a \$200,000 limit, which may be increased if the EPA administrator and the U.S. Attorney General agree that a higher penalty is warranted. If the EPA considers a penalty imposed by a state to be inadequate, the EPA may file an independent action against the violator.

MDE's administrative civil penalty authority for violations of other environmental laws is higher than its authority with respect to air pollution violations. For violations of waste management provisions, MDE can assess administrative penalties of up to \$25,000 per day per violation with a \$100,000 limit. For violations of specified water management provisions, MDE can assess administrative penalties of up to \$10,000 per day per violation with a \$100,000 cap.

State Fiscal Effect: This bill could result in an increase in special fund revenues by increasing the maximum administrative civil penalties MDE may assess for air pollution violations. According to MDE, \$352,380 in administrative civil penalties were collected in fiscal 1999. Because MDE was unable to predict the number of penalties assessed annually, and because it is difficult to predict the deterrent effect, if any, of increasing the maximum penalties, a precise estimate of the potential increase in revenues cannot be made.

However, because this bill will increase the daily maximum penalty and the per hearing maximum penalty by four times, it is reasonable to assume that the total amount of penalties assessed annually could, in any event, increase by up to four times. Assuming that the penalty data from 1999 is typical of any given year's violations, special fund revenues could increase by up to \$1.4 million annually beginning in fiscal 2002. Because the bill takes effect October 1, 2000, in fiscal 2001 special fund revenues could increase by up to \$1 million. These estimates do not reflect any deterrent effect that could occur as a result of increasing the maximum penalties. All penalties from violations of air pollution provisions are paid into the Clean Air Fund.

It is unknown whether increasing the administrative civil penalty limits will affect the number of cases that have to go to the judicial process for collection. However, it is assumed that any increase or decrease can be accommodated with the existing budgeted resources of the Judiciary and MDE.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 21, 2000
cm/jr Revised - Updated Information - February 9, 2000
Revised - Senate Third Reader - March 23, 2000

Analysis by: Lesley Frymier

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510