

Department of Legislative Services
 Maryland General Assembly
 2001 Session

FISCAL NOTE
Revised

Senate Bill 16 (Chairman, Economic and Environmental Affairs)
 (Departmental – Environment)

Economic and Environmental Affairs

Environmental Matters

Drinking Water - Administrative Penalty Authority

This departmental bill establishes a graduated administrative civil penalty system for violations of drinking water provisions for public water systems. The maximum administrative civil penalty that may be imposed by the Maryland Department of the Environment (MDE) is based on the population of the area being served by a supplier of water.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues and expenditures related to any increase in administrative actions taken by MDE. Failure to enact this bill could result in a significant loss of federal funds.

Local Effect: According to MDE, the majority of the public water systems serving a population of fewer than 10,000 are privately-owned. In addition, systems operated by local jurisdictions tend to have higher compliance rates than privately-owned systems. Accordingly, the bill is anticipated to have minimal impact on local governments.

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. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A supplier of water serving a population of more than 10,000 is subject to a penalty of up to \$1,000 per day but not exceeding \$25,000 total for each violation. A supplier of water serving a population of 3,301 to 10,000 is subject to a penalty of up to \$500 per day but not exceeding \$12,500 total for each violation. A supplier of water serving a population of 501 to 3,300 is subject to a penalty of up to \$250 per day but not exceeding \$6,250 total for each violation. The penalty that may be imposed on a supplier of water serving a population of 500 or less is up to \$100 per day but not exceeding \$5,000 total for each violation. MDE shall assess a penalty only after giving consideration to nine criteria, such as the willfulness of the violation, the actual harm to environment or human health, and the extent to which the current violation is a part of a recurrent pattern committed by the violator.

Current Law: The penalty imposed on a supplier of water serving a population of more than 10,000 shall be up to \$1,000 for each violation, but not exceeding \$25,000 total. Each day a violation occurs is a separate violation. Any penalties collected for violations of drinking water provisions are paid into the Maryland Clean Water Fund.

Background: MDE is responsible for the primary enforcement (primacy) of the federal Safe Drinking Water Act (SDWA) in Maryland. To meet the primacy conditions related to enforcement of the SDWA, MDE is required to adopt a mechanism for assessing administrative penalties for all public water systems. A public water system is defined in State law as regularly serving at least 25 persons or having at least 15 service connections. Chapter 533 of 1998 authorized MDE to assess administrative penalties on public water systems serving a population of more than 10,000; however, MDE does not currently have the authority to assess administrative penalties for public water systems serving a population of less than 10,000.

In a 1999 letter to MDE, the U.S. Environmental Protection Agency (EPA) stated that the State law needed to be changed to address systems serving a population of less than 10,000. The EPA also stated that the maximum penalty limit in State law was ambiguous and needed to be clarified to indicate that the limit applies to each violation. This legislation is a direct result of EPA's request.

There are 3,843 public water systems in Maryland. Of these, 29 systems serve a population of over 10,000 and are currently subject to administrative civil penalties for drinking water violations. Approximately 99% (3,814) of the public water systems in the State serve less than 10,000 persons and, therefore, are not currently subject to administrative civil penalties. According to MDE, compliance rates are high. For example, in 1999, there were a total of five major violations not addressed by the end of

the calendar year. According to MDE, during the past ten years, only three public water systems have been taken to court as a result of water quality violations.

State Fiscal Effect: By expanding administrative penalty authority to public water suppliers serving a population of less than 10,000, the bill could result in an increase in the number of administrative actions taken by MDE. Accordingly, special fund revenues and expenditures could increase as a result of those actions. To the extent that MDE pursues administrative action in lieu of court action, general fund revenues and expenditures could decrease as a result of a decrease in the number of actions pursued in the District Court. However, according to MDE, compliance rates are high. In 1999, there were only five major violations not addressed by the end of the calendar year. In addition, MDE reports that only three of the affected suppliers have been subject to court action during the past ten years. Accordingly, it is anticipated that the bill will have minimal impact on State operations and finances.

If the State fails to adopt administrative penalty authority for all public water systems, it could lose primacy as well as a significant amount of federal funds. According to MDE, in federal fiscal 2002 Maryland will receive an estimated \$1.4 million in federal grants for public water system supervision and approximately \$7.5 million in a capitalization grant for the Drinking Water State Revolving Loan Fund.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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