

SENATE BILL 244

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2002 Regular Session
2lr0175
CF 2lr0176

By: **The President (Administration) and Senators Forehand, Frosh, Green,
Pinsky, Sfikas, and Van Hollen**

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Community Right-to-Know Fund**

3 FOR the purpose of requiring the Department of the Environment to serve as the
4 information repository for the State Emergency Response Commission;
5 requiring the owner or operator of certain facilities to supply certain information
6 to the Department; establishing a Community Right-to-Know Fund in the
7 Department; requiring the Department to establish certain fees; specifying
8 certain uses of the Fund; authorizing certain persons to inspect certain facilities
9 and certain records; providing for the payment of certain civil penalties to the
10 Fund; requiring the Attorney General to represent the State in cases arising
11 under this Act; authorizing the Department to adopt certain regulations;
12 providing for the application of this Act; defining certain terms; and generally
13 relating to the reporting of certain information regarding hazardous materials
14 and the establishment of a Community Right-to-Know Fund in the Department
15 of the Environment.

16 BY adding to
17 Article - Environment
18 Section 7-601 through 7-605, inclusive, to be under the new subtitle "Subtitle 6.
19 Community Right-to-Know Fund"
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 2001 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Environment**

25 **SUBTITLE 6. COMMUNITY RIGHT-TO-KNOW FUND.**

26 7-601.

27 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

1 (B) "EXTREMELY HAZARDOUS SUBSTANCE" MEANS A SUBSTANCE THAT IS
2 DEFINED AS AN EXTREMELY HAZARDOUS SUBSTANCE UNDER § 329(3) OF THE
3 FEDERAL ACT.

4 (C) "FACILITY" MEANS A FACILITY THAT IS SUBJECT TO THE FEDERAL ACT.

5 (D) "FEDERAL ACT" MEANS THE FEDERAL EMERGENCY PLANNING AND
6 COMMUNITY RIGHT-TO-KNOW ACT OF 1986.

7 (E) "FUND" MEANS THE MARYLAND COMMUNITY RIGHT-TO-KNOW FUND
8 ESTABLISHED UNDER § 7-604 OF THIS SUBTITLE.

9 (F) "HAZARDOUS CHEMICAL" MEANS ANY CHEMICAL THAT IS A PHYSICAL
10 HAZARD OR A HEALTH HAZARD.

11 (G) "HEALTH HAZARD" HAS THE MEANING STATED IN 29 C.F.R. 1910.1200(C).

12 (H) "LOCAL EMERGENCY PLANNING COMMITTEE", OR "LEPC", HAS THE
13 MEANING STATED IN 40 C.F.R. 355.20.

14 (I) "PHYSICAL HAZARD" MEANS A CHEMICAL FOR WHICH THERE IS
15 SCIENTIFICALLY VALID EVIDENCE THAT IT IS A COMBUSTIBLE LIQUID, A
16 COMPRESSED GAS, EXPLOSIVE, FLAMMABLE, AN ORGANIC PEROXIDE, AN OXIDIZER,
17 PYROPHORIC, UNSTABLE, REACTIVE, OR WATER-REACTIVE.

18 (J) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201(X) OF THIS
19 TITLE.

20 7-602.

21 (A) THE DEPARTMENT SHALL SERVE AS THE INFORMATION REPOSITORY FOR
22 THE STATE EMERGENCY RESPONSE COMMISSION.

23 (B) EACH OWNER OR OPERATOR OF A FACILITY THAT IS REQUIRED BY THE
24 FEDERAL ACT, OR ANY REGULATIONS ADOPTED UNDER THE FEDERAL ACT, TO
25 FURNISH A REPORT, NOTICE, OR ANY OTHER FORM OF INFORMATION TO THE STATE
26 OR ANY OF ITS OFFICERS OR INSTRUMENTALITIES, INCLUDING THE STATE
27 EMERGENCY RESPONSE COMMISSION, THE GOVERNOR, OR THE GOVERNOR'S
28 DESIGNEE, SHALL SATISFY THE REQUIREMENT BY PROVIDING THE INFORMATION
29 TO THE DEPARTMENT.

30 (C) THE DEPARTMENT MAY ADOPT REGULATIONS TO SPECIFY FORMS, FEES,
31 SET DEADLINES, AND OTHERWISE IMPLEMENT THIS SUBTITLE.

32 (D) THIS SECTION DOES NOT RELIEVE ANY FACILITY FROM ANY
33 REQUIREMENT UNDER THE FEDERAL ACT OR UNDER ANY LOCAL ORDINANCE TO
34 REPORT TO INSTRUMENTALITIES OF FEDERAL OR LOCAL GOVERNMENT.

1 7-603.

2 A RESPONSIBLE PERSON MAY NOT KNOWINGLY OR RECKLESSLY SUBMIT FALSE
3 INFORMATION UNDER THIS SUBTITLE.

4 7-604.

5 (A) NOTWITHSTANDING § 7-219 OF THIS TITLE, THERE IS A COMMUNITY
6 RIGHT-TO-KNOW FUND.

7 (B) THE DEPARTMENT SHALL USE THE COMMUNITY RIGHT-TO-KNOW FUND
8 FOR:

9 (1) THE COLLECTION, MANAGEMENT, AND ANALYSIS OF DATA
10 RECEIVED BY THE DEPARTMENT FROM AN OWNER OR OPERATOR OF A FACILITY
11 THAT IS REQUIRED BY THE FEDERAL ACT OR ANY REGULATIONS ADOPTED UNDER
12 THE FEDERAL ACT TO PROVIDE INFORMATION TO THE STATE UNDER § 7-602(B) OF
13 THIS SUBTITLE;

14 (2) ENFORCEMENT BY THE STATE OF THIS SUBTITLE OR THE FEDERAL
15 ACT; AND

16 (3) PLANNING AND TRAINING FUNCTIONS PERFORMED BY THE STATE
17 OR LOCAL INSTRUMENTALITIES AS MAY BE REQUIRED BY THE FEDERAL ACT
18 INCLUDING:

19 (I) CONDUCTING INCIDENT RESPONSE AND EVACUATION
20 PLANNING, RAILROAD, MARITIME, AND TRANSPORTATION EXERCISES AND
21 EMERGENCY RESPONSE ACTIVITIES;

22 (II) THE COLLECTION OF HAZARDOUS MATERIAL COMMODITY
23 FLOW INFORMATION;

24 (III) THE ACQUISITION AND MAINTENANCE OF CHEMICAL
25 REFERENCE MATERIALS; AND

26 (IV) PUBLIC OUTREACH ACTIVITIES INCLUDING CASE STUDIES,
27 SCHOOL SAFETY, AND EMERGENCY PLANNING FOR CITIZENS; AND

28 (V) PARTICIPATION IN RELATED TRAINING CONFERENCES ON
29 LOCAL, STATE, AND FEDERAL REGULATORY AND COMPLIANCE UPDATES, INCIDENT
30 COMMAND, AND CRISIS CONTROL.

31 (C) THE DEPARTMENT SHALL:

32 (1) ESTABLISH AN ANNUAL FEE FOR FACILITIES REQUIRED TO REPORT
33 TO THE STATE OR ITS INSTRUMENTALITIES UNDER THE FEDERAL ACT; AND

34 (2) BASE THE ANNUAL FEE ON:

1 (I) THE COST TO THE DEPARTMENT FOR PROCESSING THE
2 INFORMATION SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (B) OF THIS
3 SECTION; AND

4 (II) THE POTENTIAL RISKS TO THE ENVIRONMENT, AS MEASURED
5 BY THE QUANTITIES AND TOXICITIES OF EXTREMELY HAZARDOUS SUBSTANCES OR
6 HAZARDOUS CHEMICALS STORED OR HELD BY THE FACILITY.

7 (D) THE ANNUAL FEE SHALL BE THE SUM OF A FIXED APPLICATION FEE AND
8 A CHEMICAL FEE.

9 (E) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, BEGINNING
10 MARCH 1, 2003 AND EACH YEAR THEREAFTER:

11 (1) THE ANNUAL FEE SHALL BE PAID TO THE DEPARTMENT NO LATER
12 THAN MARCH 1 OF EACH YEAR FOR REPORTS REQUIRED UNDER § 312 OF THE
13 FEDERAL ACT; AND

14 (2) THE ANNUAL FEE SHALL BE PAID TO THE DEPARTMENT NO LATER
15 THAN JULY 1 OF EACH YEAR FOR REPORTS REQUIRED UNDER § 313 OF THE FEDERAL
16 ACT.

17 (F) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE ANNUAL FEE
18 ASSESSED BY THE DEPARTMENT UNDER THIS SECTION MAY NOT EXCEED:

19 (1) FOR A RESPONSIBLE PERSON THAT OWNS OR OPERATES ONLY ONE
20 FACILITY IN MARYLAND, \$10,000 IN ANY CALENDAR YEAR; OR

21 (2) FOR A RESPONSIBLE PERSON THAT OWNS OR OPERATES MORE THAN
22 ONE FACILITY IN MARYLAND, \$20,000 IN ANY CALENDAR YEAR.

23 (G) (1) THE FOLLOWING PERSONS AND ENTITIES ARE EXEMPT FROM
24 PAYING ANY FEES UNDER THIS SECTION:

25 (I) GOVERNMENTAL AGENCIES;

26 (II) FARMERS WHOSE PRINCIPAL RESIDENCE IS LOCATED ON
27 THEIR FARM;

28 (III) CHARITABLE ORGANIZATIONS AS DEFINED UNDER § 6-101 (D)
29 OF THE BUSINESS REGULATION ARTICLE; AND

30 (IV) PETROLEUM DISTRIBUTORS WITH LESS THAN 75,000 GALLONS
31 OF GASOLINE AND LESS THAN 100,000 GALLONS OF DIESEL OR SIMILAR FUEL.

32 (2) THE SECRETARY MAY ADOPT REGULATIONS THAT EXEMPT
33 ADDITIONAL ENTITIES FROM THE REQUIREMENT TO PAY THE FEES TO THE
34 DEPARTMENT REQUIRED BY THIS SECTION.

35 (H) ANY FEE OR PENALTY COLLECTED OR IMPOSED UNDER THIS SUBTITLE
36 SHALL BE PAID BY THE DEPARTMENT TO THE FUND.

1 (I) A FACILITY THAT PAYS A FEE FOR THE STORAGE OR USE OF AN
2 EXTREMELY HAZARDOUS SUBSTANCE OR A HAZARDOUS CHEMICAL TO A LOCAL
3 JURISDICTION WITH AN ESTABLISHED FEE PROGRAM SHALL REMIT 50% OF EACH
4 ANNUAL FEE ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION TO THE
5 FUND.

6 (J) AT THE END OF EACH FISCAL YEAR, THE DEPARTMENT MAY USE MONEYS
7 IN THE FUND TO PROVIDE FUNDING ASSISTANCE TO A LOCAL EMERGENCY
8 PLANNING COMMITTEE.

9 (K) (1) A LOCAL EMERGENCY PLANNING COMMITTEE THAT RECEIVES
10 MONEYS UNDER SUBSECTION (J) OF THIS SECTION SHALL PROVIDE AN ANNUAL
11 REPORT TO THE DEPARTMENT DOCUMENTING THE MANNER IN WHICH THE MONEYS
12 WERE EXPENDED BY THE LOCAL EMERGENCY PLANNING COMMITTEE.

13 (2) A LOCAL EMERGENCY PLANNING COMMITTEE SHALL SPEND THE
14 MONEYS PROVIDED UNDER SUBSECTION (J) OF THIS SECTION FOR ACTIVITIES
15 IDENTIFIED UNDER SUBSECTION (B) OF THIS SECTION OR FOR ANY OTHER ACTIVITY
16 WHICH THE DEPARTMENT DETERMINES IS CONSISTENT WITH THE PURPOSES OF
17 THIS SUBTITLE.

18 (L) MONEYS ALLOCATED TO A LOCAL EMERGENCY PLANNING COMMITTEE
19 UNDER SUBSECTION (J) OF THIS SECTION THAT ARE NOT UTILIZED BY THE LOCAL
20 EMERGENCY PLANNING COMMITTEE WITHIN 1 YEAR AFTER RECEIPT OF THE
21 ALLOCATION SHALL BE REMITTED TO THE DEPARTMENT AND MAY BE REALLOCATED
22 BY THE DEPARTMENT.

23 (M) (1) AFTER PROVIDING REASONABLE NOTICE, THE SECRETARY MAY
24 REQUIRE A LOCAL EMERGENCY PLANNING COMMITTEE TO PROVIDE THE
25 DEPARTMENT WITH INFORMATION OR DOCUMENTATION RELATING TO THE
26 UTILIZATION OF MONEYS ALLOCATED UNDER SUBSECTION (J) OF THIS SECTION.

27 (2) THE SECRETARY MAY REQUIRE AN INDEPENDENT AUDIT OF ANY
28 LOCAL EMERGENCY PLANNING COMMITTEE NOT FOUND TO BE IN COMPLIANCE
29 WITH PARAGRAPH (1) OF THIS SUBSECTION.

30 (N) (1) THE SECRETARY MAY RECOVER ANY INAPPROPRIATE EXPENDITURE
31 MADE BY A LOCAL EMERGENCY PLANNING COMMITTEE FROM THE FUND.

32 (2) ANY EXPENDITURE MADE BY A LOCAL EMERGENCY PLANNING
33 COMMITTEE THAT IS INCONSISTENT WITH SUBSECTION (K) OF THIS SECTION OR THE
34 PURPOSE OF THIS SUBTITLE SHALL BE:

35 (I) REIMBURSED BY THE LOCAL EMERGENCY PLANNING
36 COMMITTEE TO THE DEPARTMENT; AND

37 (II) REMITTED TO THE FUND WITHIN 90 DAYS OF RECEIPT BY THE
38 LOCAL EMERGENCY PLANNING COMMITTEE OF A NOTICE FROM THE DEPARTMENT
39 INDICATING THAT THE EXPENDITURE IS INAPPROPRIATE.

1 7-605.

2 (A) EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS AND PROCEDURES
3 OF §§ 7-256 THROUGH 7-268 OF THIS ARTICLE SHALL BE USED AND APPLIED TO
4 ENFORCE VIOLATIONS OF:

5 (1) THIS SUBTITLE;

6 (2) ANY REGULATIONS ADOPTED UNDER THIS SUBTITLE; AND

7 (3) ANY CONDITION OF ACCREDITATION ISSUED UNDER THIS SUBTITLE.

8 (B) A PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO THE
9 COMMUNITY RIGHT-TO-KNOW FUND AND COLLECTIBLE IN ANY MANNER PROVIDED
10 BY LAW FOR THE COLLECTION OF DEBTS.

11 (C) IF A RESPONSIBLE PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED
12 UNDER THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT OF THE
13 PENALTY, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL
14 BE:

15 (1) A LIEN IN FAVOR OF THE STATE ON ANY REAL OR PERSONAL
16 PROPERTY OF THE RESPONSIBLE PERSON; AND

17 (2) RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR THE
18 COUNTY IN WHICH THE PROPERTY IS LOCATED.

19 (D) UNLESS THE RESPONSIBLE PERSON SERVED WITH NOTICE OF A PENALTY
20 UNDER THIS SUBSECTION MAKES A WRITTEN REQUEST FOR A HEARING WITHIN 10
21 DAYS OF RECEIPT OF NOTICE, THE PENALTY IS CONSIDERED FINAL.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect July 1, 2002.