

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
Revised

House Bill 291

(The Speaker, *et al.*) (Administration)

Environmental Matters

Education, Health, and Environmental Affairs

Community Right-to-Know Fund

This Administration bill establishes a Community Right-to-Know Fund in the Maryland Department of the Environment (MDE) to be used for emergency planning, enforcement, data collection, and other activities related to chemicals and hazardous substances. The bill establishes a revenue stream for the fund and specifies its allowable uses. The bill applies civil penalty provisions to the bill and requires MDE to serve as the information repository for the State Emergency Response Commission.

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: The FY 2003 budget includes \$835,787 in special funds contingent upon the enactment of this bill. Legislative Services advises that special fund revenues would increase by \$800,000 in FY 2003 from fees established by the bill (approximately \$35,800 less than the budget assumes), and that special fund expenditures would increase correspondingly.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$800,000	\$800,000	\$800,000	\$800,000	\$800,000
SF Expenditure	835,800	800,000	800,000	800,000	800,000
Net Effect	(\$35,800)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Grant revenues for local emergency planning activities would increase by an estimated \$400,000 annually beginning in FY 2003.

Small Business Effect: The Administration has determined that this bill will have minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill generally applies to facilities that manufacture, store, and use hazardous or toxic chemicals and that are subject to the federal Emergency Planning and Community Right-to-Know Act (EPCRA). Each owner or operator of a facility that is required by EPCRA to furnish any form of information (e.g., reports, notices) to the State or any of its officers or instrumentalities, including the State Emergency Response Commission (SERC) and the Governor, must provide that information to MDE. A “responsible person” (an owner or operator of a facility required to report under EPCRA) may not knowingly or recklessly submit false information to MDE.

MDE must establish an annual fee for facilities required to report to the State or its instrumentalities under EPCRA. The fee must be based on the cost to MDE for processing the information submitted to MDE under the bill. The fee may not exceed \$1,000 in any calendar year for a responsible person who owns or operates one or more facilities in the State. Payment of fees would begin March 1, 2003. The bill establishes two different annual payment deadlines depending on whether the facility is required to report under Section 312 of EPCRA (Emergency and Hazardous Chemical Inventory Reporting) or Section 313 of EPCRA (Toxic Chemical Release Reporting).

The bill provides exemptions from the fee for governmental agencies and specified farmers, charitable organizations, and petroleum retail facilities, and those that are exempt from reporting under EPCRA. The Secretary of Environment may adopt regulations providing additional exemptions.

Any fee or penalty collected or imposed under the bill must be paid into the Community Right-to-Know Fund. MDE must use the fund for:

- the collection, management, and analysis of data received from owners or operators of specified facilities;
- enforcement of this bill and EPCRA; and
- planning and training functions performed by the State or local instrumentalities as may be required by EPCRA, including several specified activities.

MDE must use 50% of the moneys in the fund to provide grants to local emergency planning committees (LEPCs). The bill describes the allowable uses of such grants and provides that a LEPC that receives funds under this provision must submit an annual

report to MDE documenting related expenditures. Funds not used within one year must be remitted to MDE and may be reallocated by MDE. The bill authorizes MDE to require a LEPC to provide additional information related to the use of funds, and to require an audit of any LEPC which does not do so. The Secretary of MDE may recover any inappropriate expenditures made by a LEPC.

The bill applies the civil penalty provision applicable to controlled hazardous substance violations to the bill, any regulations adopted pursuant to the bill, and any condition of accreditation issued under the bill. A penalty imposed pursuant to the bill is payable to the new fund.

The bill authorizes MDE to adopt regulations to implement the bill.

Current Law: With specified exceptions, a person must be permitted by MDE before the person may own, establish, operate, or maintain a facility in the State that transfers (from one mode of transportation to another) quantities of a single hazardous material that meets or exceeds 100,000 pounds in weight at any time during a calendar year. A person may not knowingly or recklessly submit false information to MDE. All fees and penalties collected by MDE related to these permits and violations of the permits must be deposited into the State Hazardous Substance Control Fund.

Controlled hazardous substances are also regulated by MDE. Generally, a person may not store, discharge, treat, or dispose of a controlled hazardous substance in this State except in a controlled hazardous substance facility and in accordance with law. A person must hold a facility permit before the person may own, establish, operate, or maintain a controlled hazardous substance facility. With specified exceptions, a person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility unless the person holds a hauler certificate, a vehicle certificate, and a driver certificate.

Various requirements, including the payment of fees and the submission of reports, apply to permit and certificate holders. All application and permit fees, renewal fees, transporting vehicle certification fees, and all other funds collected by MDE under specified controlled hazardous substances are paid into the State Hazardous Substance Control Fund. MDE may use the fund for State and local activities related to identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances, including program development. A responsible person must reimburse MDE for all expenditures made by MDE in response to a release or a threatened release of a hazardous substance at a particular site.

A person who violates specified provisions of the controlled hazardous substance law is liable to a civil penalty not exceeding \$25,000 per day. The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the

provisions relating to controlled hazardous substances, including the recovery of penalties.

Background: The federal Emergency Planning and Community Right-to-Know Act (EPCRA) was established in 1986 as part of the Superfund Amendments and Reauthorization Act. EPCRA established an infrastructure at the state and local levels to plan for chemical emergencies. Facilities that have spilled hazardous substances, or that store, use, or release certain chemicals are subject to various reporting requirements. All this information is publicly available so that interested parties may become informed about potentially dangerous chemicals in their communities. MDE advises that it is the State repository for this information. The Emergency Operations Program within MDE maintains a database of this information that is available to the public. The program also maintains the State's copy of the Toxic Release Inventory (TRI) data. MDE advises that all data is currently maintained in paper files.

EPCRA requires the Governor of each state to appoint a State Emergency Response Commission (SERC). A SERC must appoint local emergency planning committees (LEPCs) and supervise and coordinate their activities. A SERC must also designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Each LEPC must prepare an emergency plan and submit a copy of the plan to the appropriate SERC. Each LEPC must establish rules including provisions for public notification of LEPC activities, public meetings to discuss emergency plans, public comments, the LEPC response to such comments, and distribution of emergency plans. Each LEPC must also establish procedures for receiving and processing requests from the public for information. According to MDE, there are currently 25 LEPCs in the State (in each of the 23 counties, Baltimore City, and Ocean City). MDE advises that LEPCs share approximately \$50,000 annually made available to the State through a federal grant program.

According to MDE, many other states and two counties in Maryland (Montgomery and Cecil) have already enacted fee legislation relating to EPCRA activities. Fees vary widely depending on the extent of the program. Comprehensive programs, such as the one in Massachusetts, can generate millions of dollars to be used for pollution prevention, research, and other activities. Smaller programs, such as in West Virginia, simply support staff that manage the submission of data. MDE advises that Virginia has no state fees under EPCRA. According to MDE, Montgomery County has a comprehensive program and a fee structure estimated to generate approximately \$500,000 annually. The voluntary fee program in Cecil County, however, is designed only to support local response agency training. MDE advises that establishing a State fee dedicated to EPCRA will allow increased access and linkage to federal data, increased public information, and increased training and preparedness.

Penalties related to fee programs also vary widely and generally reflect local perceptions of what is needed to achieve compliance:

- Delaware has the ability to assess administrative and civil penalties of up to \$10,000 and criminal penalties of not less than \$2,500 for a first offense and not more than \$25,000 for a second offense;
- in Pennsylvania, for making false statements, violators are subject to civil and criminal penalties of up to \$10,000 and imprisonment up to five years; violations include administrative and civil penalties ranging from \$500 to \$10,000, with an additional penalty of up to \$5,000 if the violation is not corrected within a specified period of time;
- in New Jersey, which has no administrative or criminal penalty authority, violators are only subject to a \$2,500 civil penalty; and
- Virginia and North Carolina do not have any administrative, civil, or criminal penalty authority in this area.

State Revenues: The fiscal 2003 budget assumes \$835,787 in receipts from the fee established by the bill. Legislative Services advises that special fund revenues from the bill's fee provisions would increase by an estimated \$800,000 annually beginning in fiscal 2003. Special fund revenues could increase due to the bill's civil penalty provision.

Community Right-to-Know Fees

The bill authorizes MDE to establish an annual fee for facilities required to report under EPCRA. Although the bill does not stipulate the exact amount of the fee, the bill provides that MDE must base the fee on the cost to MDE for processing the information submitted to MDE under the bill. The maximum fee would be \$1,000 in any calendar year per responsible person. MDE anticipates that approximately 800 responsible persons will be required to pay the fees established by the bill. Although the fee schedule would be established by regulation, based on the maximum fee of \$1,000 per responsible person, special fund revenues would increase by \$800,000 annually beginning in fiscal 2003.

Payment of fees would begin March 1, 2003. Facilities reporting under EPCRA Section 312 would be required to submit the fees by March 1 of each year. Facilities reporting under EPCRA Section 313 would be required to submit the fees by July 1 of each year. Because MDE advises that virtually all facilities required to report under EPCRA Section 313 are also required to report under EPCRA Section 312, for purposes of this estimate, it is assumed that all responsible persons would reach the maximum fee provided by the bill under the EPCRA Section 312 fee deadline (March 31 of each year).

Under the bill, MDE could exempt additional entities from the fee requirement. To the extent that MDE does this, revenues would decrease correspondingly. Revenues could also decrease to the extent facilities do not comply with the bill's fee provisions. Because noncompliance cannot be predicted, for this estimate, it is assumed that all facilities will submit the required fee.

Penalties

Special fund revenues could increase as a result of any civil penalties collected pursuant to the bill. The bill provides that any penalty imposed is payable to the new fund. Any such increase cannot be reliably estimated at this time, but MDE advises that it is not anticipated to be significant.

State Expenditures: The fiscal 2003 budget includes \$835,787 in special funds contingent upon enactment of this bill. Under the bill, MDE would be required to use the new fund for the collection, management, and analysis of data received from owners or operators, enforcement of the bill and EPCRA, and planning and training functions performed by the State or local instrumentalities as may be required by EPCRA. MDE must use 50% of the moneys in the fund to provide grants to LEPCs.

MDE advises that one employee is dedicated to its existing program, which is limited in scope. Therefore, it is reasonable to assume that MDE may need additional employees to meet the requirements of the bill. Legislative Services advises that special fund expenditures could increase by an estimated \$800,000 in fiscal 2003 (approximately \$35,800 less than the budgeted amount), which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring two environmental specialists to collect, manage, and analyze data received from facilities and to conduct planning and training functions as provided by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including contractual services and grants to LEPCs.

Salaries and Fringe Benefits	\$72,100
Grants to LEPCs	400,000
Contractual Services – Database	319,300
Equipment and Other Operating Expenses	<u>8,600</u>
Total FY 2003 State Expenditures	\$800,000

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) ongoing grants to LEPCs of an estimated \$400,000 annually; (3) 1% annual increases in ongoing operating expenses; and (4) gradual decreases in contractual services.

The bill's penalty provisions are not expected to significantly affect State expenditures.

Local Fiscal Effect: Local revenues for LEPC activities would increase beginning in fiscal 2003 as a result of grants provided by MDE under the bill. Based on the estimated fee revenue, grants to locals will total an estimated \$400,000 annually. LEPCs receiving funding would be required to submit an annual report to MDE. If an LEPC does not use the funds within one year, the funds would revert back to MDE.

Other than grant expenditures for LEPC activities, the bill is not anticipated to materially affect local expenditures. Government agencies are exempt from the fees established by the bill. In addition, the bill's penalty provisions are not expected to significantly affect local expenditures.

Additional Comments: It is assumed that the entities affected by the new fees would pass on any increase in costs to consumers of their products. Accordingly, prices for products made from specified chemicals and hazardous substances could increase. Any such increase is speculative and cannot be reliably estimated at this time.

Additional Information

Prior Introductions: Similar legislation was introduced during the 1992 session as HB 1565. The bill received an unfavorable report by the House Ways and Means Committee.

Cross File: SB 244 (The President, *et al.*) (Administration) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment; Office of the Attorney General; Calvert, Caroline, and Howard counties; Baltimore City; U.S. Environmental Protection Agency; Department of Legislative Services

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