

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 1052 (Delegate Zirkin, *et al.*)
 Environmental Matters and Judiciary

The Chemical Security Act

This bill relates to the maintenance, storage, and handling of “hazardous materials” in the State. The bill establishes requirements for owners and operators of specified facilities and establishes criminal penalty provisions. The bill requires the Maryland Department of the Environment (MDE) to adopt regulations to implement the bill by January 1, 2003.

Fiscal Summary

State Effect: General fund expenditures would increase by \$69,400 in FY 2003 to develop regulations and begin implementing them. Future year estimates reflect contractual services and the cost of hiring additional employees in FY 2004 and are annualized, adjusted for inflation, and reflect ongoing operating expenses. Potential minimal increase in general fund revenues as a result of the bill’s penalty provisions.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	-	-	-	-	-
GF Expenditure	69,400	651,300	393,300	411,000	429,800
Net Effect	(\$69,400)	(\$651,300)	(\$393,300)	(\$411,000)	(\$429,800)

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

Local Effect: Local jurisdictions that own and operate specified facilities will become subject to regulation by MDE and could incur a significant increase in costs related to the implementation of safety measures. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill states that the General Assembly finds that:

- the presence of significant quantities of hazardous materials in populated areas of the State constitutes a potential risk of injury to the citizens of the State in the event of terrorism, sabotage, or accident;
- hazardous materials are currently stored in facilities and equipment in rail yards, tank cars, and other areas without adequate measures taken to ensure the safety and integrity of the materials in the event of a deliberate act of terrorism, sabotage, or accident; and
- the public health, safety, and welfare require stricter controls and security measures to be taken to protect the citizens of the State from death and serious injury that may result from an act of terrorism, sabotage, or accident that involves hazardous material facilities.

The bill applies to any person who owns, operates, maintains, or causes to operate or maintain a “facility” on or over any property located in the State, including rail cars that are used primarily for storage of hazardous materials as specified in the bill. A person subject to the bill’s requirements and whose facility adjoins a rail line, stores hazardous materials on a rail line, or is near a population center must maintain, store, and handle any hazardous material in a reasonably secure and prudent manner in order to prevent exposure or other danger, including implementing safety measures to ensure the security of rail cars that are stored on rail lines and used solely to contain hazardous materials.

On or before January 1, 2003, and every three years thereafter, the person must analyze the security of the facility and must implement improvements, including “inherently safer technologies” as necessary to satisfy the requirements of the bill. Inherently safer technology means a technology, product, raw material, or practice that, compared with those currently in use:

- reduces or eliminates the possibility of a release of a hazardous material from the chemical source prior to secondary containment, control, or mitigation; and
- reduces or eliminates the threats to public health and the environment associated with a release or potential release of a hazardous material from the chemical source.

The person must inform MDE, the local government, and appropriate State and local emergency response units of any measures taken or planned to implement the bill at the facility.

A person subject to the bill's requirements must prohibit unauthorized access to the property on which the facility is located by installing a wall, fencing, or other appropriate structures. A person subject to the bill's requirements also must monitor the property, the facility, and any adjoining rail lines or other means of access using security cameras, regular patrols, and other appropriate methods.

A person who knowingly violates the bill's provisions is guilty of a misdemeanor and on conviction is subject to: (1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$10,000 or both; or (2) for a subsequent violation, imprisonment not exceeding 1 year or a fine not exceeding \$25,000 or both. Each day a violation continues is a separate violation. A conviction of a violation constitutes grounds to suspend, revoke, or deny any permit that MDE has granted or may grant to the person for a facility.

The regulations adopted by MDE must include: (1) any additional facilities that MDE includes in the scope of the bill; (2) any additional hazardous materials that MDE includes in the scope of the bill; (3) reporting procedures; and (4) any other provision that MDE considers necessary or useful to further the purposes of the bill.

Facility means a controlled hazardous substance facility, as defined under the controlled hazardous substance law, and any other facility (as defined under current law) of a type that MDE includes in the scope of the bill by regulation. Hazardous material means a controlled hazardous substance, as defined under the controlled hazardous substance law, and any other hazardous material (as defined under current law) of a type that MDE includes in the scope of the bill by regulation.

The provisions of the bill are severable.

Current Law: Federal laws related to chemical safety generally address cleanup, planning, response, and risk management. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) operates a program relating to process safety management. The program, which is intended to prevent or minimize the consequences of a catastrophic release of toxic, reactive, flammable or explosive highly hazardous chemicals from a process, involves hazard analysis and the development of process safety and emergency management plans. The Maryland Occupational Safety and Health Program within the Department of Labor, Licensing, and Regulation is involved with the implementation of process safety management standards at the State level.

Under the federal Clean Air Act (CAA), specified chemical sources must prepare risk management plans and submit them to the U.S. Environmental Protection Agency (EPA). That federal law contains a general duty for owners and operators of facilities producing, using, handling, or storing extremely hazardous substances to design and maintain a safe facility to prevent accidental releases and to minimize the consequence of any releases

that occur. MDE does not have delegated authority of the federal program under the CAA and therefore does not evaluate risk management plans.

The federal Hazardous Materials Transportation Act was enacted in 1975 to provide adequate protection against the risks to life and property inherent in transporting hazardous materials in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

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. 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 in the State. 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.

A person who violates specified provisions of the hazardous materials and controlled hazardous substance laws is liable for a civil penalty not exceeding \$25,000 per day. MDE may also assess an administrative penalty of up to \$25,000 per violation not exceeding \$100,000 total. Criminal violations (for negligence) are considered misdemeanors and, for a first offense, carry a fine of up to \$25,000 or imprisonment not exceeding one year, or both; after a first conviction, the fine would be up to \$50,000 per day or imprisonment not exceeding two years, or both. Specified offenses relating to controlled hazardous substances are considered felonies and carry a fine not exceeding \$100,000 or imprisonment not exceeding five years, or both; any person who knowingly commits specified violations is guilty of a felony and upon conviction is subject to a fine not exceeding \$250,000 or imprisonment not exceeding 15 years, or both.

Background: Federal legislation relating to chemical security has been introduced in the U.S. Senate. S. 1602 (The Chemical Security Act of 2001) was introduced in October 2001. The bill was referred to the Senate Environment and Public Works Committee. In November 2001, the Subcommittee on Superfund, Toxics, Risk, and Waste Management held a hearing on the bill. According to testimony provided by Senator Barbara Boxer, one of the co-sponsors of the bill, the bill was introduced in response to the September 11, 2001 terrorist attacks.

Other states have implemented programs dealing with chemical security and preparedness. In 1986 New Jersey enacted the Toxic Catastrophe Prevention Act in an effort to prevent accidental releases. A few years ago, New Jersey amended the regulations for that program to incorporate the federal Accidental Release Prevention

requirements of the CAA. New Jersey advises that its program focuses on prevention and preparedness and works in conjunction with other programs in the State to provide a comprehensive prevention and response system. The program, which was designed in cooperation with the regulated community, requires regulated facilities to perform reviews and risk assessments and to quantitatively assess and characterize risk. The program only applies to facilities that handle, use, manufacture, store, or have the capability of generating an extraordinarily hazardous substance at specified threshold quantities. The program does not require the use of inherently safer technology.

In 1999 Delaware replaced its regulations governing extremely hazardous substances with its Accidental Release Prevention Regulation so that it could request delegation of federal provisions under the CAA. The mission of Delaware's program is to protect the lives and health of persons living and working in vicinity of facilities handling extremely hazardous substances. The program contains requirements for owners or operators of stationary sources having regulated substances on-site to develop and implement a risk management program that anticipates and minimizes the chances of catastrophic events.

Not only did the September 11, 2001 terrorist attacks heighten the interest in chemical security in the State, but after a freight train hauling hazardous chemicals caught fire in Baltimore's Howard Street tunnel in July 2001, concern was raised about the significant quantities of hazardous chemicals that pass through the State each day. Federal agencies regulate the types of containers that hold these chemicals, the safety devices and signs on them, and, in some cases, each car's proximity to other chemicals on a train. According to news sources, however, no one monitors the types and quantities of chemicals passing through the State, and no agency requires that communities be forewarned of shipments. After the CSX fire, federal rail officials reported that 2 million tank-car loads of hazardous materials were shipped nationwide last year, with 35 train accidents resulting in the release of dangerous chemicals.

State Revenues: The bill's criminal penalty provisions are not expected to significantly affect State revenues.

State Expenditures: General fund expenditures could increase by \$69,400 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of hiring one engineer to develop regulations and a part-time (0.5) assistant attorney general for legal review. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel for site visits and meetings with facilities.

Salaries and Fringe Benefits	\$65,700
Equipment and Operating Expenses	<u>3,700</u>
Total FY 2003 State Expenditures	\$69,400

Future year expenditures reflect: (1) the cost of hiring four additional engineers in fiscal 2004 to review information provided by facilities and conduct inspections of facilities; (2) contractual services of \$150,000 in fiscal 2004 only for data management activities; (3) full salaries with 3.5% annual increases and 3% employee turnover; and (4) 1% annual increases in ongoing operating expenses.

These estimates assume that a number of facilities not currently regulated by MDE would become subject to regulation under the bill. MDE advises that currently 23 permits have been issued to controlled hazardous substances facilities in the State. However, regulations adopted under the bill could cover an unknown number of additional facilities. Because the number of facilities subject to the bill's requirements will vary depending on the regulations adopted by MDE, costs for MDE to implement the bill could vary from the estimated amounts.

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

Local Fiscal Effect: An unknown number of local jurisdictions will be subject to the regulations adopted by MDE under the bill. Local jurisdictions subject to the bill's requirements will be required to analyze the security of their facilities, implement improvements, and submit reports relating to safety measures taken. In addition, local jurisdictions subject to the regulations will be required to prohibit unauthorized access to their properties and monitor their properties, facilities, and any adjoining rail lines or other means of access as provided by the bill. Accordingly, local expenditures could increase significantly.

The bill's penalty provisions are not expected to significantly affect local finances.

Small Business Effect: An unknown number of small businesses could become subject to the regulations adopted by MDE under the bill. Any business, large or small, subject to the bill's requirements will have to analyze the security of their facilities, implement improvements, and submit reports relating to safety measures taken. In addition, businesses subject to the regulations will be required to prohibit unauthorized access to their properties and monitor their properties, facilities, and any adjoining rail lines or other means of access as provided by the bill. Accordingly, expenditures could increase significantly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland Emergency Management Agency; U.S. Environmental Protection Agency; New Jersey Department of Environmental Protection; Carroll, Harford, Montgomery, Prince George's, and St. Mary's counties; *The Baltimore Sun*; Department of Legislative Services

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