

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

House Bill 1223

(Delegate Taylor)

Environmental Matters

Environmental Audits - Voluntary Disclosure

This bill provides that a “regulated entity” may conduct a voluntary “environmental audit.” If this audit is properly conducted and all environmental law violations are reported and addressed, the entity receives immunity from civil and administrative penalties. The “environmental audit report” is then deemed inadmissible and not subject to discovery in any civil or administrative proceedings.

Fiscal Summary

State Effect: Special fund revenues could increase or decrease as a result of the bill’s fee, penalty, and immunity provisions. General fund revenues could decrease due to the bill’s immunity provisions. General and special fund expenditures could increase to implement the audit program as specified in the bill.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Regulated entities that establish an environmental audit program must develop a written policy on how such audits are to be conducted. The Maryland Department of the Environment (MDE) may not impose civil and administrative penalties for a violation of an environmental law if the regulated entity:

- discovers the violation as a result of an environmental audit;

- discloses the nature and date of the violation discovery;
- submits a complete environmental audit report to MDE;
- corrects the condition and remedies damages within a certain time;
- takes appropriate steps to prevent the recurrence of the violation;
- cooperates with MDE in ensuring remediation and compliance; and
- submits a processing fee of \$100 (small business) or \$500.

On receipt of the environmental audit report, MDE must promptly verify if the conditions have been met and if the facility is granted immunity. Once verified, the audit report is deemed inadmissible and not subject to discovery in any civil or administrative proceedings. Immunity and privileged information status do not apply in specified situations; a circuit court or administrative law judge must conduct a hearing if a challenge is made. Anyone who discovers a violation through an environmental audit and fails to take action may be subject to a penalty of \$25,000 per day. The bill establishes a Voluntary Disclosure and Environmental Audit Fund which consists of all fees and penalties and is to be used for administrative expenses.

Regulated entity means any person who is subject to an environmental law.

Current Law: Under its general authority to carry out and enforce the provisions of the Environment Article, MDE established an Environmental Audit Policy. Under that policy, MDE encourages self-auditing as an effective environmental management technique. Companies that disclose environmental hazards to MDE, under specified requirements, may receive immunity from administrative penalties, pursuant to MDE's enforcement discretion.

State Revenues: Special fund revenues could increase as a result of the bill's processing fee and penalty provisions. The amount of the fees will depend upon the number of facilities that decide to submit environmental audit reports; the amount of penalties will depend upon the number of facilities that conduct voluntary audits but do not address violations. These special fund revenues would at least partially offset the expenditures discussed below. However, since facilities that receive immunity through the audit program would not have to pay any civil or administrative penalties, general and special fund revenues due to those penalties would decrease.

State Expenditures: General and special fund expenditures could increase beginning in fiscal 2003 for MDE to:

- review the environmental audit report;

- verify that the regulated entity meets the conditions of immunity;
- process the request for immunity; and
- defend legally any immunity/privilege denials.

Any increase in expenditures cannot be reliably estimated at this time; it will depend upon the number of regulated entities that decide to file environmental audit reports and the complexity of the findings involved.

Additional expenditures could be incurred due to hearings before administrative law judges. The Office of Administrative Hearings receives reimbursable funds from the various agencies depending upon the portion of time spent on cases for that agency. Any such increase in hearings will be realized as additional expenditures by MDE; however, no estimate can be made at this time as to the number of challenges that might be made.

Additional Information

Prior Introductions: Virtually identical legislation was introduced as SB 682/HB 1057 of 1996. SB 682 received a favorable with amendments report by the Judicial Proceedings Committee but was recommitted to the committee, and no further action was taken. The House Environmental Matters Committee held a hearing on HB 1057, but no further action was taken.

Cross File: None.

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

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Analysis by: Lesley Frymier

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