

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

House Bill 294 (The Speaker) (Administration)
 Environmental Matters

Environment - Water Management Fees, Penalties, and Cost Recovery

This Administration bill authorizes the Maryland Department of the Environment (MDE) to establish specified fees related to various water and wetlands permits and licenses. Fees will be paid into the Maryland Clean Water Fund. The bill also modifies the uses of that fund. Finally, the bill expands existing criminal, civil, and administrative penalty provisions and provides for cost recovery from “responsible parties.”

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: The Governor’s proposed FY 2003 budget includes approximately \$2,832,500 in special fund expenditures contingent upon the enactment of this bill. The budget assumes a commensurate increase in special fund revenues from fees and penalties associated with the bill. However, the Department of Legislative Services (DLS) advises that penalty revenue and special fund expenditures cannot be reliably estimated at this time. Special fund revenues from the bill’s fee provisions would increase by \$2,624,200 in FY 2003 (\$208,300 less than the budget assumes in receipts from fees and penalties). Future year estimates reflect a full year of fee revenue.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	-	-	-	-	-
SF Revenue	2,624,200	6,953,000	6,953,000	6,953,000	6,953,000
SF Expenditure	2,832,500	-	-	-	-
Net Effect	(\$208,300)	\$6,953,000	\$6,953,000	\$6,953,000	\$6,953,000

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

Local Effect: Local expenditures would increase significantly (over \$700,000 annually) as a result of the bill's fee provisions. Potential increase in local revenues related to the bill's penalty provisions. This bill imposes a mandate on a unit of local government.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: The bill authorizes MDE to adopt rules and regulations necessary to administer provisions of current law relating to water appropriation and use permits, nontidal wetlands, and wetlands and riparian rights. Any such rule or regulation must set reasonable application fees, modification application fees, and resource management fees for all permits and licenses issued by MDE under those provisions including: (1) water appropriation and use; (2) waterway construction; (3) waterway obstruction; (4) nontidal wetlands; and (5) tidal wetlands. A rule or regulation must establish a reasonable fee schedule that:

- provides financial incentives to conserve the State's water resources;
- relates to the anticipated cost to MDE for regulating and monitoring; and
- supports the anticipated needs of MDE for program development activities including conducting watershed studies and educational programs, monitoring and assessing impacts on water resources, and providing technical assistance to local governments.

The bill also specifies requirements relating to management fees that must be paid by specified water appropriation and use permittees.

Any fees collected must be paid into the Maryland Clean Water Fund. The bill repeals the existing allowable uses of the fund and establishes new provisions to clarify that the fund must be used for responding to the discharge of pollutants, activities related to program development, and other specified activities. Priority must be given to activities pertaining to water quality of the Chesapeake Bay and its tributaries, the coastal bays and their tributaries, and other sensitive waters of the State.

The bill also expands various criminal, civil, and administrative penalty provisions relating to sediment erosion and control, stormwater management, water appropriation and use, nontidal wetlands, wetlands and riparian rights, and water resources provisions. The bill's changes are shown in **Appendix 1**, and described below.

For violations of specified sediment erosion and control provisions, the bill:

- increases the maximum penalty for a misdemeanor from \$5,000 to \$25,000;
- applies the crime to violations of regulations, sediment control plans, and orders;
- provides that the court may order the person to restore the area disturbed;
- repeals existing civil penalty provisions and establishes new provisions;
- establishes a civil penalty of up to \$25,000 for each violation;
- increases the maximum administrative penalty from \$1,000 to \$10,000 and repeals the total amount that MDE may assess for any action; and
- provides that penalties collected for violations of a specified section of law be paid into a special fund and specifies the uses of the fund.

For violations of specified stormwater management provisions, the bill:

- increases the maximum fine for a misdemeanor from \$5,000 to \$25,000;
- provides that the court may order the person to restore the area;
- increases the maximum administrative civil penalty from \$10,000 to \$25,000; and
- increases the maximum administrative penalty MDE may assess from \$1,000 to \$10,000 per violation and repeals the total amount that MDE may assess for any action.

For violations of specified water appropriation and use provisions, the bill:

- increases the maximum daily fine for a misdemeanor from \$500 to \$25,000 and repeals the maximum total fine that may be assessed;
- provides that the court may order the person to restore the area;
- establishes civil penalties of up to \$25,000 for each violation;
- establishes an administrative penalty of up to \$10,000 for each violation, assessed with consideration given to several specified factors;
- provides that penalties collected for violations relating to permits to construct or repair reservoirs, dams, or waterway obstructions must be paid into the Nontidal Wetland Compensation Fund; and
- provides that penalties collected for violations of water appropriation and use permits must be paid into the Maryland Clean Water Fund.

For violations of specified nontidal wetlands provisions, the bill:

- increases the maximum fine for a first criminal offense from \$10,000 to \$25,000;
- increases the maximum fine for a second or subsequent criminal offense from \$25,000 to \$50,000;
- increases the maximum civil penalty from \$10,000 to \$25,000;
- authorizes MDE to assess an administrative penalty of up to \$10,000 for each violation, assessed with consideration given to several specified factors; and
- provides that any penalty collected by MDE must be paid into the Nontidal Wetland Compensation Fund.

For violations of specified water pollution control violations, the bill:

- increases the maximum civil penalty from \$10,000 to \$25,000; and
- increases the maximum administrative penalty MDE may assess from \$1,000 to \$10,000 per violation and repeals the maximum total penalty that may be assessed.

For violations of wetlands and riparian rights provisions in general, applicable when no other penalties are specified, the bill:

- increases the maximum fine for a first criminal offense from \$500 to \$25,000;
- increases the maximum fine for a second or subsequent criminal offense from \$1,000 to \$50,000;
- repeals the existing provision relating to civil actions and provides that a violator is liable for a civil penalty not exceeding \$25,000 for each violation;
- establishes an administrative penalty of up to \$10,000 for each violation, assessed with consideration given to several specified factors; and
- provides that any penalty collected by MDE must be placed in the Wetlands Compensation Fund.

For violations of water resources provisions in general, applicable when no other penalty provisions apply, the bill increases the maximum fine for a first criminal offense from \$500 to \$25,000 and increases the maximum fine for second and subsequent offenses from \$1,000 to \$50,000.

The bill also establishes cost recovery provisions. A “responsible party” must reimburse to MDE all expenditures made to protect the public from impacts of unauthorized discharges that are not otherwise recoverable. Responsible party includes: (1) the owner of the materials that were discharged; (2) the owner, operator, or person in charge of the facility, container, vessel, or vehicle involved in the discharge; or (3) any person who

through act or omission caused the discharge. In addition to any other legal action authorized, the Attorney General may bring an action to recover costs and interest from any person who fails to make such reimbursement. Recoveries must be paid into the Maryland Clean Water Fund.

Current Law: Although current law provides for the payment of specified application fees, permit fees, and renewal fees from permittees, MDE does not have the authority to assess fees similar to those proposed by the bill. All fees collected by MDE under specified water pollution control provisions are paid into the Maryland Clean Water Fund. MDE must use the Maryland Clean Water Fund for activities related to identifying, monitoring, and regulating the proper discharge of effluent into the waters of the State including program development of these activities as provided in the State budget. Priority must be given to activities pertaining to the water quality of the Chesapeake Bay and its tributaries.

Current law provides for various levels of criminal, civil, and administrative penalties for violations of the provisions of law affected by the bill, as shown in Appendix 1. Existing criminal offenses are considered misdemeanors.

Background: MDE administers several programs that relate to the provisions affected by the bill. As part of its water quality and water pollution control programs, MDE sets water quality standards for the level of protection afforded to each body of water in the State. The mission of MDE's Water Supply Program is to ensure that public drinking water systems provide safe and adequate water to all present and future users in Maryland, and that appropriate usage, planning, and conservation policies are implemented for Maryland's water resources. MDE's Wetlands and Waterways Program seeks to conserve valuable aquatic systems, providing for the environmental, economic, and resource needs of the State.

According to the Governor's Office, many companies find it cheaper to pay the fine for a violation of current law rather than to upgrade their facilities to meet existing requirements. This bill is intended to establish a deterrent effect for companies by increasing the State's water pollution fines and to give MDE the ability to collect clean-up costs from polluters. According to MDE, the bill is also intended to provide a revenue source to expand existing enforcement and permit functions.

According to MDE, penalties for similar water pollution violations in many states are higher than the existing penalties in Maryland.

State Revenues: The Governor's proposed fiscal 2003 budget assumes that special fund revenues will increase by \$2,832,502 as a result of the bill's fee and penalty provisions. DLS advises that special fund revenues will increase by approximately \$2,624,200 in fiscal 2003 from the bill's fee provisions (approximately \$208,300 less than the budget

assumes in receipts from fees and penalties). In future years, fee revenues will total an estimated \$6,953,000 annually. Special fund and general fund revenues could also increase beginning in fiscal 2003 as a result of the bill's penalty and cost recovery provisions, but any such increase cannot be reliably estimated at this time.

Fee Provisions

MDE advises that its fees will generate an estimated \$6,953,000 annually. This assumes that MDE will generate an estimated \$3,623,000 annually in water appropriation and use management fees as follows:

<u>Annual Fees</u>	<u>\$0</u>	<u>\$500</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$5,000</u>	<u>Estimated Revenues</u>
# Permits	11,129	1,053	519	773	129	\$3,623,000

The estimate also assumes that MDE will generate an estimated \$2,818,200 annually in wetland and waterway management fees as follows:

<u>Impact (square feet)</u>	<u>Number</u>	<u>Proposed Fee</u>	<u>Estimated Revenues</u>
0-999	1,352	\$0	\$0
1,000-1,999	155	300	46,500
2,000-2,999	71	600	42,600
3,000-3,999	43	1,000	43,000
4,000-4,900	51	1,500	76,500
> 5,000	<u>90</u>	\$1 per square foot	<u>2,609,600</u>
Total	1,762		\$2,818,200

The estimate also assumes that MDE will generate approximately \$52,000 in waterway obstruction management fees as follows:

<u>Height of Dam (feet)</u>	<u>Number</u>	<u>Proposed Fee</u>	<u>Estimated Revenues</u>
< 20	17	\$1,000	\$17,000
20-29	6	2,500	15,000
30-39	1	5,000	5,000
40-49	2	7,500	15,000
> 50	<u>0</u>	10,00	<u>0</u>
Total	26		\$52,000

The estimate also assumes that MDE will charge a fixed application fee of \$100 per applicant (which may cover more than one permit) generating approximately \$459,800 in application fees annually.

According to MDE, regulations implementing the bill's fee provisions will likely not take effect until approximately March 1, 2003, and that management fees will be prorated in fiscal 2003. Accordingly, in fiscal 2003, fee revenue will total an estimated \$2,624,200 which reflects full application fees and 1/3 of the annual management fees.

Penalty Provisions

MDE advises that it expects to generate approximately \$641,900 in special fund revenues in fiscal 2003 from the bill's enhanced penalty provisions. According to MDE, this is approximately equal to the actual administrative and civil penalties collected by MDE in fiscal 2001 under existing penalty provisions. However, because the bill makes significant changes to several penalty provisions and establishes new penalty provisions, and because the deterrent effect of the bill cannot be predicted, DLS advises that a reliable estimate of penalty revenue cannot be made at this time. Any deterrent effect would theoretically increase after the first year as polluters are caught and fined in accordance with the bill's enhanced penalty provisions. Accordingly, special fund revenues could increase significantly in fiscal 2003 (perhaps by as much as several million dollars). In future years, special fund revenues could increase or decrease depending on the deterrent effect.

DLS notes that although most of the bill's enhanced penalty provisions provide for penalties to be paid into various special funds, some of them do not. Accordingly, general fund revenues could increase as a result of the bill's enhanced penalty provisions for cases heard in the District Court.

Cost Recovery

Special fund revenues could also increase beginning in fiscal 2003 as a result of the bill's cost recovery provisions. MDE advises that it does not know how much it will collect as a result of cost recovery; the intent is that reimbursements to MDE will offset any expenditures MDE is required to make to protect the public from the impacts of an unauthorized discharge.

State Expenditures: The Governor's proposed fiscal 2003 budget includes \$2,832,502 in special fund expenditures contingent upon enactment of this bill. The budgeted amount includes \$2,684,000 under MDE's Water Pollution Control Program and \$148,502 under MDE's Water Supply Program. The budgeted amount includes:

- approximately \$1,106,400 in salaries and fringe benefits for 30 new positions, including 14 environmental compliance specialists, 11 water resource engineers, 3 Assistant Attorneys General, 1 natural resource planner, and 1 environmental specialist;

- approximately \$587,800 in automobile operations, including \$565,250 for the purchase of 25 vehicles;
- approximately \$550,000 in contractual services;
- approximately \$500,000 in grants;
- approximately \$67,000 in equipment, including computers, chairs, and phones for each employee; and
- approximately \$21,300 in other operating expenses.

In addition to the 30 positions that are reflected in the Governor's proposed fiscal 2003 budget, MDE advises that it anticipates hiring 14 additional employees in fiscal 2004.

DLS advises, however, that it is not clear that MDE would need to hire 30 employees in fiscal 2003, *let alone* 14 additional employees in fiscal 2004. DLS agrees that costs would increase for MDE to manage the new fee program, undertake new activities as provided by the bill, and implement the bill's cost recovery provisions. However, because the budgeted amount seems to reflect expenditures related to existing programs, an estimate of the increase in expenditures directly related to the bill cannot be made at this time. In any event, MDE has existing programs and personnel dedicated to the bill's activities; accordingly, DLS advises that costs would be significantly less.

Any increase in special fund expenditures made by MDE to protect the public from unauthorized pollutant discharges would theoretically be offset by an increase in special fund revenues from the bill's cost recovery provisions.

Local Fiscal Effect: Because local jurisdictions are not exempt from the bill's fee provisions, the bill will result in a significant increase in local expenditures beginning in fiscal 2003. MDE advises that local jurisdictions will be subject to the water appropriation and use fees as well as the wetlands fees established by the bill. According to MDE, currently 356 water appropriations permits have been issued to municipalities. Under this bill, those municipalities will be charged a \$100 application fee as well as an annual usage fee. Based on data provided by MDE, the estimated cost to municipalities related to water appropriation and use management fees will total over \$700,000 annually. Although MDE received approximately 3,300 wetlands permit applications in fiscal 2001, MDE does not know how many of these were submitted by local jurisdictions. Accordingly, a reliable estimate of the total increase in local expenditures cannot be reliably estimated at this time.

Local revenues could increase as a result of the bill's enhanced penalty provisions for those cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: SB 241 (The President) (Administration) – Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 17, 2002
ncs/jr

Analysis by: Lesley Frymier

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

Appendix 1. Existing Criminal, Civil, and Administrative Penalties and Changes Made Under SB 241

	Existing Criminal Penalties	Criminal Penalties under SB 241	Existing Civil Penalties	Civil Penalties under SB 241	Existing Administrative Penalties	Administrative Penalties under SB 241
Sediment and erosion control	Up to \$5,000 per violation or 1 year in jail or both	Up to \$25,000 per violation or 1 year in jail or both	Double the cost of restoration	Up to \$25,000 per violation	Up to \$1,000 per violation; maximum \$20,000 per action	Up to \$10,000 per violation; no maximum
Stormwater management	Up to \$5,000 per violation or 1 year in jail or both	Up to \$25,000 per violation or 1 year in jail or both	Up to \$10,000 for each violation or an injunction or both	Up to \$25,000 per violation or an injunction or both	Up to \$1,000 per violation; maximum \$20,000 per action	Up to \$10,000 per violation; no maximum
Water appropriation/use	Up to \$500 per day; maximum \$25,000	Up to \$25,000 per violation; no maximum	None	Up to \$25,000 per violation	None	Up to \$10,000 per violation; no maximum
Nontidal wetlands	First offense: up to \$10,000; Next offenses: up to \$25,000	First offense: up to \$25,000; Next offenses: up to \$50,000	Up to \$10,000	Up to \$25,000 per violation	None	Up to \$10,000 per violation; no maximum
Water pollution control	First offense: up to \$25,000 or 1 year in jail or both; Next offenses: up to \$50,000 or 2 years in jail or both	No change.	Up to \$10,000 or an injunction or both	Up to \$25,000 or an injunction or both	Up to \$1,000 per violation; maximum \$50,000	Up to \$10,000 per violation; no maximum
Wetlands/riparian rights in general, if not specified elsewhere	First offense: up to \$500; Next offenses: up to \$1,000 or 1 year in jail or both	First offense: up to \$25,000; Next offenses: up to \$50,000 or 1 year in jail or both	Attorney General may bring a civil action; Circuit court may issue injunction.	Up to \$25,000 per violation	None	Up to \$10,000 per violation; no maximum
Water Resources Title in general, if not specified elsewhere	First offense: up to \$500; Next offenses: up to \$1,000 or 1 year in jail or both	First offense: up to \$25,000; Next offenses: up to \$50,000 or 1 year in jail or both	N/A	N/A	N/A	N/A