

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE

Senate Bill 244 (The President, *et al.*) (Administration)
 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 specified enforcement 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 Governor’s proposed 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 \$1.32 million in FY 2003 from fees established by the bill (approximately \$488,200 more than the budget assumes). In addition, to implement the bill, it would only cost \$665,300 in FY 2003 (approximately \$170,500 less than the budgeted amount). Future year estimates are based on Legislative Services’ estimates and are annualized, adjusted for inflation, and reflect ongoing operating expenses.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$1,324,000	\$1,519,900	\$1,519,900	\$1,519,900	\$1,519,900
SF Expenditure	835,800	707,400	717,400	727,900	739,000
Net Effect	\$488,200	\$812,500	\$802,500	\$792,000	\$780,900

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

Local Effect: Grant revenues for local emergency planning activities would likely increase beginning in FY 2003. The Governor’s FY 2003 budget includes \$250,000 in grants to local jurisdictions contingent upon the enactment of this bill.

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 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" may not knowingly or recklessly submit false information to MDE. The bill uses the definition of a "responsible person" from the controlled hazardous substances law, which defines a responsible person as a person who:

- is the owner or operator of a vehicle or a site containing a hazardous substance;
- at the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;
- by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or
- accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

Current law lists several exceptions to that definition.

MDE must establish an annual fee for facilities required to report to the State or its instrumentalities under EPCRA. The bill establishes a process by which MDE must determine the fee and provides that the fee may not exceed \$10,000 in any calendar year for a responsible person that owns or operates only one facility in the State, or \$20,000 in any calendar year for a responsible person that owns or operates more than one facility 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). Facilities already paying specified fees to local jurisdictions would be required to pay half of the annual fee established by the bill.

The bill provides exemptions from the fee for governmental agencies and specified farmers, charitable organizations, and petroleum distributors. 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.

At the end of each fiscal year, MDE may use moneys in the fund to provide funding assistance to a local emergency planning committee (LEPC). The bill describes the allowable uses of such funds 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 enforcement procedures applicable to controlled hazardous substances 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 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.

Enforcement of the controlled hazardous substance law may involve right of entry, administrative search warrants, suspension and revocation of permits or certificates, complaints, hearings in accordance with the Administrative Procedure Act, corrective orders, injunctive relief, and judicial review.

A person who violates specified provisions of the controlled hazardous substance law is liable to 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. For knowingly making false statements, representations, or certifications in required documents, a person is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$25,000 or imprisonment not exceeding two years, or both. For falsifying required information, a person is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000 or imprisonment not exceeding five years, or both. 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.

MDE advises that the proposed penalties in this bill are similar to federal penalty authority under the U.S. Environmental Protection Agency.

State Revenues: The Governor's proposed 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 \$1,324,000 in fiscal 2003 (which is approximately \$488,200 more than the budget assumes in receipts from the fee) and by an estimated \$1,519,900 annually thereafter. Special fund revenues could also increase due to the bill's penalty provisions.

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 establishes a process by which MDE must determine the fee and provides maximum fee limits for a given facility. MDE advises that based on the bill's guidelines, it anticipates that it would charge a fixed application fee and a chemical fee. MDE anticipates that approximately 3,200 facilities will be required to pay the fees established by the bill.

MDE advises that total fee revenue from the 3,200 affected entities is estimated at approximately \$1,519,900 annually. This estimate is based on the following assumptions regarding the establishment of fees:

- application fees will not be greater than \$100 per facility, or a maximum of \$1,000 for a person with multiple facilities in the State;
- fees for each extremely hazardous substance reported under EPCRA Section 312 may not be greater than \$100 for amounts less than 100 pounds, \$200 for amounts between 100 and 999 pounds, \$400 for amounts between 1,000 and 9,999 pounds, \$800 for amounts between 10,000 and 99,999 pounds, \$1,200 for amounts between 100,000 and 999,999 pounds, and \$2,000 for amounts greater than 1 million pounds;
- fees for each hazardous chemical reported under EPCRA Section 312 may not be greater than \$200 for amounts less than 100,000 pounds, \$400 for amounts between 100,000 and 999,999 pounds, \$800 for amounts between 1 million and 9,999,999 pounds, and \$1,600 for amounts greater than 10 million pounds; and

- fees for each hazardous chemical reported under EPCRA Section 313 may not be greater than \$100 for each Form-A report submitted, \$250 for each Form-R report submitted, and \$500 for each Persistent, Bioaccumulative, and Toxic substance reported.

MDE advises that its fee categories are based on those used in Maine. Based on the general guidelines described above, and accounting for the fact that facilities already paying specified fees to local jurisdictions would only have to pay half the fee under the bill, MDE would collect an estimated \$320,000 from application fees, \$300,000 from facilities reporting extremely hazardous substances under Section 312 of EPCRA, \$704,000 from facilities reporting hazardous chemicals under Section 312 of EPCRA, and \$195,900 from facilities reporting under Section 313 of EPCRA. Legislative Services advises that because MDE does not currently record information regarding poundage levels in detail, revenues could vary from the estimated amount. (Legislative Services notes that once the program established by the bill is operational, MDE will be able to track this information electronically).

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. Based on the general guidelines and data provided by MDE, in fiscal 2003, \$1,324,000 in fees would be collected; this is approximately \$488,200 more than the proposed budget assumes in receipts. This estimate assumes that the fees submitted by facilities required to report under EPCRA Section 313 would not be posted until fiscal 2004. To the extent any additional fees are posted during fiscal 2003, revenues would increase.

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 also could increase as a result of any penalties collected pursuant to the bill. The bill provides that any penalty imposed would be 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 Governor’s proposed fiscal 2003 budget includes \$835,787 in special funds contingent upon enactment of this bill. The budgeted amount includes:

- approximately \$176,700 in salaries and fringe benefits to hire five environmental specialists;
- approximately \$300,000 in contractual services for database development and maintenance;
- approximately \$250,000 in grants to LEPCs;
- approximately \$92,500 in automobile operations, including \$90,700 for the purchase of four vehicles;
- approximately \$12,200 in equipment; and
- approximately \$4,400 in other operating expenditures.

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. In addition, at the end of each fiscal year, MDE may use the moneys in the fund to provide funding 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. However, the need for five additional employees at this time is unclear. Accordingly, Legislative Services advises that special fund expenditures could increase by an estimated \$665,300 in fiscal 2003 (approximately \$170,500 less than the budgeted amount), which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring three 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.

Salaries and Fringe Benefits	\$108,200
Grants to LEPCs	250,000
Contractual Services – Database	225,000
Automobile Purchases	68,000
Equipment and Other Operating Expenses	<u>14,100</u>
Total FY 2003 State Expenditures	\$665,300

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) ongoing grants to LEPCs of an estimated \$250,000 annually; and (3) 1% annual increases in ongoing operating expenses, including contractual services. MDE advises that it would need to hire an additional three environmental specialists in fiscal 2004. However, Legislative Services advises that at this time, the need for additional employees in future years is unclear. Should the three employees hired in fiscal 2003 prove inadequate to meet the requirements of the bill, MDE may request additional positions through the annual budget process.

Legislative Services advises that special fund expenditures could increase to the extent that MDE provides additional grants to LEPCs in accordance with any fund balances that may exist.

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

Local Fiscal Effect: Local revenues for LEPC activities would likely increase beginning in fiscal 2003 as a result of grants provided by MDE under the bill. The Governor's proposed fiscal 2003 budget includes \$250,000 in grants to LEPCs contingent upon the enactment of this bill. 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: HB 291 (The Speaker, *et al.*) (Administration) – Environmental Matters.

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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