

Department of Legislative Services
Maryland General Assembly
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FISCAL NOTE

Senate Bill 245 (The President) (Administration)
Education, Health, and Environmental Affairs

Administrative Penalties and Cost Recovery - Air Quality and Radiation

This Administration bill increases the maximum administrative penalties for specified air quality and asbestos removal violations from \$2,500 to \$25,000 for each violation and repeals the total penalty that can be imposed for any single administrative hearing. The bill also modifies the allowable uses of the Maryland Clean Air Fund and the State Radiation Control Fund and provides for the recovery of specified costs into those funds from “responsible parties.”

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: Potential increase in special fund revenues in FY 2003 related to the bill’s penalty provisions. Under one set of assumptions, special fund revenues could increase by at least \$2 million in FY 2003. In future years, the impact on special fund revenues will depend largely on the bill’s deterrent effect, if any. Special fund expenditures related to assessment and abatement could increase beginning in FY 2003 but would be offset by an increase in special fund revenues from polluters.

Local Effect: The bill would not materially affect local operations or finances.

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: “Responsible party” includes: (1) the owner of the materials that were released or potentially released; (2) the owner, operator, or person in charge of the facility, container, vessel, or vehicle involved in the release or potential release of the air pollutants or radiation; or (3) any other person who through act or omission caused the release or potential release of the air pollutants or radiation.

The bill provides that all expenditures made by the Maryland Department of the Environment (MDE) to assess air quality impacts of an unauthorized release or potential release of air pollutants not otherwise recoverable under any State or federal laws or regulations must be reimbursed to MDE by the responsible party. Recoveries must be paid into the Maryland Clean Air Fund. All expenditures made by MDE to protect the public from the impacts of an unauthorized release or potential release of radiation not otherwise recoverable under any State or federal laws or regulations must be reimbursed to MDE by the responsible party. Recoveries must be paid into the State Radiation Control Fund.

The bill modifies the allowable uses of the Maryland Clean Air Fund to include activities related to the release or potential release of air pollutants in the State. The bill also modifies the allowable uses of the State Radiation Control Fund to include activities related to the release or potential release of radiation in the State.

For recoveries related to both air pollution and radiation, in addition to any other authorized action, the Attorney General may bring an action to recover costs and interest from any person who fails to reimburse MDE as required.

Current Law: In addition to any other remedies available at law or in equity and after an opportunity for a hearing, MDE may impose a penalty for violation of any provision of specified ambient air quality and asbestos removal provisions or any rule, regulation, order, plan for compliance, registration, or permit adopted or issued under those provisions. Before taking any action, MDE must provide the alleged violator with written notice of the proposed action and an opportunity for an informal meeting. A penalty of up to \$2,500 is imposed for each violation not exceeding \$50,000 total for any single administrative hearing. Each day a violation occurs is a separate violation. Penalties must be assessed with consideration given to several specified factors. MDE may also go through the judicial process to collect civil penalties of up to \$25,000 per day per violation with no limit.

The Maryland Clean Air Fund in MDE receives application fees, permit fees, renewal fees, and funds collected by MDE under specified ambient air quality and asbestos

removal provisions, including any civil or administrative penalty or fine imposed by a court under those provisions. The fund must be used for:

- activities conducted under the ambient air quality program that are related to identifying, monitoring, and regulating air pollution in this State including program development of these activities as provided in the State budget; and
- providing grants to local governments to supplement funding for programs conducted by local governments that are consistent with specified provisions relating to ambient air quality and the State’s air quality program.

The State Radiation Control Fund receives all general license fees, specific license fees, registration fees, radiation machine certification fees, and all funds collected by MDE under specified radiation provisions, including any civil penalties, settlements, or fines. MDE must use the fund for activities related to identifying, monitoring, and controlling sources of radiation, including radiation machines, and for program development of these activities.

Background: MDE has had the authority to assess administrative penalties for air pollution and asbestos violations since July 1, 1985. On July 1, 1991, the penalty limits were raised from \$1,000 for each violation with a \$20,000 maximum limit for each administrative hearing to the current penalties. According to MDE, total penalty collections (including administrative, civil, and criminal penalties) from fiscal 1999 to fiscal 2001 ranged from approximately \$457,400 in fiscal 1999 to approximately \$343,700 in fiscal 2001. Administrative penalties accounted for a large percentage of the total penalties collected; administrative penalties collected ranged from approximately \$351,400 in fiscal 1999 to \$205,350 in fiscal 2001, as shown below.

<u>Fiscal Year</u>	<u>Total Penalties</u>	<u>Administrative</u>	<u>Civil</u>	<u>Criminal</u>
1999	\$457,380	\$351,380	\$105,000	\$1,000
2000	\$462,501	\$207,501	\$255,000	\$0
2001	\$343,695	\$205,350	\$135,000	\$3,345

Source: Maryland Department of the Environment

Information relating to the distribution of penalties from fiscal 1999 to fiscal 2001 is shown below.

<u>Fiscal Year</u>	<u>Range of Penalty</u>	<u>% of Total Penalties Collected</u>	<u>% of Administrative Penalties Collected</u>
1999	\$0-10,000	9%	12%
	\$10,000-20,000	22%	28%
	\$20,000-30,000	11%	6%
	\$30,000-40,000	42%	54%
	Greater than \$40,000	16%	0%
2000	\$0-10,000	9%	20%
	\$10,000-20,000	12%	27%
	\$20,000-30,000	11%	24%
	\$30,000-40,000	13%	29%
	Greater than \$40,000	55%	0%
2001	\$0-10,000	9%	13%
	\$10,000-20,000	11%	18%
	\$20,000-30,000	16%	27%
	\$30,000-40,000	23%	19%
	Greater than \$40,000	41%	23%

Source: Maryland Department of the Environment

According to MDE, under the federal Clean Air Act (CAA), the U.S. Environmental Protection Agency (EPA) has the administrative authority to assess penalties of up to \$27,500 per day per violation with a \$220,000 cap. If EPA considers a penalty imposed by a state to be inadequate, EPA may file an independent action against the violator.

MDE advises that penalties for air pollution violations in other states are higher than the existing penalties in Maryland. For example, in Delaware and New York, violators are subject to administrative penalties of up to \$10,000 per day with no limit; in Pennsylvania and Indiana, violators are subject to administrative penalties of up to \$25,000 per day with no limit.

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 plants and equipment to meet existing requirements. This bill is primarily intended to establish a deterrent effect for companies by increasing the State's air pollution and asbestos fines and to give MDE the ability to collect from polluters air quality assessment costs and costs related to protecting the public from the impacts of unauthorized releases of radiation. The Administration has

also introduced legislation that would establish new penalties, increase existing penalties, and eliminate existing penalty caps for various environmental violations.

State Fiscal Effect: This bill could result in an increase in special fund revenues in fiscal 2003 related to the bill's penalty provisions. In future years, the impact will depend largely on the bill's deterrent effect. By modifying the allowable uses of the Maryland Clean Air Fund and the State Radiation Control Fund, special fund expenditures could increase beginning in fiscal 2003 but would be offset by an increase in revenues under the bill's cost recovery provisions.

Administrative Penalties

Special fund revenues could increase by raising the maximum administrative penalties MDE may assess for air pollution and asbestos violations and by repealing the maximum penalty that may be assessed for a single administrative hearing. Although the deterrent effect of the bill cannot be predicted, it is reasonable to assume that during the first year, the deterrent effect would likely be significantly less than in future years.

According to MDE, \$205,350 in administrative penalties were collected in fiscal 2001. While a precise estimate of the potential increase in revenues from this bill cannot be made, because this bill increases the daily maximum penalty by ten times, and because it repeals the total penalty that can be imposed for any single administrative hearing, it is reasonable to assume that the total amount of penalties assessed in the first year could, in any event, increase by at least ten times. Based on penalty data from 2001, special fund revenues could increase by at least \$2 million in fiscal 2003. In future years, it is assumed that any deterrent effect would be greater.

It is unknown whether increasing the administrative penalty limits will affect the number of cases that have to go to the judicial process for collection. However, it is assumed that any increase or decrease can be accommodated with the existing budgeted resources of the Judiciary and MDE.

Uses of Special Funds and Cost Recovery

By modifying the allowable uses of the Maryland Clean Air Fund and the State Radiation Control Fund, special fund expenditures related to conducting air quality assessments and protecting the public from radiation releases could increase beginning in fiscal 2003. To the extent that MDE is able to recover costs from polluters as provided by the bill, special fund revenues would increase to offset any costs incurred. MDE advises that it does not know how much it would collect under the bill's cost recovery provisions; the provisions would most likely only be used in catastrophic events.

The Office of the Attorney General did not respond to repeated requests for information. It is assumed that the Attorney General could handle the bill's changes with existing budgeted resources.

Additional Information

Prior Introductions: SB 62 of 2000 would have increased the daily maximum penalty and the per hearing maximum penalty MDE may assess for air pollution and asbestos violations. The bill passed the Senate with amendments but received an unfavorable report by the House Environmental Matters Committee.

Cross File: HB 295 (The Speaker) (Administration) – Environmental Matters.

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

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