

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 299 (The Speaker) (Administration)
Environmental Matters

State Solid Waste Management Fund

This Administration bill establishes a State Solid Waste Management Fund in the Maryland Department of the Environment (MDE). The bill establishes a revenue stream for the fund, provides for cost recovery from responsible parties, and applies specified penalty provisions to solid waste violations.

The bill takes effect July 1, 2002.

Fiscal Summary

State Effect: The Governor's proposed FY 2003 budget includes \$791,414 in special funds contingent upon the enactment of the bill. Legislative Services advises that special fund revenues would increase by \$3.4 million in FY 2003 from fees established by the bill (approximately \$2.6 million more than the budget assumes). In addition, it would only cost \$401,400 to implement the bill (\$390,000 less than the budgeted amount). General fund expenditures would increase by \$79,500 in FY 2003 for State fees. Future year estimates are annualized, adjusted for inflation, and reflect a significant increase in recycling and remediation activities.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$3,400,000	\$6,800,000	\$6,800,000	\$6,800,000	\$6,800,000
GF Expenditure	79,500	159,000	159,000	159,000	159,000
SF Expenditure	791,400	8,199,000	5,758,600	5,809,100	5,860,600
Net Effect	\$2,529,100	(\$1,558,000)	\$882,400	\$831,900	\$780,400

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

Local Effect: Increase in local expenditures of an estimated \$2.5 million annually related to the fee established by the bill. **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 regulations for the administration of the State Solid Waste Management Fund for solid waste management activities and recycling initiatives or programs. The fund consists of revenues collected by MDE from the solid waste management fee established by the bill, reimbursements to MDE in accordance with the bill, any civil or administrative penalty pertaining to specified solid waste laws, and any fine imposed by a court resulting from departmental actions relative to violations of solid waste laws.

Moneys in the fund must be allocated for: (1) statewide and regional recycling initiatives of MDE; and (2) solid waste program activities relating to inspections, permitting, public education, recycling programs, planning, market development, data management needs, and associated administrative costs. If available, moneys in the fund may be allocated annually beginning on July 1, 2003 to supplement funding for recycling and solid waste management programs consistent with specified provisions of current law and the State program. Funds not required to meet MDE's obligations under the bill must be deposited with the State treasurer to the credit of the fund and may be invested as provided by law.

The solid waste management fee must be paid to MDE on a quarterly basis by solid waste acceptance facilities beginning January 1, 2003. The fee must be imposed at the point of first transfer of solid waste to a permitted solid waste acceptance facility. The fee shall be calculated as the per ton rate times the tons of solid waste accepted for disposal by the facility for the quarterly payment period. The fee is \$1 per ton of solid waste. The bill specifies several wastes that are exempt from the fee, including incinerator ash, scrap tires, sewage sludge, yard waste, and recyclables.

The bill authorizes MDE to remove or arrange for the removal of solid waste and provide for specified remedial actions upon a determination that improper dumping or disposal of solid waste has occurred at a nonpermitted site. MDE may also take any other action it considers necessary to protect the public health and welfare or the environment. In doing so, MDE is authorized to use the unallocated revenues in the new fund. All expenditures made by MDE for the cost of inspection, monitoring, cleanup, and legal actions relating to such removal and remediation not otherwise recoverable under any State or federal laws or regulations must be reimbursed to MDE by the "responsible party". "Responsible party" includes any person who:

- by agreement, contract, or otherwise arranges for the disposal of solid waste;
- accepts or accepted solid waste for transport to a solid waste acceptance facility;
- is the owner, permittee, operator, or person in charge of the site, container, vessel, or vehicle involved in the improper dumping or disposal of solid waste; or
- through act or omission causes the improper dumping or disposal of solid waste.

Recoveries must be paid into the new fund. 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 reimburse MDE in accordance with the bill.

The bill requires MDE to prepare an annual report on the status of the fund and requires that the report be included in the annual report MDE is required to submit under current law relating to the amount of solid waste disposed of in the State.

Legislative Services notes that the bill's enforcement provisions are ambiguous as currently drafted. The bill appears to apply enforcement procedures currently applicable to violations of refuse disposal provisions to the new provisions established by the bill. Those enforcement provisions include the assessment of civil penalties not exceeding \$10,000 per day and the assessment of administrative civil penalties of up to \$1,000 per violation with a \$50,000 maximum.

In addition, the bill appears to modify existing enforcement procedures for violations of refuse disposal provisions by applying misdemeanor penalty provisions to those violations. For a first offense, the violator would be subject to a fine not exceeding \$25,000 or imprisonment not exceeding one year, or both; after a first conviction, the violator would be subject to a fine not exceeding \$50,000 per day or imprisonment not exceeding two years, or both.

Current Law: Solid waste acceptance facilities are permitted by MDE. There is no permit fee. Permitted facilities are not currently required to pay a fee based on the amount of solid waste accepted for disposal. MDE is required to prepare an annual report identifying the amount of solid waste by weight or volume, disposed of in the State during the previous year. All permitted solid waste acceptance facilities must provide MDE, at least annually, with information necessary to prepare the report. MDE must submit the annual report to the House Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee.

Except for specified violations, enforcement procedures applicable to refuse disposal violations include complaints, corrective orders, hearings in accordance with the Administrative Procedure Act, injunctive relief, judicial review, and civil and

administrative penalties. Violators are subject to civil penalties not exceeding \$10,000 per day to be collected in a civil action brought by MDE; MDE may also assess administrative civil penalties of up to \$1,000 per violation with a \$50,000 maximum. Criminal penalties do not currently apply to those violations.

Background: MDE currently regulates the management and disposal of solid waste in the State and provides regulatory oversight to State and county recycling programs. Funding for the State's solid waste program currently comes from the general fund. MDE advises that expanded federal requirements for municipal solid waste (MSW) landfills, an increase in interstate transportation of waste, and new national recycling initiatives have resulted in MDE not being able to effectively address these issues, to achieve its ongoing goals of safe and adequate management of solid waste, and to increase the diversion of waste from landfill disposal by reuse and recycling.

According to MDE's September 2001 report entitled *Solid Waste Managed in Maryland: Calendar Year 2000*, approximately 6.8 million tons of solid waste was received for disposal in 2000 by permitted solid waste acceptance facilities in the State. This includes municipal solid waste, construction and demolition (C&D) waste, industrial waste, and other wastes. The estimated amount includes all solid waste received by, disposed at, or transported from permitted solid waste acceptance facilities in the State. It does not include scrap tires, sewage sludge, or incinerator ash. In 2000 an additional \$4.2 million tons of waste was recycled or composted.

Waste generated outside of the State comes from neighboring jurisdictions including Delaware, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. According to MDE, the Mountainview MSW landfill in Allegany County, which is privately-owned, is the only permitted solid waste landfill that accepts solid waste from other states. In 2000 there were 10 operating C&D landfills in Maryland, 7 of which are privately-owned and accept out-of-State C&D waste. According to the report, 9 of Maryland's 24 jurisdictions have contracted for the out-of-state disposal of their waste in order to extend the useful life of the county-owned landfills. In 2000 a total of 1.76 million tons of waste was transported to Virginia and Pennsylvania.

According to MDE, in 2000 there were a total of 23 permitted MSW landfills, 4 municipal solid waste-to-energy facilities (WTE) or MSW incinerators, 11 MSW transfer stations, 3 MSW processing facilities, 10 C&D Landfills (rubble landfills), 6 C&D processing facilities, 4 land clearing debris landfills, 2 industrial waste landfills, 6 special medical waste incinerators, and 2 other processing facilities in the State. The distribution of ownership of these facilities is shown below.

	<u>County</u>	<u>Municipal</u>	<u>Private</u>	<u>Other</u>
MSW Landfills	19	1	1	2
WTE/MSW Incinerators	2		2	
MSW Transfer Stations	6	2	2	1
MSW Processing Facilities	1		2	
C&D Landfills (Rubble Landfills)	1		7	2
C&D Processing Facilities			6	
Land-clearing Debris Landfills			4	
Industrial Waste Landfills			2	
Special Medical Waste Incinerators			3	3
Other Processing Facilities			2	

Source: Maryland Department of the Environment.

“Other” includes facilities owned by the Maryland Environmental Service, the federal government, and the State (University of Maryland).

In 1998 the Governor created a Solid Waste Management Task Force to investigate solid waste issues and make recommendations on a long-range policy for solid waste management in Maryland. One recommendation was to increase funding for MDE to broaden its role in policy making, assistance to local jurisdictions, inspection, protection of the environment, and public education. Another task force recommendation was to increase funding for recycling, source reduction and education, and the development of a strategic marketing plan for recycled materials.

MDE advises that Maryland is the only state in the region that does not assess solid waste fees (permit fees or tonnage fees). With a dedicated funding source, MDE advises that it would be able to undertake new initiatives such as electronics recycling, carpet recycling, and reduction of mercury in the environment. In addition, a dedicated funding source would enable MDE to expand the regulatory oversight of existing solid waste acceptance facilities, increase solid waste management related compliance and enforcement activities, and improve and expand public outreach, education, and responses to public information requests.

State Revenues: Special fund revenues would increase by an estimated \$3.4 million in fiscal 2003 and \$6.8 million annually thereafter in fee revenue from the solid waste management fee established by the bill. The Governor’s proposed fiscal 2003 budget assumes \$791,414 in receipts from the fees, which is \$2,608,586 less than this estimate. Special fund revenues could also increase as a result of the bill’s cost recovery provisions, the bill’s penalty provisions, and any investments made under the new fund.

Solid Waste Management Fees

The bill establishes a revenue stream for the new fund by requiring permitted solid waste acceptance facilities to pay a fee of \$1 per ton of solid waste accepted for disposal. Although the actual amount of solid waste that will be accepted by permitted facilities in future years is unknown, based on data from 2000, revenues from the fee will total an estimated \$6.8 million annually. Because the fee does not take effect until January 1, 2003, in fiscal 2003 special fund revenues will total an estimated \$3.4 million. These estimates assume that the amount of solid waste will not decrease; however, Legislative Services advises that fee revenue could be less to the extent that any recycling initiatives established as a result of this bill are successful in reducing the amount of solid waste taken to permitted facilities. Any such decrease cannot be reliably estimated at this time.

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 the new fund will offset any expenditures MDE is required to make related to the improper dumping or disposal of solid waste at a non-permitted site, as provided by the bill.

Penalties

Special fund revenues could also increase beginning in fiscal 2003 related to any additional civil, administrative, and criminal penalties collected as a result of the bill. Any such increase cannot be reliably estimated at this time, but is not anticipated to be significant.

Investments of the Fund

The bill provides that money in the fund not required to meet MDE's obligations must be deposited with the State Treasurer to the credit of the fund and may be invested as provided by law. Accordingly, special fund revenues could also increase as a result of any investment revenue generated by the fund.

State Expenditures: The Governor's proposed fiscal 2003 budget includes \$791,414 in special funds contingent upon the enactment of this bill. The budgeted amount reflects:

- approximately \$360,700 in salaries and fringe benefits for 11 new positions, including 5 sanitarians, 2 natural resource planners, 1 agency budget specialist, 1 assistant attorney general, 1 geologist, and 1 public health engineer;

- approximately \$250,000 in contractual services to initiate new recycling initiatives and to hire a private accounting firm to review financial assurance statements submitted by permitted facilities;
- approximately \$122,200 for automobile operations, including \$113,100 for the purchase of 5 vehicles;
- approximately \$41,800 for equipment, including field safety and monitoring equipment, computers, chairs, and phones;
- approximately \$11,000 for travel; and
- approximately \$5,700 in other operating expenses.

MDE advises that the agency budget specialist would be responsible for administering the fund established by the bill; the natural resource planners would be used to develop new regional and multi-jurisdictional initiatives directed towards recycling, market development for recyclables, and special areas of national interest such as electronics and carpet recycling and mercury in the environment; the assistant attorney general would primarily be responsible for implementing the cost recovery provisions established by the bill; and the sanitarians, the geologist, and the public health engineer would provide expanded regulatory oversight of existing facilities and expanded enforcement activities.

Legislative Services advises, however, that at this time it is unclear that MDE would need 11 new employees in order to meet the requirements of the bill. Legislative Services agrees that expenditures would increase to manage and administer the new fund, conduct new recycling and solid waste activities, and implement the bill's cost recovery provisions. However, MDE already has 26 full-time staff working in its solid waste program and is already responsible for conducting inspections and enforcement of permitted facilities. This bill simply provides for the expansion of those activities by providing a revenue source to do so.

Accordingly, Legislative Services advises that in order to meet the bill's requirements, special fund expenditures would increase by an estimated \$401,400 in fiscal 2003, which is approximately \$390,000 less than the budgeted amount. The estimate, which accounts for a 90-day start-up delay, reflects the cost of hiring four new employees (one agency budget specialist to manage and administer the new fund, two natural resource planners to manage the new solid waste and recycling initiatives, and one assistant attorney general to implement the bill's cost recovery provisions). The estimate assumes that contractual services would be used to initiate new recycling projects in a few counties, covering an estimated 12,000 people. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Services	\$235,000
Salaries and Fringe Benefits	151,400
Equipment	9,000
Other Operating Expenses	<u>6,000</u>
Total FY 2003 State Expenditures	\$401,400

This estimate does not include any special fund expenditures related to the improper dumping or disposal of solid waste that occurs at nonpermitted sites. It is assumed that any such expenditures would be offset by an increase in special fund revenues under the bill's cost recovery provisions.

Future year expenditures reflect: (1) contractual services totaling almost \$8 million in fiscal 2004 and approximately \$5.5 million annually thereafter for expanded recycling initiatives (including public outreach and education, market development, household hazardous waste collections, a mercury collection and exchange program, and a recycling program for electronics) and remediation activities; (2) full salaries with 3.5% annual increases and 3% employee turnover; and (3) 1% annual increases in ongoing operating expenses. The bill provides that, if available, beginning July 1, 2003, money in the new fund may be allocated to supplement funding for recycling and solid waste management programs that are consistent with law and the State program. Accordingly, special fund expenditures could increase to the extent supported by any fund balance.

In 2000 there was one State-owned special medical waste incinerator (operated by the University of Maryland). Based on data provided by MDE, Legislative Services advises that general funds would increase by an estimated \$79,500 in fiscal 2003 and \$159,000 annually thereafter for the State to pay the solid waste fee for that facility. Legislative Services advises that general fund expenditures could also increase for any increase in costs related to solid waste disposal that would likely occur as a result of the bill.

Activities relating to the administrative, civil, and criminal penalty provisions of this bill are not expected to significantly affect State expenditures. The Attorney General could handle the bill's requirements with existing budgeted resources.

Local Fiscal Effect: Local jurisdictions that own permitted solid waste acceptance facilities would be required to pay the solid waste management fee established by the bill. The fee would be \$1 per ton of solid waste accepted by each facility for disposal. Each facility would be required to submit the fee to MDE on a quarterly basis.

According to MDE, an estimated 2.5 million tons of solid waste is accepted annually for disposal by facilities that are owned by local jurisdictions. Based on that data, local jurisdictions would be responsible for an estimated \$2.5 million in fees annually, which represents 37% of the total fees that would be collected by MDE under the bill. Because the fee would not take effect until January 1, 2003, local jurisdictions would pay an estimated \$1.25 million in fees in fiscal 2003. These estimates assume that local jurisdictions would be required to pay the fee even if a contractor operates the facility. Legislative Services advises that it is likely that any increase in costs would be passed on to contractors and, ultimately, to anyone who generates solid waste in the State.

Examples of the estimated annual fees for some local jurisdictions, based on data provided by MDE, are shown below:

<u>Local Jurisdiction</u>	<u>Estimated Fees</u>
Calvert County	\$56,000
Caroline County	22,000
Harford County	116,000
Howard County	168,000
Montgomery County	565,000
Prince George's County	508,000

Prince George's County advises that an increase in fees could reduce the amount of solid waste delivered to permitted facilities, and, accordingly, reduce local revenues from existing solid waste fees. Because any decrease in the amount of solid waste that will be accepted by facilities for disposal in the future cannot be predicted, it is assumed, for purposes of this estimate, that the amount of waste will remain constant over time.

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

Additional Comments: It is assumed that any increase in costs related to solid waste management would be passed on to any entity that generates waste in the State, including businesses and households. According to MDE, the average Maryland resident generates approximately 1 ton of solid waste annually; the average household generates approximately 2.61 tons annually. Legislative Services also advises that to the extent the bill results in an increase in the demand for recycling services and/or recycled products, businesses engaged in those activities would benefit.

Additional Information

Prior Introductions: None.

Cross File: SB 243 (The President) (Administration) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment; Office of the Attorney General; Calvert, Caroline, Harford, Howard, Montgomery, Prince George's counties; Baltimore City; City of Annapolis; City of Bowie; Town of Elkton; Town of Thurmont; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2002
ncs/jr

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