

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 796

(Delegate Zirkin)

Judiciary

Education, Health, and Environmental Affairs

State Police - Facility Security

This bill establishes various provisions relating to facilities where hazardous material is stored, dispensed, used, or handled, and establishes a Task Force on the Security of Hazardous Materials.

Fiscal Summary

State Effect: Increase in general fund expenditures, for the State Police and the Maryland Department of the Environment (MDE), of \$202,100 in FY 2004 to develop regulations and begin implementation and compliance. Out-year costs reflect annualization and inflation. The civil penalty provisions of the bill are not expected to significantly affect State finances or operations. Any expense reimbursements for task force members and staffing costs for the State Police are assumed to be minimal and absorbable within existing budgeted resources.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
GF Revenue	-	-	-	-	-
GF Expenditure	202,100	181,200	185,800	235,200	196,000
Net Effect	(\$202,100)	(\$181,200)	(\$185,800)	(\$235,200)	(\$196,000)

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

Local Effect: Local jurisdictions that own and operate certain facilities will become subject to regulation and could incur a significant increase in costs related to the implementation of safety measures. **This bill imposes a mandate on a unit of local government.** Baltimore City's current ordinance relating to hazardous materials inspections may exempt the city from the provisions of this bill. The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: This bill requires owners, lessees, and operators of facilities where hazardous material is stored, dispensed, used, or handled to maintain, store, and handle all hazardous material in a reasonably secure and prudent manner in order to prevent exposure or other danger. Such persons must analyze and implement safety measures at least every three years, beginning by January 1, 2005, in consultation with the Maryland Emergency Management Agency (MEMA) and with the appropriate local organizations for emergency management. The bill provides for the confidentiality of such analyses.

The bill requires such persons to inform the Department of State Police, local governments, and appropriate State and local emergency response units of any measures taken or planned to implement these provisions. The bill requires such persons to prohibit unauthorized access to the facility property, monitor the property, the facility, and the means of access, and safeguard the property with protective measures.

The State Police must approve a national industry security code or set of standards for compliance, if specified requirements of such a code or set of standards is met. The bill provides for the circumstances under which a person is deemed to be in compliance. The bill's provisions do not apply to local jurisdictions that adopt standards at least as stringent as those required under the bill and work in consultation with the State Police in regard to security measures. By January 1, 2004, the State Police are required to adopt supplementary regulations.

The bill provides for the following maximum civil penalties if a person knowingly fails to maintain, store, and handle all hazardous material in a reasonably secure and prudent manner or fails to obey the applicable regulations: (1) for a first violation, \$5,000; and (2) for a subsequent violation, \$10,000. Each day that a violation continues is a separate violation.

The bill also establishes a 23-member Task Force on the Security of Hazardous Materials to make recommendations regarding hazardous materials security at rail lines, rail yards, and other storage facilities and transportation routes. The State Police are required to provide staffing to the task force. The task force is required to report its recommendations to the Governor and the General Assembly by December 15, 2003.

The bill's provisions are severable.

Current Law: Federal laws related to chemical safety generally address cleanup, planning, response, and risk management. The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) operates a program relating to process safety management. The program, which is intended to prevent or minimize the consequences of a catastrophic release of toxic, reactive, flammable, or explosive highly hazardous chemicals from a process, involves hazard analysis and the development of process safety and emergency management plans. The Maryland Occupational Safety and Health Program within the Department of Labor, Licensing, and Regulation is involved with the implementation of process safety management standards at the State level.

Under the federal Clean Air Act (CAA), specified chemical sources must prepare risk management plans and submit them to the U.S. Environmental Protection Agency (EPA). That federal law contains a general duty for owners and operators of facilities producing, using, handling, or storing extremely hazardous substances to design and maintain a safe facility to prevent accidental releases and to minimize the consequence of any releases that occur. MDE does not have delegated authority of the federal program under the CAA and therefore does not evaluate risk management plans.

The federal Hazardous Materials Transportation Act was enacted in 1975 to provide adequate protection against the risks to life and property inherent in transporting hazardous materials in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

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 (from one mode of transportation to another) quantities of a single hazardous material that meets or exceeds 100,000 pounds in weight at any time during a calendar year. 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 in the State. 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.

A person who violates specified provisions of the hazardous materials and controlled hazardous substance laws is liable for 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. Specified offenses relating to controlled hazardous substances are considered felonies and carry a fine not exceeding \$100,000 or imprisonment not exceeding five years, or both; any person who knowingly commits specified violations is guilty of a felony and upon conviction is subject to a fine not exceeding \$250,000 or imprisonment not exceeding 15 years, or both.

Background: Federal legislation relating to chemical security has been reintroduced in the U.S. Senate for each of the past three years: the Chemical Security Act of 2001, the Chemical Security Act of 2002, and most recently the Chemical Security Act of 2003 as S. 157. The bill would require EPA to work with the Department of Homeland Security (DHS) to identify high-priority chemical plants based on the volume and toxicity of chemicals that the plants produce or store and their proximity to population centers. EPA and DHS would then develop regulations to require these “high-priority” chemical plants to conduct vulnerability assessments and to implement response plans that include security improvements and safer technologies. EPA and DHS would then review the assessments and plans to ensure that they meet the new federal standards. As with the bills introduced in 2001 and 2002, this bill was introduced in response to the September 11, 2001 terrorist attacks.

A recent (March 2003) report on homeland security by the U.S. Government Accounting Office (GAO) found that chemical facilities may be attractive targets for terrorists intent on causing economic harm and loss of life. Many facilities exist in populated areas where a chemical release could threaten thousands. EPA reports that 123 chemical facilities located throughout the nation have toxic “worst-case” scenarios where more than a million people in the surrounding area could be at risk of exposure to a cloud of toxic gas if a release occurred. While the GAO believes that the chemical industry has undertaken a number of voluntary initiatives to address security facilities, to date, no one, including the federal government has comprehensively assessed the chemical industry’s vulnerabilities to terrorist attacks.

No federal laws explicitly require that chemical facilities assess vulnerabilities or take security actions to safeguard their facilities from attack. However, a number of federal laws impose safety requirements on facilities that may help mitigate the effects of a terrorist-caused chemical release. EPA believes that the CAA could be interpreted to provide authority to require chemical facilities to assess their vulnerabilities and to make security enhancements that protect against attacks. However, EPA has not attempted to use these provisions because of concerns that this interpretation would pose significant litigation risk and has concluded that chemical facility security would be more effectively addressed by passage of specific legislation.

The GAO report asserts that no agency monitors or documents the extent to which chemical facilities have implemented security measures, and that, as a result, federal, state, and local entities lack comprehensive information on the vulnerabilities facing the industry.

Other states have implemented programs dealing with chemical security and preparedness. In 1986 New Jersey enacted the Toxic Catastrophe Prevention Act in an effort to prevent accidental releases. A few years ago, New Jersey amended the regulations for that program to incorporate the federal Accidental Release Prevention requirements of the CAA. New Jersey advises that its program focuses on prevention and preparedness and works in conjunction with other programs in the state to provide a comprehensive prevention and response system. The program, which was designed in cooperation with the regulated community, requires regulated facilities to perform reviews and risk assessments and to quantitatively assess and characterize risk. The program only applies to facilities that handle, use, manufacture, store, or have the capability of generating an extraordinarily hazardous substance at specified threshold quantities. The program does not require the use of inherently safer technology.

In 1999 Delaware replaced its regulations governing extremely hazardous substances with its Accidental Release Prevention Regulation so that it could request delegation of federal provisions under the CAA. The mission of Delaware's program is to protect the lives and health of persons living and working in the vicinity of facilities handling extremely hazardous substances. The program contains requirements for owners or operators of stationary sources having regulated substances on-site to develop and implement a risk management program that anticipates and minimizes the chances of catastrophic events.

Not only did the September 11, 2001 terrorist attacks heighten the interest in chemical security in the State, but after a freight train hauling hazardous chemicals caught fire in Baltimore's Howard Street tunnel in July 2001, concern was raised about the significant quantities of hazardous chemicals that pass through the State each day. Federal agencies regulate the types of containers that hold these chemicals, the safety devices and signs on them, and, in some cases, each car's proximity to other chemicals on a train. According to news sources, however, no one monitors the types and quantities of chemicals passing through the State, and no agency requires that communities be forewarned of shipments. After the CSX fire, federal rail officials reported that 2 million tank-car loads of hazardous materials were shipped nationwide last year, with 35 train accidents resulting in the release of dangerous chemicals.

The State Police currently have regulatory authority over firearms (including firearms dealer licensing, machine gun registrations, handgun permits, handgun instructor

certification, handgun collector permits, and gun safety); private detective registration; private detective agency licensing; security guard certifications; security guard agency licensing; security systems agency licensing; security systems technicians, sales persons, and monitors; special police registrations; outdoor music festivals private property permits; K-9 registrations; railroad police commission; public fireworks display permits; explosives dealer licensing; fireworks shooter licensing; smoke detector sales/use approvals; fire extinguisher repair licensing; and explosives blaster licensing (a program under development).

In March 2002, in response to a specific request pertaining to amendments to HB 1052 of 2002 (a similar bill), the Maryland Office of the Attorney General wrote: “the amendment that would require the department to designate hazardous material that cannot be stored on rail lines would be preempted by federal law. The amendment that would require the department to regulate transfer procedures and storage time limits would not be preempted by federal law. However, any regulations adopted under that provision would be preempted unless they are substantially the same as the federal regulations governing the matter.” While the “department” referenced in last year’s bill was MDE, rather than the State Police, it is assumed that the same reasoning would apply to this bill.

According to both MDE and the Chemical and Industrial Technology Alliance, there are an estimated 220 facilities that would be subject to the provisions of this bill. MDE has advised the State Police that, under U.S. Department of Transportation regulations referenced in the bill, propane and propane tanks stored for retail sales use would not be included as hazardous materials under this bill. Monitoring of propane and propane tank storage is generally done by local fire departments

In October 2002, Baltimore City enacted a hazardous materials ordinance with provisions similar to those provided under this bill. Implementation and enforcement responsibilities under the ordinance were given to the city fire department. Due to the severe snow emergencies of 2003, only five inspections/audits have been performed to date. The Baltimore Fire Department reports that it has not attempted to enforce the city ordinance at rail lines. Although the city ordinance does not have the same reporting requirements as under this bill, the city believes the ordinance is at least as stringent as the requirements of the bill and that, therefore, Baltimore City would be exempt from the provisions of the bill.

State Expenditures: There are about 225 facilities statewide, including rail lines, that could be subject to the provisions of this bill. Some of these are public sector facilities (including wastewater treatment facilities using chlorine).

For the State Police, general fund expenditures could increase by an estimated \$161,991 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring two civilian compliance officers to provide an inspection and enforcement mechanism for the bill's provisions, including annual on-site inspections of all 225 facilities. It includes salaries, fringe benefits, one-time start-up costs (including automobiles and computers with appropriate software for tracking purposes), and ongoing operating expenses.

Salaries and Fringe Benefits	\$87,913
Purchase of Two Automobiles	44,132
Other One-time Start-Up Costs	14,870
Other Operating Expenses	<u>15,076</u>
FY 2004 State Police Expenditures	\$161,991

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses with replacement automobiles in fiscal 2007.

MDE currently has a Community Right-to-Know program. It is served by one full-time equivalent position. The program collects information from facilities that manufacture, use, or store certain hazardous materials and are required to report under the Federal Employee Protection and Community Right-to-Know Act.

This bill would require facilities to inform appropriate State and local response units of any measures taken or planned to be taken to implement the bill's requirements at the facility. MDE does not currently receive such information. Accordingly, for MDE, general fund expenditures could increase by an estimated \$40,084 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of hiring one environmental specialist to collect, organize, analyze, and respond to information provided by affected facilities. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$36,390
One-time Start-up Costs	2,430
Other Operating Expenses	<u>1,264</u>
FY 2004 MDE Expenditures	\$40,084

Total State expenditures associated with facility reporting, compliance, and enforcement for fiscal 2004, not including any costs associated with the bill's penalty provisions, is estimated to be \$202,075. In the out-years these costs would total \$181,231 for fiscal 2005; \$185,812 for fiscal 2006; \$235,235 for fiscal 2007; and \$196,004 for fiscal 2008.

Small Business Effect: An unknown number of small businesses could become subject to the statutory requirements of this bill and to regulations adopted by the State. Any business, large or small, subject to the bill's requirements will have to analyze the security of their facilities, implement improvements, and submit reports relating to safety measures taken. In addition, businesses subject to the regulations will be required to prohibit unauthorized access to their properties and monitor their properties, facilities, and any adjoining rail lines or other means of access as provided by the bill. Accordingly, expenditures could increase significantly.

Additional Information

Prior Introductions: In 2002, a similar bill (HB 1052) had hearings before the Judiciary Committee and the Environmental Matters Committee and had no further action taken on it.

Cross File: None.

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

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