

Department of Legislative Services

Maryland General Assembly

2004 Session

FISCAL AND POLICY NOTE

House Bill 1441

(Chairman, Environmental Matters Committee)

(By Request – Departmental – Environmental)

Environmental Matters

Air Quality - Emissions Fees

This departmental bill establishes an annual fee to be paid by major stationary sources of volatile organic compounds (VOCs) or nitrogen oxides (NO_x) located in Maryland within the Washington, DC nonattainment area. Fees would only apply if the U.S. Environmental Protection Agency (EPA) finds that the area has failed to attain the federal one-hour ambient air quality standard for ozone by the applicable attainment date. The Maryland Department of the Environment (MDE) must issue annual fee notices. Fees would be paid into the Ozone Standard Attainment Fund, a continuing, nonlapsing special fund established by the bill. MDE must hold the fees collected from each person in separate accounts to be used for reimbursements for costs incurred for the installation of air pollution control devices or other pollution prevention or reduction measures. MDE must adopt regulations.

The bill sunsets if such fees are no longer required by the federal Clean Air Act (CAA).

Fiscal Summary

State Effect: Potential significant increase in special fund revenues beginning in FY 2007; special fund expenditures could increase for reimbursements. To the extent any State facilities are subject to the fee, expenditures for affected agencies would increase. Failure to enact the bill could result in a significant loss of federal highway funds.

Local Effect: Potential increase in local expenditures to the extent any local facilities become subject to the bill's fee provision.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with that assessment.

Analysis

Bill Summary: The fee is \$5,000 per ton of VOCs or NO_x emitted each year after the attainment year, in excess of 80% of the baseline amount (calculated in accordance with specified provisions of CAA and any EPA guidance). Fees must be paid for each calendar year starting the year after the attainment year and each calendar year thereafter until the area is designated as “in attainment” with the one-hour standard or the fees are no longer required by CAA. The fee shall be adjusted annually for inflation in accordance with CAA. A person is not required to pay any fee with respect to any emissions for any year that is treated as an extension year under CAA or if that fee would not otherwise be imposed under CAA. In the event the fees required by the bill are no longer required by CAA, any balance remaining in the accounts must be returned to payees along with accrued interest.

Current Law/Background: Section 185 of CAA, as amended in 1990, requires major sources of VOCs and NO_x (those that emit at least 25 tons per year) located in “severe” nonattainment areas to pay an emission fee if the ambient air quality standard for ozone is not met by 2005. Under CAA, the Washington, DC metropolitan area was required to comply with the one-hour ozone standard by November 15, 1999, but failed to do so as a result of transported pollution from other states. EPA granted an extension to this deadline, but in doing so, failed to impose certain requirements that CAA mandates. In response to a court decision resulting from legal action taken against EPA for its decision to extend the deadline, EPA reclassified the Washington, DC area’s nonattainment status from “serious” to “severe.” Maryland, Virginia, and Washington, DC were required to resubmit clean air plans by March 1, 2004; these plans were required to include all measures mandated under CAA for “severe” nonattainment areas, including imposition of Section 185 fees. Maryland has resubmitted its plan, but because statute does not provide the authority to impose emission fees required by Section 185, the plan is incomplete. EPA must act to approve or disapprove Maryland’s plan by April 30, 2004. Failure to secure authority for the imposition of Section 185 fees by that date could result in a significant loss of federal highway funds and limitations on industries.

EPA has proposed rules for implementing an eight-hour ozone standard; these rules are expected to be adopted in the spring of 2004 and could delay or eliminate the Section 185 fee requirement for the Washington, DC area. MDE advises that a provision in the Congressional energy bill also may affect how Section 185 applies. Accordingly, it is not clear at this time if the bill’s fee provisions would be implemented.

State Fiscal Effect: Although it is unclear if and when the bill's fee provisions would be implemented, based on the current attainment date of November 2005, fees could be assessed beginning with calendar 2006 emissions; accordingly, at the earliest, revenues would not be affected until fiscal 2007. Because actual fee revenues will depend on a number of factors, including future emissions, a reliable estimate of any fee revenues cannot be made at this time. Fee revenues would likely be significant, however.

For informational purposes only, based on emissions from 2002 (the most recent data available), MDE advises that 22 major sources in the State would be subject to the bill's fee provisions, if implemented. According to MDE, adjusting the \$5,000 per ton fee from 1990 dollars for inflation pursuant to CAA, the fee is estimated to total about \$7,500 per ton for calendar 2006. EPA has not issued any guidance regarding the calculation of a baseline. In the absence of such guidance, using MDE's latest available emissions data for major sources and assuming a fee of \$7,500 per ton, fee collections could total an estimated \$68.5 million annually. Actual revenues will depend on actual calculations of baseline, the number of facilities considered "major sources" in any given year, actual emissions from those facilities, and inflation. In addition to fee revenues, special fund revenues could increase from any investment earnings of the fund.

Based on 2002 emissions data from affected sources, fees could range from about \$37,500 for the smallest major source to over \$25 million for the largest major source. Based on 2002 emissions data, one State-owned facility (the University of Maryland, College Park) could be subject to an annual fee of about \$148,500.

Fees would be paid into the Ozone Standard Attainment Fund, a special fund established by the bill. Expenditures from the fund cannot be reliably estimated at this time, as they will depend on actual fees collected and the extent to which affected facilities qualify for reimbursement from the fund for the installation of pollution control devices or other prevention or reduction measures.

Failure to enact the bill could result in a significant loss of federal highway funds and limitations on new or expanded industries.

Local Fiscal Effect: Based on 2002 emissions data, one of the 22 sources that would be subject to the bill's fee provision is owned by Prince George's County (the Brown Station Road Landfill). Based on 2002 emissions data, the fee for that facility would be about \$48,000. The number of locally-owned facilities that would be subject to the fee if and when the fee provision is implemented is unknown, however.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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ncs/ljm

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