

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 493 (Chairman, Environmental Matters Committee)  
 (By Request – Departmental – Environment)

Environmental Matters Education, Health, and Environmental Affairs

**Environment - Hazardous Material Security**

This departmental bill requires facilities that store, dispense, use, or handle threshold amounts of hazardous materials (as defined under federal law), by October 1, 2005, and at least every five years thereafter, to conduct a self-audit of the security of the facility and submit this analysis, along with a \$2,500 fee, to the Maryland Department of the Environment (MDE). By January 1, 2005, MDE must adopt hazardous material security standards and regulations to implement the bill. Fees will be deposited into a new account within the existing Community Right-to-Know Fund. MDE, in consultation with the Department of State Police (DSP), must audit facilities for compliance with the standards, and MDE must refer violations to DSP for enforcement. DSP must adopt regulations to enforce compliance. Finally, the bill prohibits a person from knowingly submitting false information and establishes a civil penalty for violations of the bill.

**Fiscal Summary**

**State Effect:** Special fund revenue increase of \$137,500 in FY 2006 and every five years thereafter. General fund revenues could increase beginning in FY 2006 from the bill's penalty provision. Special fund expenditure increase of \$54,700 in FY 2006. Future year expenditures, which are annualized and adjusted for inflation, assume that general, federal, or other special funds would be appropriated in FY 2008 and FY 2009 due to a lack of special funds in the new account.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	\$0	-	-	-	-
SF Revenue	0	137,500	0	0	0
SF Expenditure	0	54,700	57,400	25,500	0
GF/SF/FF Exp.	0	0	0	35,200	64,200
Net Effect	\$0	\$82,800	(\$57,400)	(\$60,700)	(\$64,200)

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

**Local Effect:** Although exempt from the bill's fee provision, local jurisdictions that own and operate certain facilities could incur a significant increase in costs. **This bill imposes a mandate on a unit of local government.** Facilities in Baltimore City would likely be exempt from the bill.

**Small Business Effect:** MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

**Bill Summary:** A hazardous material facility must submit to MDE the analysis required under the bill, including potential security threats, vulnerabilities, and consequences to the facility and any changes undertaken at the facility to implement the bill. Information submitted to MDE is confidential unless the facility is subject to an investigation and enforcement action by DSP.

The security standards to be adopted by MDE must require prioritization and periodic analysis of potential security threats, vulnerabilities, and consequences; development and implementation of security measures commensurate with risks; documentation of security management programs, processes, and procedures; training, drills, and guidance for employees, contractors, service providers, and others; communications, dialogue, and exchange of information with employees, communities, and government agencies and officials; internal audits; and third-party verification that owners and operators have implemented the security measures identified under the periodic analysis required by the bill. DSP, in consultation with MDE, must adopt regulations to enforce compliance with the standards. The bill does not apply in local jurisdictions that adopt standards at least as stringent as those adopted under the bill.

The new account within the existing Community Right-to-Know Fund would consist of facility fees collected under the bill and any funds appropriated in the State budget for costs incurred by MDE. Funds may only be used for processing the information submitted to MDE and for regulation.

Counties and municipal corporations are exempt from the bill's fee provision.

A person who violates the bill or any regulation adopted under the bill is subject to a civil penalty of up to \$1,000 per violation. Each day is a separate violation.

**Current Law:** No federal laws explicitly require chemical facilities to 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 increase the security of those facilities.

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, specified chemical sources must prepare risk management plans and submit them to the U.S. Environmental Protection Agency (EPA). The 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 consequences of any releases that occur. MDE does not have delegated authority of the federal program and therefore does not evaluate risk management plans.

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.

Currently, 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 must report certain information regarding these substances to MDE. Those facilities must pay a fee which is deposited into the Community Right-to-Know Fund. MDE administers the fund.

**Background:** According to MDE, a 2003 report on homeland security by the U.S. General Accounting Office (GAO) found that chemical facilities may be attractive targets for terrorists. 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 if a release occurred. While GAO believes that the chemical industry has undertaken a number of voluntary initiatives to address security at facilities, to date, no one has comprehensively assessed the chemical industry's vulnerabilities. The GAO report asserts that no agency monitors or documents the extent to which chemical facilities have implemented security measures.

MDE advises that Baltimore City and other states, such as New Jersey and Delaware, have programs addressing chemical security and preparedness. MDE reports that, as of November 2003, approximately 131 facilities were required to report risk management programs to EPA. Of these, 28 are located in Baltimore City and would, therefore, likely be exempt from the bill. Another eight facilities would be exempt due to the bill's definition of "facility," which does not include a retail distributor whose principal business is to sell or offer for sale, at the retail level, commercial fertilizer intended for agricultural use. Accordingly, the bill would likely apply to an estimated 95 facilities in the State.

**State Revenues:** Of the estimated 95 facilities that would be affected by the bill, MDE advises that 40 are owned by local governments and would, therefore, be exempt from paying any fees. The remaining 55 facilities would be subject to a \$2,500 fee per facility. Assuming MDE's regulations require facilities to submit information (and associated fees) once every five years, fee revenues would total an estimated \$137,500 in fiscal 2006 and every five years thereafter.

General fund revenues could increase beginning in fiscal 2006 due to the bill's penalty provision.

**State Expenditures:** Special fund expenditures could increase by an estimated \$54,655 in fiscal 2006, which reflects an October 1, 2005 implementation date. This estimate reflects the cost of hiring one environmental compliance specialist to review information submitted by facilities and audit facilities for compliance. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$39,665
Automobile Purchase and Operations	11,465
Equipment/Operating Expenses	<u>3,525</u>
<b>Total FY 2006 State Expenditures</b>	<b>\$54,655</b>

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. Legislative Services notes that, based on the anticipated revenues and expenditures of the new account, funds would be exhausted in the middle of fiscal 2008. Accordingly, it is assumed that general, federal, or other special funds would need to be appropriated at that time to cover MDE's costs until fee revenues are collected again (fiscal 2011).

MDE could develop regulations with existing budgeted resources. DSP could handle any increase in workload with existing budgeted resources.

**Local Expenditures:** Local governments that own and operate certain facilities (such as wastewater treatment plants that use chlorine) would incur increased costs to assess the security of their facilities and implement any required security measures. Although a reliable estimate of any increase in costs to local jurisdictions cannot be made, it could be significant. According to MDE, an estimated 40 local facilities would be affected by the bill. Facilities located within Baltimore City would likely be exempt from the bill's requirements because Baltimore City enacted an ordinance in 2002 with provisions similar to the bill. Facilities violating the bill's provisions would be subject to enforcement actions.

**Small Business Effect:** Any business, large or small, subject to the bill's requirements will have to analyze the security of its facilities, submit reports, file a fee, and comply with the standards developed by MDE or face enforcement actions. Affected facilities could, therefore, incur potentially significant increases in expenditures. According to MDE, however, most affected facilities are not considered small businesses.

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### **Additional Information**

**Prior Introductions:** Legislation addressing hazardous material facility security was introduced as HB 796 of 2003. The bill passed the House with amendments. The Senate Education, Health, and Environmental Affairs Committee reported the bill unfavorably. In 2002, a similar bill (HB 1052) had hearings before the Judiciary Committee and the Environmental Matters Committee, but no further action was taken.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 15, 2004  
ncs/ljm Revised - House Third Reader - March 30, 2004  
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