

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 65 (Chairman, Education, Health, and Environmental Affairs Committee)
(By Request – Departmental – Environment)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Water Quality - Penalties

This departmental bill increases the maximum criminal penalties for knowingly making any false statement in any required documents or tampering with any monitoring device or method under specified water pollution control laws. Specifically, the bill increases the misdemeanor penalties from a fine of up to \$10,000, or imprisonment for up to six months, or both, to a fine of up to \$50,000, or imprisonment for up to two years, or both.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues and general fund expenditures due to the bill's enhanced monetary and incarceration penalty provisions.

Local Effect: Potential minimal increase in expenditures due to the bill's enhanced incarceration penalty.

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

Analysis

Current Law: A person who knowingly makes any false statement, representation, or certification in any required document or falsifies, tampers with, or knowingly renders inaccurate any required monitoring device or method under the Water Pollution Control

subtitle is guilty of a misdemeanor. On conviction, that person is subject to a fine of up to \$10,000, or imprisonment for up to six months, or both.

The penalties associated with the underlying violations of the Water Pollution Control subtitle are more severe than those associated with falsifying and tampering. Specifically, a person who violates the water pollution control provisions or fails to perform any duty imposed by those provisions is guilty of a misdemeanor. On conviction, that person is subject to: (1) for a first offense, a fine of up to \$25,000, or imprisonment for up to one year, or both; or (2) for a subsequent offense, a fine of up to \$50,000 for each day of violation, or imprisonment for up to two years, or both. Each day is a separate violation. In addition, the person may be enjoined from continuing the violation.

Fines are paid into the Maryland Clean Water Fund within MDE.

Background: Acts of falsification and tampering are performed to avoid compliance with MDE's permit terms and conditions. According to MDE, it is inconsistent to punish willful tampering and deliberate deception designed to mislead MDE less severely than the underlying violations the deceptions attempt to conceal. Those who engage in this type of fraud enjoy an unfair competitive advantage over those who comply with the law. In addition, MDE advises that fraudulent information submitted to MDE adversely affects the agency's ability to assess the current condition of the State's wastewater treatment plants and to appropriately allocate resources for improvements, which the Governor has indicated is one of his top environmental priorities.

MDE advises that it has investigated a number of cases relating to falsifying and tampering over the past five years and has charged about a half dozen people in that time period. Those convicted of the crimes affected by the bill (falsifying and tampering) are typically fined in the range of \$5,000 to \$10,000. According to MDE, convictions of these crimes typically do not result in imprisonment.

According to MDE, the criminal penalties for the water pollution control violations affected by the bill were last increased in 1973.

State Effect: Under current law, fines are paid into the Maryland Clean Water Fund within MDE. Accordingly, special fund revenues could increase minimally as a result of the bill's enhanced monetary penalty provision.

General fund expenditures could increase minimally as a result of the bill's increased incarceration penalty due to more people being committed to Division of Correction

(DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this offense is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Effect: Expenditures could increase minimally as a result of the bill's increased incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: SB 467 of 1998, among other things, would have increased the maximum penalties for knowingly violating water pollution control provisions. The bill passed the Senate with amendments and was referred to the House Environmental Matters Committee, which held a hearing on the bill. The bill was reintroduced during the 1999 session as SB 366, which was referred to the Senate Judicial Proceedings Committee. A hearing was held on the bill, but no further action was taken.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Lesley Cook

Direct Inquiries to:
(410) 946-5510
(301) 970-5510