

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 655 (Senator Frosh)
 Education, Health, and Environmental Affairs

**Voluntary Cleanup Program and Brownfields Revitalization Incentive Program -
 Procedures and Requirements**

This bill makes several changes to the Voluntary Cleanup Program (VCP) administered by the Maryland Department of the Environment (MDE). The bill expands eligibility for the program; modifies fee provisions; increases predictability and efficiencies; increases public notification of cleanups; and clarifies liability provisions. The bill also provides new enforcement authority to MDE under the Controlled Hazardous Substances Subtitle and broadens eligibility for grants and loans through the Brownfields Redevelopment Incentive Program (BRIP) administered by the Department of Business and Economic Development (DBED).

Fiscal Summary

State Effect: Special fund revenue increase of \$252,000 in FY 2005 and \$336,000 annually thereafter due to increased participation and the establishment of new fees. Special fund expenditure increase of \$228,600 in FY 2005; future year estimates are annualized and adjusted for inflation. To the extent the bill results in an increase in useful, redeveloped properties, future tax revenues could increase.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$252,000	\$336,000	\$336,000	\$336,000	\$336,000
SF Expenditure	228,600	286,600	277,600	293,700	311,000
Net Effect	\$23,400	\$49,400	\$58,400	\$42,300	\$25,000

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

Local Effect: Local governments that own property could benefit from the bill's changes to eligibility provisions. Local tax revenues could be positively affected to the extent that the bill results in the redevelopment of additional properties.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill's changes are described below.

Expanded Eligibility to Enter VCP

First, the bill allows properties with oil contamination to enter VCP. Second, the bill modifies the definition of “eligible property” to include a site under active enforcement under specified conditions, including the requirement to provide a performance bond. “Eligible property” does not include a portion of a property if the entire property is investigated for contamination.

VCP Fees

Currently, the only fee associated with VCP is the \$6,000 application fee. The bill authorizes MDE to reduce the initial application fee for applicants who demonstrate financial hardship. In addition, the bill provides that an application fee for a subsequent application regarding the same property is \$2,000. The bill also establishes a new \$2,000 fee for each of the following: (1) an applicant wishing to expedite the determination of the applicant's status as an inculpable person; (2) a participant receiving a “no further requirements” determination conditioned on certain uses or on the maintenance of certain conditions; (3) a participant receiving a certificate of completion conditioned on the permissible use of the property; and (4) a participant requesting to alter a record of determination in the land records for an eligible property with conditions. The bill also makes application fees nonrefundable.

Increased Predictability and Efficiencies within VCP

First, the bill establishes an expedited service for the determination of an applicant's inculpable status. MDE would be required to approve or disapprove an applicant's status within five days of receiving the written request for an expedited determination and the \$2,000 fee. Second, the bill allows applicants the option to delay submitting a Phase II site assessment, which is a more extensive examination of the property involving soil and water testing, until after the application and applicable fees are submitted. A Phase II site assessment is, however, required before a release from liability may be issued. Third, the bill decreases MDE's turnaround times relating to notifying an applicant or participant regarding the status of an application and the approval of proposed plans. Fourth, the bill clarifies that, if an owner of an eligible property that has limited permissible uses wants

to change the use of the property, the owner, subject to MDE approval, is responsible for the cost of cleaning up the property to the appropriate standard.

Increased Public Protections

The bill increases public notification of cleanups by requiring applicants to post notice of all applications on the property site and by requiring MDE to post notice on its web site. The bill retains the requirement for public informational meetings for proposed cleanup plans, upon request. The bill also makes changes to public comment time frames. The bill also requires persons receiving a “no further requirements” determination or a certificate of completion that is conditioned on certain uses of the property or on the maintenance of certain conditions to send that information to “Miss Utility.”

Liability

The bill provides that participants receiving a “no further requirements” notice will receive protection from litigation initiated by a responsible person, as is the case when a participant receives a certificate of completion. MDE also would not be able to bring an enforcement action against such a participant. Further, the bill provides those participants and participants who have received a certificate of completion with continued liability protection if a third party violates the property’s use conditions.

The bill also modifies the definition of “inculpable person” to clarify that a local government that is not a “responsible person” under the Controlled Hazardous Substances Law will now clearly be entitled to “inculpable person” status and accorded those benefits.

MDE’s Enforcement Authority

The bill expands MDE’s enforcement authority under the Controlled Hazardous Substances Subtitle. Specifically, in addition to any costs recovered from the responsible person under current law, the bill authorizes MDE to commence a civil action to recover punitive damages from a responsible person who fails without sufficient cause to comply with a final order of the State. In addition to any other remedies available at law or in equity, punitive damages may be assessed for up to three times the amount of the costs incurred by the State after the date on which the final order was issued and as a result of the failure to comply. A responsible person will be entitled to a contested case hearing to determine whether the person failed without sufficient cause to comply with a final order.

Changes to BRIP

The bill's changes to both the Environment Article and the statute governing the Maryland Economic Development Assistance Fund (MEDAF) broaden the eligibility of sites for financial assistance under BRIP. The bill also makes technical changes to the MEDAF statute and to the Tax – Property Article to correct inconsistencies that resulted from the consolidation of MEDAF in 2000.

Other Provisions

The bill requires MDE to convene a work group from representatives of the Maryland Department of Planning, DBED, various sectors of local governments, real estate professionals, the business community, the banking industry, the environmental community, and members of the public to review the Universal Environmental Covenants Act proposed by the National Conference of Commissioners on Uniform State Laws. The work group must make recommendations to MDE and specified committees of the General Assembly by December 31, 2004.

Finally, the bill authorizes Baltimore City to enter private land in order to perform certain tests to determine the possibility of public use of a property.

Current Law: Brownfields are abandoned or underutilized industrial or commercial sites, located primarily in urban areas, which are either contaminated or perceived to be contaminated by hazardous substances. Chapters 1 and 2 of 1997 established VCP within MDE to encourage the investigation of eligible brownfields properties, to protect public health and the environment, to accelerate the cleanup of eligible properties, and to provide predictability and finality to the cleanup process. VCP works in conjunction with BRIP, a program administered by DBED that provides economic incentives such as loans, grants, and property tax credits to clean up and develop certain properties.

VCP provides owners or purchasers of a contaminated site liability relief if cleanup goals are met. Eligible applicants may be either responsible persons (as defined under the Controlled Hazardous Substances Law) or prospective owners who have not previously owned the property and did not cause or contribute to contamination at the property. Eligible parties that want to participate must submit an application describing a proposed voluntary cleanup project that specifies the proposed cleanup criteria for a contaminated site and the future use of the site. MDE must notify the applicant within 60 days whether the application is approved, denied, incomplete, or that a “no further requirements” determination has been issued stating that there are no further requirements related to the investigation of controlled hazardous substances at the property. A participant must develop a response action plan on cleanup activities, and MDE must notify the applicant within 120 days if the plan has been approved or rejected. The response action plan

approval letter must state that no further action is required on the property other than the actions described in the plan and that the participant will receive a certificate of completion once the plan is carried out. Once notified of a project's completion, MDE must determine if the response action plan has been completed satisfactorily. A "no further requirements" determination or certificate of completion conditioned on the permissible use of the property must be recorded in the land records of the local jurisdiction or the determination or certificate is void.

The application fee is \$6,000. MDE may reduce the application fee for VCP participation if a lesser fee is sufficient to cover the costs of review of the application and administration and oversight of the response action plan. All application fees are paid into the Voluntary Cleanup Fund. If the direct costs of review of the application and administration and oversight of the response action plan are less than or greater than the application fee, MDE must either refund the difference to the participant or require the participant to pay the difference to MDE.

In addition to VCP, MDE also administers the State's superfund program. The program assesses suspected hazardous waste sites, including federal facilities, to control and remove environmental and public health threats through site cleanups and remedial actions. The Oil Control Program within MDE regulates all oil-related activities. The Oil Contaminated Site Environmental Cleanup Fund reimburses certain owners of underground storage tanks and heating oil tanks for costs incurred for the cleanup of contaminated sites.

BRIP, administered by DBED, provides financial assistance for conducting environmental assessments of sites that intend to enter either VCP or the Oil Control Program and for the remediation of eligible brownfields sites. DBED also certifies sites as qualified brownfields sites making them eligible for property tax credits in participating jurisdictions. Each of the jurisdictions participating in BRIP have approved a property tax provision that, for each of the five taxable years following the first revaluation of an eligible property: (1) grants a property tax credit of 50% of the property tax attributable to the increase in assessment (including improvements to the site); and (2) contributes 30% of the property tax attributable to the increase in assessment to MEDAF. A participating jurisdiction may grant a property tax credit up to an additional 20% of the remaining property tax attributable to the increase in assessment. The 30% contribution from the property tax to BRIP must be designated for financial incentives to qualified sites in the jurisdiction making such a contribution.

Background: As of January 7, 2004, MDE had received applications for a total of 174 properties, 114 of which had been accepted into VCP. Acceptance was pending for 52 properties. Eight properties had withdrawn from the program. Of the 114 properties that had been accepted into the program, 91 had been completed (77 properties were issued a

“no further requirements” determination and 14 properties were issued a certificate of completion). Cleanups were pending on an additional 23 properties. As of January 2004, BRIP had approved 31 projects to receive State funds, totaling about \$4.8 million. The following jurisdictions have elected to participate in BRIP: Allegany County, Baltimore County, Baltimore City, Cecil County, Dorchester County, Frederick County, Howard County, Montgomery County, Somerset County, the Town of Colmar Manor, the City of Cumberland, the City of Frederick, the City of Salisbury, and the City of Taneytown.

This bill is similar to the Administration’s brownfields legislation (SB 186/HB 294). All three bills stem in part from several meetings held by stakeholders during the 2003 interim and are intended to encourage participation in the existing programs by expanding eligibility to participate, providing a more predictable process for prospective owners of eligible properties, reducing the costs of redevelopment, and decreasing turnaround times.

As a result of recent changes to federal law that expand liability protections to prospective purchasers, contiguous property owners, and innocent landowners, several states are proposing changes to their brownfields programs in order to spur brownfields redevelopment.

State Revenues: Special fund revenues to the Voluntary Cleanup Fund within MDE would increase by an estimated \$336,000 annually beginning in fiscal 2006 (\$206,000 from initial application fees, \$100,000 from the additional site control fees, and \$30,000 in fees associated with the new expedited service for inculpable status determination) as discussed below. Due to the bill’s October 1, 2004 effective date, special fund revenues would increase by \$252,000 in fiscal 2005.

- Based on data for fiscal 2004 to date, MDE receives approximately 44 first-time applications per year; after refunds of unexpended funds, the average fee is \$3,500 per site. Accordingly, MDE currently receives about \$154,000 annually in application fees from first-time applicants. Under the bill, MDE expects to receive 60 first-time applications annually; at \$6,000 each, revenues from initial application fees would total \$360,000, or an increase of \$206,000 per year.
- Assuming 50 sites per year would be subject to the new \$2,000 fees applicable to participants receiving a “no further requirements” determination conditioned on certain property uses, participants receiving a certificate of completion conditioned on certain property uses, and participants requesting land record changes, an additional \$100,000 annually would be generated.
- MDE advises that, under current law, about 25% of applicants request a letter from MDE regarding their status as an inculpable person for use in property

settlements, which are time-sensitive. Based on this level of demand, it is assumed that 15 applicants per year would request an expedited determination of the applicant's status as an inculpable person. At \$2,000 each, the new fee would generate \$30,000 annually.

This estimate does not reflect any loss of revenue that would occur due to the reduced fee for subsequent applications on the same property. For a variety of reasons, MDE expects the number of subsequent applications on the same property to decrease over time. This estimate also does not reflect any reductions in application fees that may be granted by MDE to those applicants who can demonstrate financial hardship. Because guidelines for such exemptions will be developed through regulation, a precise estimate of any loss in revenues associated with hardship waivers cannot be made at this time.

Special fund revenues to the State Hazardous Substance Control Fund within MDE could increase beginning in fiscal 2005 due to the bill's provisions authorizing MDE to collect punitive damages under the State's superfund program.

Tax revenues could increase to the extent the bill results in the redevelopment of additional properties.

State Expenditures: Special fund expenditures for MDE would increase by an estimated \$228,623 in fiscal 2005 for MDE as discussed below. DBED could handle any increase in workload with existing resources.

Maryland Department of the Environment

Special fund expenditures could increase by an estimated \$228,623 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring three geologists, one public health engineer, and one environmental specialist to handle the anticipated increase in the number of applications to VCP, accommodate the bill's decreased review times, and monitor an increased number of sites subject to use restrictions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the nine staff currently involved with VCP are fully subscribed;
- a 35% increase in the number of applications to VCP is anticipated;

- decreased review times, combined with the new expedited service for determination of an applicant’s status as an inculpable person will place additional workload constraints on MDE, requiring additional staff; and
- the number of sites with use restrictions, which require monitoring, will increase.

Salaries and Fringe Benefits	\$179,948
Automobile Purchase and Operations	26,625
Equipment	12,750
Other Operating Expenses	<u>9,300</u>
Total FY 2005 State Expenditures	\$228,623

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) the purchase of an additional automobile in fiscal 2006.

Department of Business and Economic Development

The bill’s changes are expected to increase the number of sites qualified to receive financial assistance and property tax credits under BRIP. However, total MEDAF finances would not be significantly affected. Although the bill will likely result in an increase in the number of applications for financial assistance under BRIP, DBED could handle any increase in workload with existing resources.

Local Fiscal Effect: Local jurisdictions that own property could benefit from the bill’s changes expanding eligibility to participate in VCP and to apply for financial assistance under BRIP. Baltimore City could benefit from the bill’s authorization to enter private land to perform certain tests prior to site acquisition to determine the possibility of public use of the property. Local governments would likely benefit from an increase in tax revenues to the extent the bill results in the redevelopment of additional properties.

Small Business Effect: Applicants to VCP include businesses, large and small. The bill’s changes are expected to result in an increase in applicants to the program and an increase in the number of sites eligible to apply for financial assistance and property tax credits under BRIP. In general, as developers and owners of property, businesses should be positively affected by the bill.

Additional Comments: The Governor’s proposed fiscal 2005 budget includes four new general fund positions, totaling approximately \$140,000, for the State’s superfund

program. These proposed positions are independent of the positions required to implement the bill's changes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Business and Economic Development, Department of Assessments and Taxation, Office of the Attorney General, Office of Administrative Hearings, Maryland Department of Planning, Baltimore City, Kent County, Talbot County, Worcester County, Department of Legislative Services

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