

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

**FISCAL AND POLICY NOTE**

House Bill 1158 (Delegate McDonough, *et al.*)  
 Health and Government Operations

**Homeland Security Fund**

This bill establishes the Homeland Security Fund in the Governor’s Office of Homeland Security (OHS) for the purpose of supporting State, local, and intergovernmental homeland security activities in the State. OHS must administer the fund and make grants for specified homeland security activities.

A court is required to impose a \$250 surcharge on defendants convicted of, or receiving probation for, drunk driving offenses under § 21-902 of the Transportation Article. The fund will consist of such surcharges collected, money appropriated to the fund in the State budget, and any other money from any other source accepted for the benefit of the fund. The Comptroller is required to pay the surcharges into the fund.

**Fiscal Summary**

**State Effect:** General fund expenditure increase of \$151,500 in FY 2005 for additional clerical staff to manually track surcharges. The out-years reflect annualization and inflation. Special fund revenue cannot be reliably predicted, but could be about \$4.89 million per year, if collection rates for the surcharge are near 100%. Administration of the fund could be handled with the existing budgeted resources of OHS.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
SF Revenue	\$4,894,300	\$4,894,300	\$4,894,300	\$4,894,300	\$4,894,300
GF Expenditure	151,500	208,100	221,200	235,200	250,400
Net Effect	\$4,742,800	\$4,686,200	\$4,673,100	\$4,659,100	\$4,643,900

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

**Local Effect:** None.

**Small Business Effect:** None.

---

## **Analysis**

**Current Law:** A person is prohibited from driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se (§ 21-902(a) of the Transportation Article). A first offense is punishable with a maximum fine of \$1,000 or imprisonment up to one year, or both. Maximum penalties for second and third offenses that occur after five years of a prior conviction, each increase by \$1,000 and an additional year of imprisonment, but the subsequent offenses occurring after five years of a prior conviction, have a maximum penalty of a fine of up to \$3,000 or imprisonment for up to three years, or both.

A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol, or under the influence of alcohol per se, within five years after a prior conviction for any included offenses is subject to a mandatory minimum penalty of imprisonment for not less than five days. A person who is convicted a third or subsequent time within five years of any of those same offenses is subject to a mandatory minimum penalty of imprisonment for not less than 10 days. Imprisonment includes confinement in an inpatient rehabilitation or treatment center or home detention that includes electronic monitoring for the purpose of participation in a certified or court-approved alcohol treatment program. The Motor Vehicle Administration (MVA) is required to suspend for one year the license of anyone convicted of driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se more than once within a five-year period.

A person who is convicted of driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se within five years of a prior conviction for any included offenses must be required by a court to undergo a comprehensive alcohol abuse assessment. If recommended at the conclusion of the assessment, the offender must participate in an alcohol program certified by the Department of Health and Mental Hygiene, certified by an adjacent state agency, or approved by the court. The penalties are mandatory and are not subject to suspension or probation.

Additionally, the MVA may revoke the license of any person convicted of a violation of § 21-902(a) or issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

A person is prohibited from driving or attempting to drive any vehicle while impaired by alcohol (§ 21-902(b) of the Transportation Article). A first offense is punishable with a

maximum fine of \$500 or imprisonment for up to two months, or both. Subsequent offenses that do not occur within five years of a prior offense have a maximum fine of \$500 or imprisonment for up to one year, or both.

Additionally, the MVA may revoke the license of any person who, within a three-year period, is convicted of driving while impaired by alcohol, or while impaired by any combination of drugs or drugs and alcohol and who was previously convicted of two or more violations within a three-year period of being convicted under § 21-902. The MVA may suspend the license for 60 days for a first offense, or 120 days for two or more violations of driving while impaired by alcohol or driving while impaired by any combination of drugs or drugs and alcohol within three years, or the MVA may issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

**Background:** OHS was formed within the Executive Department in July 2003 (Executive Order 01.01.2003.18). OHS coordinates and directs State homeland security efforts and advises the Governor on such issues. In addition, OHS assesses Maryland's readiness and ability to prepare for, prevent, and respond to disasters and emergencies, including terrorist attacks. OHS coordinates efforts to obtain and allocate federal funds for State and local homeland security. OHS also serves as State liaison to the White House Office of Homeland Security and the U.S. Department of Homeland Security.

Most of the State spending on homeland security purposes has involved the use of federal funds. However, it is difficult for State agencies to identify what spending is a direct result of homeland security needs. In any case, there are three categories of spending most agencies must consider: (1) new spending – involving federal or State funds that would not have otherwise occurred; (2) timed spending, which are expenditures that may have occurred even without the homeland security issues, but homeland security needs caused it to be spent sooner than planned; and (3) scheduled spending, which is spending that is related to homeland security and which occurred in the amount and at the time planned.

It is not easy to distinguish these categories. For instance, the purchase of a piece of equipment that is useful for search and rescue will not be used exclusively for homeland security. If the equipment can be useful in the recovery from a natural disaster it will be used. However, it is not practical to start allocating the cost of the equipment by how it is used. State spending by those agencies able to isolate their homeland security spending is expected to total \$3.8 million for fiscal 2004.

**State Fiscal Effect:** The District Court had 9,025 guilty dispositions for § 21-902 offenses in fiscal 2003 and 10,371 with a disposition of probation before judgment. In the circuit courts, there were a total of 181 convictions and probations before judgment.

Assuming that the number of guilty dispositions and probations before judgment for § 21-902 offenses in fiscal 2003 is typical, and assuming that all such convicted persons were assessed and paid the surcharge, the fund would receive \$4,894,250 in special fund revenue, annually. However, it should be noted that, because the collection rates for some post conviction fees has historically been low, the fund could receive an amount perhaps somewhat less than \$4.89 million per year from the surcharge. Such a lesser collection rate cannot be readily quantified. The extent to which the fund may receive other monies, including future general fund appropriations, is unknown.

The District Court reports that tracking surcharge payments would have to be done manually and would necessitate the hiring of 10 additional clerks, with operating expenses, at a cost of about \$341,800 in fiscal 2005 and growing to \$514,300 by fiscal 2009. These manual costs, according to the District Court, could be alleviated with the installation of a new automated case management computer system at a cost of about \$1.5 million and which would not be operational for two years. In addition, the District Court believes that the surcharge could alter sentencing practices for these offenses to the effect that judges may reduce other fines and fees in amounts equal to the surcharge.

The Department of Legislative Services advises that the automated tracking of these surcharges could be accomplished with five additional clerks. The need of a new automated computer system is arguable and cannot be fairly assessed within the context of this fiscal note. The extent to which judges may alter sentencing practices due to the provisions if this bill is also arguable and far from likely.

Accordingly, general fund expenditures could increase by an estimated \$151,535 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring three court clerks to manually track surcharges required by this bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$151,047
Operating Expenses	<u>488</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$151,535</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

It is assumed that administration of the fund could be handled with the existing budgeted resources of OHS.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Maryland District Court, Administrative Office of the Courts), Governor's Office, Maryland Department of Transportation, Department of Legislative Services

**Fiscal Note History:** First Reader - March 17, 2004  
mam/jr

---

Analysis by: Guy G. Cherry

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