

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 612

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

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Water Appropriation Permits - Penalties

This departmental bill modifies the regulatory process of the Maryland Department of the Environment (MDE) relating to water appropriation and use in three ways. First, the bill exempts *de minimus* groundwater users from the requirement to obtain a permit. Second, the bill enhances enforcement by establishing civil penalties, increasing existing criminal penalties, and authorizing MDE to issue corrective action and other orders. Third, the bill expands the uses of the Maryland Clean Water Fund in a manner consistent with the proposed permit changes and provides that penalties collected under the water appropriation and use subtitle be paid into that fund.

Fiscal Summary

State Effect: Potential increase in special fund revenues from the bill's enhanced penalty provisions; a reliable estimate of any such increase cannot be made at this time. Expenditures would not be significantly affected.

Local Effect: The bill would not materially affect local operations or finances.

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

Analysis

Bill Summary: The bill exempts from the water appropriation and use permit requirement the use of groundwater at an average annual use of 5,000 gallons of water per day or less, under specified conditions. Instead, such users will only have to file a notice of exempt use with MDE.

The bill provides that, in addition to being subject to an injunctive action, a person who violates any provision of the water appropriation and use subtitle is liable for a civil penalty of up to \$10,000 to be collected in a civil action brought by MDE. Each day is a separate violation. The bill also increases the existing maximum daily misdemeanor fine from \$500 per day to \$10,000 per day and repeals the existing total misdemeanor fine.

MDE must give notice and hold any hearing related to orders in accordance with the Administrative Procedure Act. The bill outlines procedures regarding requests for hearings, the hearings themselves, and decisions.

The bill expands the uses of the Maryland Clean Water Fund by providing that MDE must also use the fund for activities related to the management, conservation, protection, and preservation of the State's ground and surface waters, including program development of these activities as provided by the State budget.

Current Law: A permit must be obtained from MDE to appropriate or use or begin to construct any plant, building, or structure which may appropriate or use any waters of the State. This requirement does not apply to the use of water for domestic purposes other than for heating and cooling or agricultural purposes, under specified conditions. A violation of the water appropriation and use subtitle or its implementing regulations is a misdemeanor, and, upon conviction, the violator is subject to a fine of up to \$500 per day for each day of the offense, up to \$25,000 total, with costs imposed in the discretion of the court. MDE does not have the authority to impose civil penalties for violations of water appropriation and use provisions.

All application fees, permit fees, renewal fees, and funds collected by MDE under the water pollution control subtitle, including any civil or administrative penalty or any fine imposed by a court, are paid into the Maryland Clean Water Fund. MDE must use the fund for activities related to identifying, monitoring, and regulating the proper discharge of effluent into waters of the State, including program development of these activities as provided in the State budget. Priority must be given to activities pertaining to water quality of the Chesapeake Bay and its tributaries.

Background: MDE advises that currently it is required to review all applications for water appropriation and use, even though the majority of permit applications for groundwater use are so small that they have an inconsequential impact on the resource. Exempting these users from the requirement to obtain a permit would greatly reduce the administrative burden on MDE and on the regulated public. MDE estimates that this change would benefit approximately 4,700 small businesses.

With respect to enforcement, MDE advises that the current penalty provisions are inadequate. According to MDE, the existing criminal penalty provision is cumbersome; no criminal fines have been imposed in at least 20 years.

Finally, MDE advises that the proposed modifications regarding the use of the Maryland Clean Water Fund would allow uses consistent with the State's regulatory program related to water appropriation and use.

Additional Information

Prior Introductions: HB 1296 of 2004, among other things, would have established administrative penalties for violations of water appropriation and use provisions. The Environmental Matters Committee held a hearing on the bill, which was subsequently withdrawn. SB 241/HB 294 of 2002, among other things, would have increased the misdemeanor fines associated with such provisions and also would have established administrative and civil penalty authority. SB 241 received an unfavorable report from the Education, Health, and Environmental Affairs Committee. HB 294 received an unfavorable report from the Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2005
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