

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 970

(Chair, Education, Health, and Environmental Affairs
Committee) (By Request – Departmental – Environment)

Education, Health, and Environmental Affairs

Environmental Matters

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, establishing new 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 all penalties collected under the Water Appropriation and Use Subtitle be paid into that fund, including any fines imposed by a court.

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. Potential minimal increase in general fund expenditures due to the bill's penalty provisions.

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

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 \$5,000 to be collected in a civil action brought by MDE. Each day is a separate violation. Before bringing a civil action against a local government, MDE is required to meet and consult with the local government to seek an alternative resolution to the contested issue. Prior consultation by MDE with the local government constitutes compliance with that requirement.

The bill also repeals the existing misdemeanor fine but applies specified existing criminal penalty provisions applicable to water pollution control violations to violations of the Water Appropriation and Use Subtitle. Specifically, a person who violates the Water Appropriation and Use Subtitle is guilty of a misdemeanor and, for a first offense, subject to a fine of up to \$25,000 and/or imprisonment for up to one year. For a second or subsequent offense, the person is subject to a fine of up to \$50,000 and/or imprisonment for up to two years. In addition, the person may be enjoined from continuing the violation. Each day is a separate violation. A person who makes false statements or tampers with monitoring devices is guilty of a misdemeanor and on conviction is subject to a fine of up to \$50,000 and/or imprisonment for up to two years.

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. Priority must still be given to activities relating to water quality of the Chesapeake Bay and its tributaries.

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. MDE reports that it would still be able to track those withdrawals through well construction records. In addition, if MDE believes that an area requires special protection, the bill authorizes MDE to designate water management strategy areas where permits would still be required.

MDE advises that this change would enable MDE staff to devote more time to increasingly complex larger and medium size permits and to other mandated program activities. The reallocation of staff time would also increase turnaround time for permit applications and renewals.

With respect to enforcement, MDE advises that the current penalty provisions are inadequate. According to MDE, the existing criminal penalty provision is cumbersome and too weak to be a deterrent for regulatory purposes; MDE reports that it has never collected penalties under the existing criminal penalty provisions. With civil penalties, MDE advises that it would be able to provide an incentive to achieve greater compliance with the law.

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.

State Revenues: Special fund revenues could increase as a result of the bill's monetary penalty provisions. A reliable estimate of any such increase cannot be made at this time.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties 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 proposed crime 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 \$2,300 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 \$465 per month. Excluding medical care, the average variable costs total \$134 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 2008 are estimated to range from \$21 to \$65 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.

The fines, costs, and fees collected by the District Court are tracked in an automated cash register system and distributed based on the category of the case, such as routine traffic, jailable traffic, criminal, civil, and local. The District Court advises that this legislation may require form changes and reprogramming changes to cash register programs in the District Court. Legislative Services advises that any such changes could be accommodated with the existing budgeted resources of the Judiciary.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. 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 \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: Similar legislation was introduced in the 2005 session as HB 612. The bill passed the House with amendments; the amended version was identical to this

bill as introduced. In the Senate, the favorable report of the Education, Health, and Environmental Affairs Committee was adopted but the bill was recommitted to committee.

Cross File: None.

Information Source(s): Kent County, Montgomery County, Prince George's County, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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