

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1291

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

Environmental Matters

Education, Health, and Environmental Affairs

Solid Waste Regulation - Criminal Penalties

This departmental bill establishes criminal penalties for violating any provision of solid waste laws set forth in Title 9, Subtitle 2 of the Environment Article, or failing to perform any duty imposed by a rule, regulation, order, or permit adopted or issued in accordance with these provisions of solid waste laws, with specified exceptions.

Fiscal Summary

State Effect: Potential minimal increase in special fund revenues and general fund expenditures due to the bill's penalty provisions. The Maryland Department of the Environment (MDE) and the Environmental Crimes Unit could implement the bill with existing resources.

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: Violations of specified provisions of law relating to sewage sludge utilization permits, scrap tires, and disposal of infectious waste are not included in the bill. Violations of these provisions continue to be enforced through other sections of law.

Under the bill, a violation is a misdemeanor and on conviction for a first offense is subject to a fine of up to \$25,000 or imprisonment for up to one year, or both. If the conviction is for a violation committed after a first conviction, the person is subject to a fine of up to \$50,000 for each day of violation or imprisonment for up to two years, or both. In addition to the criminal penalties, a person may be enjoined from continuing the violation.

Other criminal penalties apply for making a false statement in required documents or tampering with monitoring devices. Such violations are misdemeanors and on conviction subject to a fine of up to \$50,000 or imprisonment for up to two years, or both.

The bill directs the Attorney General to take charge of, investigate, prosecute, and defend every case arising under the bill, including the recovery of fines, but preserves the right of the State's Attorney for each county and Baltimore City to prosecute and defend cases in which the State may be interested.

Current Law/Background: Currently, there are no criminal penalties for violating provisions of solid waste laws affected by the bill or failing to perform any duty imposed by a rule, regulation, order, or permit adopted or issued in accordance with those solid waste laws. The current enforcement mechanisms for violations of solid waste laws or regulations include the issuance of a complaint, notice, and order by MDE, the holding of an administrative hearing, issuance of a final corrective order, and injunctive relief. In addition to being subject to an injunctive action, a person who violates any provision of solid waste laws or any rule, regulation, order, or permit adopted or issued under solid waste laws is liable for a civil penalty of up to \$10,000, to be collected in a civil action brought by MDE. Each day a violation occurs is a separate violation. In addition, MDE may impose administrative penalties of up to \$1,000 for each violation, but not exceeding \$50,000 total.

According to MDE, in recent years, individuals have operated illegal landfills and waste transfer stations and failed to comply with the permit conditions related to solid waste facilities. In significantly egregious situations in which criminal prosecution may be warranted, prosecutors have been forced to try to address violations with the Litter Control Law set forth in the Criminal Law Article. The Litter Control Law prohibits the throwing or depositing of litter in any quantity, but it does not prohibit the illegal operation of unpermitted, inadequately sited, and inadequately maintained landfills and transfer stations.

The criminal penalties set forth in the bill are the same as currently imposed for violations of the water pollution control law.

State Revenues: Under current law, penalties collected under Subtitle 3 of Title 9 of the Environment Article are paid into the Maryland Clean Water Fund. Accordingly, special fund revenues could increase minimally as a result of the bill's monetary penalty provisions. The fiscal 2006 ending balance of the Maryland Clean Water Fund (after encumbrances) totaled \$5,074,030.

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.

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: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 15, 2007
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