

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 442

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Environment - Clean Air Permit Fees

This bill increases the maximum air quality emissions-based permit fee (from \$25 per ton, indexed to inflation, to \$50 per ton, indexed to inflation). The bill also increases the maximum fee for a single source (from \$200,000, indexed to inflation, to \$500,000 indexed to inflation) for calendar 2008 and 2009 and repeals the facility cap beginning in 2010. The bill modifies the definition of “regulated emissions” to facilitate the repeal of the facility cap and clarifies that carbon dioxide emissions shall be excluded for the purpose of calculating fees. The bill also increases the current limit (from \$750,000 to \$2.0 million) on the amount of money that can be maintained in the Maryland Clean Air Fund.

Fiscal Summary

State Effect: Special fund revenue increase of \$1.3 million in FY 2009 due to the increase in the maximum fee and the facility cap. Future year estimates are annualized and reflect the repeal of the facility cap beginning in 2010, an increase in the per-ton fee due to inflation, and a decrease in overall emissions. Special fund expenditures would increase correspondingly.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	\$1,325,200	\$2,103,100	\$2,743,800	\$2,422,100	\$2,097,100
SF Expenditure	1,325,200	2,103,100	2,743,800	2,422,100	2,097,100
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: Local governments subject to emissions-based fees would incur additional costs due to the fee increase. However, the impact is anticipated to be minimal for most local jurisdictions.

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland Department of the Environment is authorized to adopt regulations that require a permit or registration before a person constructs, modifies, operates, or uses a source that may cause or control emissions into the air. MDE has to collect a fee for such permits. The amount of the fees must cover the reasonable cost of reviewing and acting on permit applications; the reasonable costs incurred in implementing and enforcing the terms and conditions of the permits, exclusive of any court costs or other costs associated with any enforcement actions; and costs identified in a specified section of the federal Clean Air Act Amendments of 1990. Fees assessed and collected must be used exclusively for the development and administration of the permit program. Statute establishes a maximum fee of \$25 per ton of regulated emissions, indexed to inflation. The current per-ton fee is approximately \$42. Statute establishes a maximum fee of \$200,000 for any single source, indexed to inflation; the cap is now approximately \$336,000. “Regulated emissions” means the actual rate of emissions, in tons per year, of any registered pollutant emitted by a source, to be calculated using criteria consistent with specified federal regulations, and subject to a limit of 4,000 tons per year of any single pollutant.

Emissions fees, permit fees, and penalties are paid into the Maryland Clean Air Fund. When the fund balance is at or above \$750,000 any additional monies that otherwise would be deposited in the fund have to go to the general fund instead.

Background: According to MDE, revenues from emissions-based fees are critical to the funding of its air pollution control regulatory programs. Currently, three principal revenue sources support air pollution control activities in Maryland – federal funds, special funds from permit/emissions fees, and reimbursable funds from the Maryland Department of Transportation to undertake transportation-related air pollution reduction activities. Although program costs have been rising over the years, MDE advises that federal funds have declined in recent years, and that special funds from emission-based fees are projected to decrease in the future as new and existing pollution control programs are implemented.

MDE advises that Pennsylvania’s emissions-based fees are \$55.50 per ton and New Jersey’s emissions-based fees are \$98.39 per ton.

State Fiscal Effect: Special fund revenues could increase by \$1.3 million in fiscal 2009 as a result of the increase in the maximum per-ton fee and the increase in the facility cap. This estimate, which reflects the bill's October 1, 2008 effective date, is based on information provided by MDE regarding • the number of facilities that are billed after October 1, 2008; • the number of facilities that are currently subject to the facility cap, which is increased for calendar 2008 and 2009 under the bill; and • the number of tons that would be subject to the fee under current law and under the bill. The estimate is based on the current fee (\$41.96 per ton in calendar 2008 and an estimated \$42.93 per ton in calendar 2009 due to inflation) and the proposed fee (\$50.00 per ton in calendar 2008 and an estimated \$51.15 per ton in calendar 2009 due to inflation). Finally, the estimate is adjusted to reflect the difference between calendar and fiscal years.

Future year estimates reflect the repeal of the facility cap in 2010, fee increases due to inflation, and a reduction in overall emissions due to the implementation of the Healthy Air Act.

The increase in the limit on the amount of money that can be maintained in the Maryland Clean Air Fund is not anticipated to have an impact on State finances. MDE advises that even with the additional special fund revenues generated by this bill, it does not anticipate that the new cap would be exceeded, since federal funds continue to decrease and program costs continue to increase. Legislative Services notes that even though current law states that when the fund equals or exceeds the limit, any additional money received for the fund must be deposited into the general fund, MDE advises that it treats this provision as a limit on the fund balance at the end of each fiscal year.

Although the bill does not impose any new requirements on MDE, it is assumed that MDE would spend any increase in fee revenues on its air quality program. Specifically, MDE advises that it anticipates hiring additional compliance, permitting, and planning staff, and conducting special air monitoring efforts (modeling, monitoring, and data analysis) for policy development purposes. Although MDE may carry over some funds from year to year to accommodate increases in salaries and fringe benefits over time, for purposes of this Fiscal and Policy Note, it is assumed that MDE would spend any increase in fee revenues each year.

Additional Comments: MDE advises that about 465 facilities are subject to the emissions-based fees. However, the bill would have the greatest impact on the largest air pollution sources in the State. MDE advises that currently only seven sources exceed the facility cap that would be repealed by the bill starting in 2010.

Additional Information

Prior Introductions: HB 1218 of 2007 would have shifted MDE's emissions-based fee-setting authority from a statutory to a regulatory framework and would have repealed the limit on the amount of money that can be maintained in the Maryland Clean Air Fund. The House Environmental Matters Committee held a hearing on the bill but the bill was subsequently withdrawn.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Economy.com, Department of Legislative Services

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