

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 977

(Chair, Environmental Matters Committee)

(By Request – Departmental – Environment)

Environmental Matters

Education, Health, and Environmental Affairs

Controlled Hazardous Substances - Discharge or Release - Reporting Requirements

This departmental bill requires, beginning October 1, 2009, a responsible person that possesses specified evidence of a release of a hazardous substance, at or above a threshold established by the Maryland Department of the Environment, to immediately report the finding to MDE. The bill establishes specific items MDE must consider in determining a reportable threshold, and requires MDE to adopt regulations by June 30, 2009.

Fiscal Summary

State Effect: General fund expenditure increase of \$53,800 in FY 2009 for MDE to develop regulations. Future year general/special fund expenditures, which are annualized and adjusted for inflation, reflect costs for MDE to evaluate anticipated additional cases. Because current law requires a responsible person to reimburse MDE for response costs, special fund revenues from reimbursements could increase beginning in FY 2010.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	\$0	-	-	-	-
GF Expenditure	53,800	0	0	0	0
GF/SF Exp.	0	170,200	151,600	158,900	166,500
Net Effect	(\$53,800)	(\$170,200)	(\$151,600)	(\$158,900)	(\$166,500)

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

Local Effect: The bill is not anticipated to significantly affect local operations or finances, as discussed below.

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

Current Law: Current law relating to the release of hazardous substances into the environment authorizes MDE to enter any site or facility to address a release and to issue orders to or seek injunctive relief against responsible parties. Current law does not explicitly require the reporting of releases to MDE. However, current regulations specify that one of the ways MDE may discover the release of hazardous substances is through reports.

MDE is directed to use the State Hazardous Substance Control Fund for activities related to identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances, including program development. All expenditures made by MDE in response to a release or a threatened release must be reimbursed to MDE by the responsible person.

Background: MDE advises that the purpose of the bill is to establish a clear statutory requirement that MDE be notified of a release or threat of a release of controlled hazardous substances into the environment. Because such notification is not required under current law, MDE has learned, sometimes several years later, of instances in which a person has discovered contaminated environmental media but did not immediately report the discovery. In some cases, the contamination represented a potential risk to human health and the environment. Without knowledge of the potential or actual contamination, MDE is unable to take action to identify and mitigate the potential risk. For example, with respect to the Swann Park site in Baltimore City, formerly owned by Allied Signal, MDE advises that records provided by Honeywell Corporation to MDE in the spring of 2007 indicate that the presence of arsenic in the soils at the park was known as far back as 1976. This information was not shared with MDE until recently, however. This bill is intended to improve MDE's ability to address potential or actual contamination as soon as possible.

State Fiscal Effect: General fund expenditures could increase by an estimated \$53,831 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of hiring one geologist to develop regulations and, in future years, to evaluate the additional cases anticipated as a result of mandatory notification and to oversee any additional cleanups. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	\$50,628
Equipment/Operating Expenses	<u>3,203</u>
Total FY 2009 State Expenditures	\$53,831

It is assumed that any costs incurred in fiscal 2009 would be borne by the general fund.

Future year general/special fund expenditures reflect • the cost of hiring one toxicologist in fiscal 2010 to assist the geologist in evaluating additional cases and overseeing any additional cleanups; • in fiscal 2010, additional one-time start-up and ongoing operating expenses, including the purchase of a truck; • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses. The information and assumptions used in calculating these estimates are stated below:

- the Controlled Hazardous Substances enforcement program has seven staff;
- the program currently receives a minimum of five written requests per year to determine whether a release requires additional regulatory action; and
- the number of notifications would increase by 15% per year for several years.

Because current law requires a responsible person to reimburse MDE for response costs, special fund revenues from reimbursements could increase beginning in fiscal 2010. To the extent reimbursements do not offset all of MDE's costs in future years, general funds may be needed.

Local Expenditures: In those instances in which a local government is responsible for a release, the local government could incur costs to investigate and potentially remediate the contamination. The range of costs associated with such activities depends on the nature and extent of contamination. Although this liability exists under current law, the impact of requiring an immediate notification to MDE could result in affected entities incurring costs sooner or mitigating future costs by earlier notification and remediation. It is important to note, however, that under current law, the definition of "responsible person" does not include a State or local government *except* in the case of gross negligence or willful misconduct. Accordingly, the bill is not anticipated to have a significant impact on local operations or finances.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 22, 2008
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