HB 1556

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1556 (Chair, Economic Matters Committee and Chair, Environmental Matters Committee)(By Request - Departmental - Environment)

Economic Matters and Environmental Matters | Education, Health, and Environmental Affairs

Environment - Coal Combustion By-Products - Fees

This departmental bill establishes a Coal Combustion By-Products Management Fund and requires the Maryland Department of the Environment (MDE) to establish, by regulation, and collect a fee on each ton of coal combustion by-products (CCBs) generated.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: Special fund expenditures and corresponding cost recovery revenues increase by about $778,400 in FY 2010 to implement the CCB regulatory program in MDE supported by the bill. General or special fund expenditures may increase minimally at other State agencies to the extent they are required to pay a fee as a generator of CCBs under the bill.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
SF Revenue	$778,400	$679,400	$712,300	$746,800	$783,100
SF Expenditure	$778,400	$679,400	$712,300	$746,800	$783,100
GF/SF Exp.	-	-	-	-	-
Net Effect	$0	$0	$0	$0	$0

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

Local Effect: The bill is not expected to materially affect local government finances. The Allegany County Public School System is the only local government entity currently identified as a generator of CCBs in the State; the fiscal impact to the school system is anticipated to be minimal.

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

Analysis

Bill Summary: The bill regulates generators of CCBs. A generator is an entity, other than a person at their private residence, whose actions create CCBs. A CCB is defined as the residue generated by, or resulting from, the burning of coal, and includes fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by specified air pollution control devices.

MDE is required to establish a fee necessary to operate a regulatory program for the control of CCBs. MDE has to base the fees on certain factors including the type, volume, and annual tonnage of CCBs generated; whether the generator uses or disposes of the CCBs; and whether the CCBs are transported out-of-state. MDE may not impose a fee on a generator that beneficially uses CCBs as determined by MDE or that uses CCBs for coal mine reclamation in accordance with regulations of MDE or the receiving state. Fees imposed for CCBs that are transported out-of-state may not be more than half of the fees established for disposal in-state.

The fees must be deposited into the fund established by the bill, which is not subject to reversion to the general fund. MDE must use the fund solely to administer and implement programs to control the disposal, use, beneficial use, recycling, processing, handling, storage, transport, or management of CCBs. Specifically, the fund must be used to (1) support the review, inspection, and evaluation of CCB-related data, permits, and reports; (2) perform and oversee assessments and specified remedial activities; and (3) develop, adopt, and implement relevant regulations and regulatory initiatives. If the fee revenues exceed the costs necessary to implement the CCB regulatory program in a given year, MDE must reduce the fees in the following fiscal year.

Beginning November 1, 2010, and annually thereafter, MDE must report to the General Assembly on the status, revenues, and expenditures of the fund; the efficiency of the regulatory program; compliance rates; and the necessity to reduce the fees if revenues are exceeding expenditures.

Current Law: On December 1, 2008, new regulations developed by MDE for the disposal of CCBs took effect. According to MDE, the new regulations generally require the following:

- disposal facilities must meet all of the same standards required for industrial solid waste landfills, including requirements on leachate (rainwater mixed with waste),

collection, groundwater monitoring, the use of liners, and routine analysis of CCBs;

- as a solid waste disposal facility, a CCBs disposal facility must conform to all local zoning and land-use requirements as well as each county's 10-year solid waste management plan;
- for coal and noncoal mine reclamation sites, the use of CCBs in noncoal mines must meet standards similar to those required for industrial solid waste landfills, including standards for coal mine reclamation that ensure that only alkaline CCBs are used;
- for both disposal and mine reclamation sites, dust control measures must be implemented, post-closure monitoring and maintenance must be performed, and MDE may impose other requirements as part of the permitting process for new CCBs disposal or mine reclamation sites; and
- new annual reporting requirements for generators of CCBs covering how the material was recently used or disposed, as well as future plans for disposal or use.

Although these new regulations are now in effect, MDE advises that they are not yet being fully implemented due to a lack of funds. A bill that would have funded the new effort with a per ton fee on CCBs generated did not pass during the 2008 session. MDE also advises that it is currently planning to promulgate regulations to define beneficial uses of CCB.

At the federal level CCBs are not yet subject to direct regulation, but their use and disposal are covered within several different regulatory frameworks. For example, in 2000 the U.S. Environmental Protection Agency (EPA) determined that CCBs did not constitute hazardous waste under the federal Resource Conservation and Recovery Act, but that, as a solid waste, CCBs were subject to the regulatory controls imposed on solid waste disposal facilities. CCBs are also covered within federal water pollution, mine reclamation, and other environmental and right-to-know laws. In addition, MDE advises that EPA has been working on regulations since 2000 to institute direct regulatory controls on CCB management.

Background: CCBs are noncombustible materials generated from burning coal. According to MDE, between 2 and 2.5 million tons of CCBs are currently generated each year, primarily from nine power plants in Maryland; this amount is anticipated to increase as a result of new environmental controls being installed at power plants to collect CCBs from the combustion process.

CCBs are currently either disposed of or used. According to MDE, beneficial uses of coal ash include mine reclamation, structural fill applications, or as a substitute for cement in the production of concrete. MDE is currently considering regulations for the

beneficial use of CCBs. According to a 2006 report by DNR, in 2004 about 49% of CCBs were placed in 1 of 20 disposal sites in Maryland.

Under certain geologic conditions, certain types of coal ash can produce high concentrations of potentially toxic constituents (such as arsenic, boron, cadmium, iron, lead, manganese, selenium, sulfate, and thallium) in soil that may leach into surface or groundwater. According to a 2007 report by EPA, groundwater contaminated with CCB waste poses a substantial cancer risk. In addition, without proper controls, MDE reports that coal ash released into the air in large quantities can create a public nuisance and/or cause respiratory problems.

If CCBs are not managed properly, constituents of the material can be released into the environment. On October 1, 2007, MDE filed a consent order in Anne Arundel County Circuit Court to settle the environmental enforcement action taken against BBSS, Inc. and Constellation Power Source Generation, Inc. for contamination of public drinking water wells in the vicinity of BBSS' Gambrills sand and gravel mine. Among other provisions, the consent order required the facility owners and operators to pay a civil penalty of $1 million. On December 30, 2008, a Baltimore Circuit Judge approved a $54 million settlement in the class-action lawsuit brought by Gambrills residents. In December 2008, one of the largest CCB spills in U.S. history occurred in Tennessee, where an estimated 5.4 million cubic yards of wet coal ash breached an earthen retaining wall.

State Fiscal Effect: Special fund expenditures increase by $778,400 in fiscal 2010. This estimate reflects the cost of hiring three geologists to review environmental data, three public health engineers for the permit review process and to evaluate site design plans, three environmental compliance specialists to conduct inspections, one assistant Attorney General for enforcement, and one administrative specialist.

	FY 2010	**FY 2011**
Positions	11	0
MDE Salaries and Fringe Benefits	$641,943	$653,615
MDE Start-up Costs and Operating Expenses	136,457	25,834
Total State Expenditures	**$778,400**	**$679,449**

Future year expenditures reflect salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

The fees to be established by regulation will support these additional positions and other expenses necessary to implement the bill's regulatory program. Therefore, special fund

revenues are anticipated to increase by about $778,400 in fiscal 2010. However, Legislative Services advises that the bill may restrict the ability of MDE to fund the annual increases in personnel and operating costs of the CCB control program. The bill requires MDE to reduce fees in the next fiscal year based on any excess revenue generated in a given fiscal year, rather than setting the fee based on the expected cost of implementing the program in the following year. Nevertheless, this estimate assumes the ability to generate sufficient fee revenue to cover ongoing costs.

It is unknown whether and to what extent other State agencies may be affected by the bill's regulations. However, because the State is not exempted by the bill, any agency that is also a generator of CCBs will be required to pay the established fees; this is unlikely to significantly affect State finances.

Local Fiscal Effect: In addition to the minimal impact on the Allegany County Public School System, the bill may indirectly affect local government operations and finances by fully funding existing CCB regulations. Once implemented, the new regulatory program may significantly alter current solid waste management plans and disposal activities.

Small Business Impact: As noted, there are nine coal-burning power stations in Maryland that will be the primary subjects of the fees charged to generators of CCBs. Although the only parties expressly exempted by the bill are individuals burning coal at private residences, it is possible that the regulations required by the bill will establish a *de minimis* exemption to relieve any small businesses and other entities from fee payments to the extent that these entities possess coal-burning equipment that also generate CCBs.

Small businesses may also be indirectly affected by the bill to the extent that the fee established by the bill allows MDE to fully fund current and impending CCB regulatory programs.

Additional Information

Prior Introductions: HB 1466 of 2008, a similar bill, was amended by the House and reported favorably by the Senate Education, Health, and Environmental Affairs Committee. However, it was not voted on by the full Senate.

Cross File: None.

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

Fiscal Note History: First Reader - March 25, 2009
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment – Coal Combustion By-Products - Fees

BILL NUMBER: HB 1556

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.