

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 148

(Calvert County Delegation)

Environmental Matters

Education, Health, and Environmental Affairs

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Calvert County - Reimbursement of Costs - Authority

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This bill authorizes the County Commissioners of Calvert County to seek reimbursement of costs incurred in the cleanup of hazardous materials in Calvert County from the person responsible for the release of the hazardous materials.

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Fiscal Summary

**State Effect:** None. The bill does not affect State finances or operations.

**Local Effect:** Potential minimal increase in Calvert County revenues under the bill's reimbursement provision.

**Small Business Effect:** Potential meaningful impact on any small business that would not otherwise be responsible in the absence of the bill.

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Analysis

**Current Law/Background:** Calvert County is one of the eight Maryland counties that operate under the commission form of government (Calvert, Carroll, Cecil, Frederick, Garrett, St. Mary's, Somerset, and Washington). The legislative authority of counties with commission form of government is limited only to the powers granted by the General Assembly. Because local government has not historically had home rule powers, without acting affirmatively to adopt home rule, commission counties are subject to the legislative authority of the General Assembly except in areas where that authority has been delegated.

One of the enumerated powers of commission counties is the authorization to sue for any injury done to the property *of the county*. It is unclear whether, in the absence of express

authority, a commission county may currently sue under its status as a corporate entity for the cost incurred to clean up a hazardous material release pursuant to federal, or any other, law.

The State Hazardous Substance Control Fund is used primarily for identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous *substances*. The definition of a hazardous substance is very broad and includes any substance defined by the federal Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA), which itself incorporates the definition provided by other federal environmental laws, or any controlled hazardous substance identified by the Code of Maryland Regulations. CERCLA is a broad, remedial statute that encourages voluntary cleanup of hazardous substances by providing persons, including those instituting citizen suits, with the right to seek reimbursement from the responsible party for costs incurred in the voluntary cleanup.

However, a hazardous *material* is defined as any substance regulated as a hazardous material under Title 49 of the Code of Federal Regulations, referring generally to regulations governing the transportation of hazardous materials. Though there may be substantial overlap in the substances covered by these two regulations, to the extent that a hazardous material is not also a hazardous substance under the State Hazardous Substance Control Fund, reimbursement for cleanup of that material may not be available. Under current law, local emergency responders may seek reimbursement from a motor carrier that is at fault and causes a traffic accident that results in a spill or discharge of hazardous materials.

In 2008, MDE's Emergency Response Division responded to two releases of hazardous substances in Calvert County.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 11, 2009  
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