

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 664

(Senator Klausmeier, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Dental Radiation Machines - Inspections

This bill requires a State inspector of dental radiation machines to provide a specified notice to the dental office or facility if there is a violation that does not present a serious and probable danger to patients or employees. The notice must (1) explain the nature of the violation and the required corrective action; (2) indicate that the office or facility has 20 days to comply with the corrective action; and (3) inform the dental office or facility to let the Maryland Department of the Environment (MDE) know that the corrective action has been completed. If the corrective action is completed in the 20-day period, MDE may not impose a fine on the office or facility for the violation.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: Potential decrease in MDE's special fund revenues beginning in FY 2010 as fewer fines may be imposed for violations of State radiation control laws. Expenditures are not affected; MDE advises that the notification it currently provides to facilities following inspections meets most of the bill's requirements.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: MDE's Radiation Machines Division regulates manufactured electronic sources of radiation to minimize the amount of unnecessary

radiation exposure received by the general public. These electronic radiation sources include dental and veterinary x-ray machines, mammography (breast imaging) machines, diagnostic and therapeutic radiation machines, and other electronic radiation devices such as security screening devices used in research or industry. State regulations, which derive in part from U.S. Food and Drug Administration (FDA) statutory requirements, require that all radiation exposures be “As Low As Reasonably Achievable.”

When MDE has reasonable grounds to believe that a person has violated the radiation control laws and regulations, it is required to issue a written complaint that specifies the provisions allegedly violated and states the alleged facts that constitute the violation. MDE is also authorized to (1) issue an order that requires the person to whom it is directed to take corrective action within a time set in the order; and (2) send a written notice that requires the alleged violator to file a written report and/or appear at a hearing regarding the allegations. If MDE issues such a notice, and after a specified time period, MDE must issue a final corrective order if it determines that a violation has occurred. MDE is required to take action to secure compliance with any final corrective order and, if the terms of such an order are violated or if a violation is not corrected within the specified time period, sue to require correction. MDE is also authorized to bring an action for an injunction against violators.

Various administrative, civil, and criminal penalties apply to violations of the State’s radiation control laws and regulations. A person who fails, refuses, or neglects to comply with those laws is guilty of a misdemeanor and on conviction is subject to a fine of up to \$25,000 or imprisonment for up to one year, or both. In addition, a person who violates any radiation control provision is liable for a civil penalty of up to \$10,000 to be collected in a civil action in the circuit court for any county; each day is a separate violation. Finally, MDE is authorized to impose an administrative penalty of up to \$1,000 for each violation, up to \$50,000 total, assessed with consideration given to several specified factors; each day is a separate violation.

According to MDE, the issuance of fines for the purpose of deterring violations is particularly important with respect to the dental industry. MDE began issuing such fines in May 2008. The compliance rate with State radiation control laws and regulations had averaged between 29% and 35% over the past 10 years, but increased to 49% in 2009 after MDE began issuing fines.

State Revenues: Civil penalties and fines collected by MDE for violations of the State’s radiation control laws and regulations are deposited into the Radiation Control Fund at MDE, which also consists of various license, registration, and certification fees. The fund is used to support activities relating to identifying, monitoring, and controlling sources of radiation and for program development. Administrative and civil penalty revenue assessed against all radiation sources totaled \$310,512 in fiscal 2009; although

the actual amount assessed against dental facilities is unknown, MDE estimates that it likely totaled approximately \$250,000. A reliable estimate of the potential revenue loss cannot be made at this time, as future violations cannot be predicted. However, MDE estimates that about 81% of dental facilities resolved their violations within 20 days; thus, if the bill's provisions had been in effect in fiscal 2009, MDE would have been prohibited from collecting an estimated \$203,000 in fine revenue in that year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Health and Mental Hygiene, Department of Legislative Services

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