

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1262

(Delegate Hucker, *et al.*)

Economic Matters

Education, Health, and Environmental Affairs

Environment - Asbestos Worker Protection

This bill establishes an Asbestos Worker Protection Fund within the Maryland Department of the Environment (MDE) to be used for asbestos worker protection and enforcement activities. The bill specifies the sources of the fund, which include all civil and criminal penalties and fines collected under the Asbestos Removal Subtitle. The maximum civil penalty for violating, whether willfully or not, any provision of the asbestos removal subtitle increases, from \$5,000 to \$25,000. The bill alters the conditions for accreditation of an individual engaged in an asbestos occupation and requires MDE to adjust its cost recovery fees to include the cost of administering accreditation examinations.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, for the new Asbestos Worker Protection Fund due to the increase in civil penalties and the greater number of actions that may be brought with the lessened burden of proof established by the bill. Special fund expenditures increase correspondingly for asbestos worker protection and enforcement activities. Special fund revenues may decrease minimally for the Maryland Clean Air Fund to the extent that a greater number of enforcement actions are brought as civil actions rather than administratively.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill states that the General Assembly finds that stricter penalties and independent testing are needed to safeguard the health of asbestos removers in the State.

The bill establishes an Asbestos Worker Protection Fund as a special, nonlapsing fund administered by MDE. The fund consists of all penalties and fines collected under the asbestos removal subtitle, money appropriated in the State budget, investment earnings of the fund, and money from any other source accepted for the benefit of the fund.

In accordance with the State budget, the fund must be used only for asbestos worker protection and enforcement activities. Money spent from the fund for enforcement activities is supplemental to funding that otherwise would be appropriated.

The bill increases, from \$5,000 to \$25,000, the civil penalty for violating any provision of the Asbestos Removal Subtitle within Title 6 of the Environment Article and removes the requirement that violations be willful to be subject to the civil penalty.

The bill alters the conditions for accreditation of an individual engaged in an asbestos occupation to require that MDE verify that an individual (1) is at least age 18; (2) has successfully completed, though not necessarily passed, a training program and any required refresher program from MDE or the U.S. Environmental Protection Agency (EPA), or acquired and maintained current accreditation from an EPA-approved state accreditation plan of another state; and (3) has passed an applicable asbestos occupation examination provided and administered by MDE or by an “independent testing organization” acting on MDE’s behalf. The bill also adds to the documents that MDE may accept as proof of accreditation a certificate showing successful completion of an examination. An “independent testing organization” is an entity that is not in any way affiliated with a “business entity” that employs an individual to remove or encapsulate asbestos in the State; a “business entity” includes any person designated to manage or supervise the removal or encapsulation of asbestos.

The bill requires that MDE adjust its relevant cost recovery fees to include the cost of administering accreditation examinations.

Current Law: The General Assembly finds that exposure to asbestos, a known carcinogenic agent, creates a significant hazard to the health of the people of this State; that projects to remove asbestos expose increasing numbers of asbestos removers to this hazard; and that it is in the public interest to protect asbestos removers from this hazard by requiring adherence to strict safety standards on asbestos removal projects.

An individual may not engage in an asbestos occupation unless accredited by MDE. MDE must accredit an individual on submittal of proof that the individual has (1) successfully completed and passed a training program and any required refresher program approved by MDE; (2) successfully completed and passed a training program and any required refresher program approved by EPA; or (3) acquired and maintained current accreditation from an EPA-approved state accreditation plan of another state. MDE may accept as proof of accreditation a certificate showing successful completion of any approved training program and any required refresher program.

MDE must set reasonable fees sufficient to cover the direct and indirect costs of approving training programs, including the cost of applications, issuance, and renewal of training course approvals and reviews, on-site audits, recordkeeping, and other related activities.

A person who willfully violates any provision of the asbestos removal subtitle or any regulation adopted under the subtitle, is liable for a civil penalty of up to \$5,000 to be collected in a civil action. Each day a violation continues is a separate violation. If the Attorney General concurs, the Secretary may compromise and settle any claim for a civil penalty.

A person who *knowingly* and willfully violates any provision of the asbestos removal subtitle or regulation under the subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$20,000 for a first offense, or up to \$25,000, or imprisonment of up to two years, or both, for a second or subsequent offense.

In addition, MDE may impose an administrative penalty for violations of the asbestos removal subtitle of up to \$2,500 per violation not exceeding \$50,000 total for any single administrative hearing. Each day is a separate violation.

Civil and administrative penalties are currently paid into the Maryland Clean Air Fund, which is generally used by MDE to conduct air pollution-related activities.

An “asbestos occupation” is defined as any job as an inspector, project designer, management planner, asbestos abatement contractor, asbestos supervisor, or asbestos abatement worker involving specified projects and activities. Excluded from this definition is work on any small-scale, short-duration operations, maintenance, and repair activities as defined in federal occupational safety and health law. A “business entity” is defined as a partnership, firm, association, corporation, sole proprietorship, or other business concern.

Background: According to MDE, asbestos is a naturally occurring mineral found in certain rock formations, mined from open pit mines. Most of the asbestos used in the United States today comes from Canada. Three types, chrysotile, amosite, and crocidolite are most commonly found in the United States. The short, thin asbestos fibers released into the air are a hazard to persons who breathe in these fibers. There is no known safe level of exposure for persons who work with asbestos or may be in the same area as an asbestos project. Asbestos is also a hazardous air pollutant that is regulated by Maryland and the federal government. The State regulates how persons work with asbestos and also regulates those who train persons to work with asbestos. EPA regulations cover four asbestos activities: (1) the removal, repair, or encapsulation of asbestos-containing materials; (2) approval of asbestos training providers; (3) regulation of persons accredited to perform asbestos-related activities; and (4) asbestos in schools.

Under an agreement with the federal Occupational Safety and Health Administration, the Maryland Occupational Safety and Health (MOSH) Division of the Department of Labor, Licensing, and Regulation (DLLR) promotes occupational safety, including regulation of asbestos for the protection of workers. Thus, MOSH carries out federal worker protection standards relating to asbestos as well as supplemental State standards for asbestos protective clothing, which functions in concert with MDE to protect workers from asbestos.

State Fiscal Effect: Special fund revenues may increase significantly for the new Asbestos Worker Protection Fund as the bill increases the maximum civil penalty and removes the willfulness element currently applicable in a civil action, thus making any violation of the asbestos removal subtitle subject to a civil penalty. MDE advises that it anticipates at least a few additional actions may be brought per year as a result of the bill. Special fund expenditures from the Asbestos Worker Protection Fund increase correspondingly to support asbestos worker protection and enforcement activities, as provided by the bill. MDE can implement the bill's changes with existing budgeted resources.

MDE advises that there were no civil penalties collected in fiscal 2011 and that only one civil penalty has been imposed within the last 10 years. Currently, civil and administrative penalties from asbestos removal enforcement actions are paid into the Maryland Clean Air Fund, while criminal penalties are paid into the general fund for those cases heard in the District Court. This bill redirects civil and criminal penalties to the new Asbestos Worker Protection Fund. However, because the use of civil and criminal penalties to enforce the asbestos removal laws has been rare, it is unlikely that the bill will result in any material decrease in general fund revenues or special fund revenues to the Maryland Clean Air Fund. Maryland Clean Air Fund revenues may decrease minimally, however, to the extent that fewer administrative penalties are

collected due to cases being brought as civil actions rather than administratively. The bill's provision relating to cost recovery fees for accreditation examinations is not anticipated to affect Maryland Clean Air Fund revenues, as MDE indicates that it has no plans to alter its operations or adjust the fees that support those operations.

Additional Information

Prior Introductions: None.

Cross File: SB 649 (Senator Ramirez, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2012
mc/lgc
Revised - House Third Reader/Updated Information - March 30, 2012

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