

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1163

(Delegate Jacobs, *et al.*)

Environmental Matters

Environment - Penalty for Sewage Overflow - Establishment and Distribution

This bill establishes a civil penalty on an owner or operator of a sanitary sewer system, combined sewer system, or wastewater treatment plant for any sewage overflow or bypass that results in the discharge of raw or diluted sewage into State waters. The civil penalty is \$0.009 times the number of gallons of sewage discharged. A portion of the penalty revenue may be retained by the Maryland Department of the Environment (MDE) for specified administrative expenses, and any remaining revenue must be distributed to the Department of Natural Resources' (DNR) Fisheries Research and Development Fund for oyster restoration. MDE must adopt specified implementing regulations.

Fiscal Summary

State Effect: MDE special fund revenues may increase beginning in FY 2013 due to collecting the new penalty; however, any increase cannot be reliably estimated. DNR special fund revenues may increase beginning in FY 2013 due to the distribution of any remaining penalty revenue; however, any increase cannot be reliably estimated. It is assumed that MDE expenditures are not materially affected.

Local Effect: Local government expenditures may increase beginning in FY 2013 to pay the new penalty for water pollution control violations. For example, most wastewater treatment plants are owned by local governments, and a large majority of sewer overflows occur at wastewater treatment plants.

Small Business Effect: Potential meaningful impact to the extent small businesses violate the law and are subject to the new penalty. Assuming compliance with the law, however, small businesses are not affected.

Analysis

Current Law/Background: In addition to being subject to an injunctive action, a person who violates the State's water pollution control laws, or any regulation, order, or permit issued under these laws, is subject to a penalty of up to \$10,000 to be collected in a civil action brought by MDE. Each day a violation occurs is a separate violation. MDE may also impose an administrative penalty of up to \$5,000 per violation and up to \$50,000 total for a violation of any water pollution control law, regulation, order, or permit. Administrative penalties must be assessed with consideration given to specified factors. The Water Pollution Control subtitle generally pertains to the regulation of point source discharges to waters of the State. Chapter 258 of 2009 increased the maximum administrative penalty from \$1,000 to \$5,000 per violation. Penalties are paid into the Maryland Clean Water Fund.

Since January 1, 2009, MDE has implemented a new enforcement initiative to address unauthorized discharges of pollutants resulting from sanitary sewer overflows. Under this initiative, MDE has begun assessing penalties for all sewage overflows, with the exception of permitted combined sewer overflows, unless the owner or operator of the system clearly demonstrates that the overflow was beyond their control and in spite of taking all reasonable steps to properly operate, maintain, and improve the system. Previously, MDE targeted only those systems with numerous sewage overflows or large volume overflows for enforcement actions. Between July 2009 and December 31, 2011, MDE collected \$798,341 in penalties from enforcement of sewage overflow violations.

The water pollution control laws include the requirement for an owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant to report to MDE any sewer overflow or treatment plant bypass that results in the direct or potential discharge of sewage. MDE provides public access through its website to the Maryland Reported Sewer Overflow Database. The database shows that there were over 2,000 reports of sewage overflows in calendar 2011, including 94 overflows of at least one million gallons. Most overflow reports are made by local wastewater treatment plants.

The Fisheries Research and Development Fund is composed of revenue from, among other things, commercial fishing licenses and permits, specified oyster and clam shell payments, the sale of seed oysters, specified fines or forfeitures, and general fund appropriations. This revenue must be used for (1) replenishing fisheries resources and related research; (2) matching federal funds available to research and development of fishing resources; and (3) administrative costs.

State Revenues: This analysis assumes that the civil penalty established by the bill is in addition to other penalties already established. Thus, special fund revenues to the

Maryland Clean Water Fund may increase beginning in fiscal 2013 due to collecting the new penalty. Any such increase cannot be reliably estimated due to the variability of water pollution control penalties assessed each year. The minimum sewage discharge that subjects an individual to liability, which MDE must establish in regulations, will also affect the level of penalty revenue collected. However, for contextual purposes, \$646,090 in penalty revenue was collected in fiscal 2011 due to violations of water pollution control laws.

DNR special fund revenues may increase beginning in fiscal 2013 for oyster restoration. However, the bill is unlikely to generate revenue above that which MDE retains for administrative expenses.

MDE advises that numerous consent decrees and consent orders exist that establish stipulated penalties for sewage overflows at rates far higher than the rate per gallon in the bill. MDE further advises that it may not be worthwhile to devote resources to collecting penalties at the level proposed in the bill, as a penalty is only \$9 for a 1,000 gallon overflow or \$90 for a 10,000 gallon overflow.

Local Expenditures: Local government expenditures may be affected to the extent they are owners and operators of sanitary sewer systems, combined sewer systems, or wastewater treatment plants. The Washington Suburban Sanitary Commission (WSSC) advises that, based on annual average sanitary sewer overflows within its jurisdiction over the past five years, the bill requires WSSC to pay approximately \$193,208 annually in penalty fees. Harford County advises that, based on data over the past 10 years, the bill requires it to pay approximately \$1,700 annually in penalty fees. Talbot County notes that it was fined \$4,000 for several sewage spills totaling approximately 10,000 gallons; however, under the bill, the penalty for 10,000 gallons is only \$90. Since 2002, Baltimore City's sanitary sewer overflows have been covered by a consent decree with MDE and the U.S. Environmental Protection Agency. As long as this consent decree is in effect, Baltimore City advises that it will be penalized for overflows based on the stipulated penalty schedule within the consent decree, not in accordance with provisions in the Environmental Article.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Carroll, Harford, Montgomery, and Talbot counties; Department of Budget and Management; Department of Natural

Resources; Maryland Department of the Environment; Washington Suburban Sanitary Commission; Department of Legislative Services

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