

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 546

(Delegate Anderson, *et al.*) (By Request - Baltimore City Administration)

Environmental Matters

Criminal Law - Litter Control Regulations and Penalties

This bill expands the scope of the State Litter Control Law to include additional prohibitions regarding “illegal dumping” – the placement of litter into a container that is not for public use or without the consent of the owner if the container is private property. The bill also enhances the misdemeanor penalties for violations of the renamed Illegal Dumping and Litter Control Law by significantly lowering the thresholds and altering the considerations as to which of several existing penalties apply; the bill prescribes driver’s license suspension periods for the first and subsequent littering violations if committed during the use of a motor vehicle.

Fiscal Summary

State Effect: General fund expenditures increase by \$26,300 in FY 2013 only for reprogramming by the Administrative Office of the Courts, and workloads may increase minimally due to the bill’s penalty provisions. Transportation Trust Fund (TTF) expenditures increase minimally to reimburse the Office of Administrative Hearings (OAH) for additional hearings based on driver’s license suspensions as authorized by the bill. Otherwise, the bill can likely be handled by the Motor Vehicle Administration (MVA), OAH, the Judiciary, and other State agencies with existing resources, except to the extent that a State agency opts to procure additional signs or trash receptacles as a result of the bill. TTF revenues increase minimally due to the collection by MVA of additional administrative flag removal fees generated by fines that go unpaid.

Local Effect: Local government revenues increase, potentially significantly, beginning in FY 2013 due to the bill’s additional prohibitions and enhanced penalty structure. Local incarceration expenditures may increase minimally and to the extent a jurisdiction opts to procure additional trash receptacles and signage as a result of the bill.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill expands the scope of the State Litter Control Law by prohibiting the placement of litter into a litter receptacle or container installed on property unless the receptacle or container is for public use or, if the receptacle or container is privately owned, without the consent of the owner. The bill alters the definition of “public or private property” as it applies to the State Litter Control Law to include trash receptacles not provided for public use as well as public trash receptacles clearly marked with “no dumping permitted.”

The bill also lowers the weight thresholds that apply in determining the misdemeanor penalty, and it significantly eliminates both volume as an applicable measure and whether the violation was for commercial gain as a consideration. Thus, the bill lowers, from up to 100 pounds or 27 cubic feet (and not for commercial gain) to *up to one pound*, the amount of litter that constitutes a violation for which a misdemeanor penalty of up to \$1,500 or imprisonment for up to 30 days, or both, applies. Additionally, the bill lowers, from over 500 pounds or 216 cubic feet (or any amount for commercial gain) to *one pound or more*, the amount of litter that constitutes a misdemeanor penalty of up to \$30,000 or up to five years imprisonment, or both. The bill also repeals the misdemeanor penalty of up to \$12,500, or up to one year imprisonment, or both, that applies to the disposal of between 100 and 500 pounds or between 27 and 216 cubic feet of litter (and not for commercial gain).

If the violation involved the use of a motor vehicle, the bill repeals the *authorization* for a court to suspend the driver’s license for the person presumed responsible. Instead, the bill *requires* a court to notify the offender that his or her license may be suspended and to notify MVA of the violation. If the amount of litter exceeds one pound, then the offender who used a vehicle in the commission of the violation *may* have his or her license suspended by MVA for up to 60 days for a first offense and *must* have his or her license suspended for between 60 days and one year for a second or subsequent offense. A driver’s license holder may request a hearing for a suspension under the bill. The Chief Judge of the District Court and the Administrative Office of the Courts, in conjunction with MVA, must establish uniform procedures for reporting a violation.

Finally, the bill changes the name of the Litter Control Law to be the “Illegal Dumping and Litter Control Law” and transfers the authority for Baltimore City to implement illegal dumping surveillance systems from the Baltimore City Department of Public

Works to the Baltimore City Department of Housing and Community Development, or another department designated by the mayor.

Current Law/Background:

State Litter Control law

Under the State's Litter Control Law, a person may not (1) dispose of litter on a highway or perform an act that violates the State Vehicle Laws regarding disposal of litter, glass, and other prohibited substances on highways; or (2) dispose, or cause or allow the disposal of, litter on public or private property unless the property is designated by the State, a unit of the State, or a political subdivision for the disposal of litter and the person is authorized by the proper public authority to use the property, or the litter is placed into a litter receptacle or container installed on the property.

Public or private property means:

- the right-of-way of a road or highway;
- a body of water or watercourse or the shores or beaches of a body of water or watercourse;
- a park;
- a parking facility;
- a playground;
- public service company property or transmission line right-of-way;
- a building;
- a refuge or conservation or recreation area;
- residential or farm property; or
- timberlands or a forest.

If two or more individuals are occupying a motor vehicle, boat, airplane, or other conveyance from which illegal litter is disposed, and it cannot be determined which occupant is the violator, then (1) if present, the owner of the conveyance is presumed to be responsible for the violation; or (2) if the owner of the conveyance is not present, the operator is presumed to be responsible for the violation.

A person who disposes of litter in violation of these provisions in an amount not exceeding 100 pounds or 27 cubic feet and not for commercial gain is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 30 days and/or a fine of \$1,500. A person who disposes of litter in an amount exceeding 100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain is guilty of a misdemeanor and subject to maximum penalties of imprisonment for

one year and/or a fine of \$12,500. A person who disposes of litter in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$30,000.

In addition to the incarceration and monetary penalties, a court may order the violator to (1) remove or render harmless the litter disposed of; (2) repair or restore any property damaged by, or pay damages for, the disposal of the litter; (3) perform public service relating to the removal of litter or to the restoration of an area polluted by litter; or (4) reimburse the State, county, municipal corporation, or bi-county unit for its costs incurred in removing the litter. In addition to, or instead of these penalties, the court may suspend for up to seven days the license of the person to operate the type of conveyance used in the violation who is presumed to be responsible for any violation involving a conveyance.

Fines collected for Litter Control Law violations must be disbursed in the following manner: (1) to the county or municipal corporation where the violation occurred; or (2) if the bi-county unit is the enforcement unit and the violations occurred on property over which the bi-county unit exercises jurisdiction, to the bi-county unit. Fines collected must be used to pay for required litter receptacles and posting signs and for other purposes relating to the removal or control of litter.

The legislative body of a municipal corporation may prohibit littering and classify littering as a municipal infraction. Prince George's County is authorized to adopt an ordinance to prohibit littering and, for violations of the ordinance, may impose criminal penalties and civil penalties that do not exceed the specified criminal penalties and civil penalties under State law.

“Litter” means all rubbish, waste matter, refuse, garbage, trash, debris, dead animals, or other discarded materials of every kind and description.

Baltimore City Dumping Site Surveillance Systems

Chapter 13 of 2006 authorized Baltimore City to install surveillance systems at State- and city-owned “dumping sites” that have been repeatedly used for illegal litter disposal and to use the surveillance images to enforce the State Litter Control Law or local laws relating to the unlawful disposal of litter. Unless the person committing the violation receives a citation from a police officer at the time of the violation, the owner of the vehicle is subject to a civil penalty, which may not exceed \$1,000.

The District Court has exclusive jurisdiction over cases brought for illegal dumping. Court costs for dumping cases are \$22.50. In uncontested cases in which the fines are

paid directly to the city, costs are \$2. The District Court, in consultation with Baltimore City, must prescribe a uniform citation form and a civil penalty to be paid by persons who choose to pay the penalty as opposed to appearing in court. Penalties in uncontested cases must be paid to Baltimore City.

A person receiving the citation may elect to stand trial by notifying Baltimore City. The District Court may consider in defense of a violation the fact that the vehicle or its registration plates were stolen prior to the violation and that neither was in the possession of the owner at the time of the violation.

Failure to pay the civil penalty or contest liability in a timely manner (1) is an admission of liability; (2) may result in the refusal by MVA to register the vehicle; and (3) may result in the suspension of the motor vehicle registration. MVA may not register or transfer the registration of any vehicle involved in a violation of State or local litter control laws if it is (1) notified by Baltimore City that a person cited has failed to pay the fine or file notice of intent to stand trial; or (2) notified by the District Court that a person who has elected to stand trial failed to appear at trial.

In addition, Baltimore City ordinances prohibit littering on public or private property. "Littering" means discarding or otherwise disposing of small amounts of paper, beverage containers, glass, garbage, or other waste that (1) weighs less than one pound; (2) comprises less than one cubic foot; and (3) are not toxic, noxious, or otherwise a threat to the public health or safety. A conviction for littering carries a \$500 fine.

State Expenditures:

Incarceration Costs: The bill establishes additional prohibitions within the Litter Control Law and increases the severity of penalties for violations by lowering the threshold that applies to each existing misdemeanor penalty, including incarceration penalties of up to five years imprisonment. Thus, general fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this crime and sentenced to a term of more than one year is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month. *For illustrative purposes*, under the bill's maximum incarceration penalty for a

person convicted of littering one pound or more, the average time served would be 60 months. Assuming the variable inmate costs of \$170 per month, State costs could increase by \$10,200 for each person imprisoned under the bill.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Judiciary Impact: General fund expenditures increase by \$26,300 for reprogramming costs by the Administrative Office of the Courts. The Administrative Office of the Courts advises that the bill's requirement for a court to notify those who violate the State's Illegal Dumping and Litter Control Law through the use of a vehicle that their license may be suspended, and to notify MVA of the violation, will result in the need for over 400 hours of computer reprogramming. The Administrative Office of the Courts advises that the anticipated increase in caseloads generated by the bill's additional prohibitions can likely be handled with existing budgeted resources.

MVA and OAH Impact: For a violation of the bill in which the amount of litter exceeds one pound, if the offender used a vehicle in the commission of the violation, that individual may have his or her license suspended by MVA for up to 60 days for a first offense, and must have his or her license suspended for between 60 days and one year for a second or subsequent offense. MVA workloads may increase minimally for reprogramming and reprinting costs and to process additional transactions. Additionally, assuming the additional prohibitions in the bill result in additional citations issued by Baltimore City dumping site surveillance systems, MVA workloads may increase to handle additional requests to refuse vehicle registrations and place administrative flags on the vehicle registrations for individuals that fail to pay the fine on these citations. However, it is assumed that MVA can handle the additional work with existing budgeted resources. Nevertheless, TTF expenditures increase to pay OAH for the additional driver's license suspension hearings authorized by the bill. Currently, MVA reimburses OAH for each administrative hearing requested on a suspension initiated by MVA.

Local Revenues: Local government revenues increase, likely significantly statewide, and potentially significantly for several individual jurisdictions due to the additional prohibitions and enhanced penalty structure established by the bill. However, a reliable estimate of the increase in local revenues cannot be made at this time due to numerous uncertainties, including how many additional violations will occur under the bill's additional prohibitions, the amount of the average penalty assessed for violations, and the share of violations that are less than, or greater than/equal to, one pound – the new threshold established by the bill to determine which misdemeanor penalty applies. However, *for illustrative purposes only*, local revenues statewide may increase by about \$3.0 million on an annual basis under the following information and assumptions:

- in fiscal 2010 and 2011 there were an average of 381 violations involving littering of 100 pounds or less, 30 involving between 100 and 500 pounds, and 22 involving over 500 pounds;
- the same number of violations occur in future years;
- it is assumed that each violation carries a penalty equal to half of the statutory maximum; and
- it is assumed that half of violations for littering of 100 pounds or less was based on less than one pound of litter, and the other half was based on between one and 100 pounds.

Legislative Services advises that, due to limited information and highly variable assumptions, the actual increase in local revenues statewide may differ significantly from this estimate.

Baltimore City revenues may increase significantly due to the additional Litter Control Law prohibitions established by the bill. As noted, Baltimore City implements dumping site surveillance systems that provide enhanced enforcement of littering violations. Thus, the bill may result in a significant increase in fines generated from the city's surveillance systems.

Local Expenditures: Expenditures increase minimally as a result of the bill's enhanced incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Legislative Services advises that, although not required, local governments may also incur additional expenditures to update signage associated with trash receptacles and provide additional receptacles for the public. For example, the Maryland National-Capital Park and Planning Commission estimates that it may cost about \$50,000 in fiscal 2013 to provide additional receptacles and to post signs regarding the bill's prohibition and to publicize the availability of receptacles for public use; future operation and maintenance expenditures may reach about \$10,000 annually.

Additional Information

Prior Introductions: None.

Cross File: SB 419 (Senator Jones-Rodwell)(By Request - Baltimore City Administration) - Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Cecil, Harford, and Montgomery counties; cities of Bowie and Takoma Park; Department of Natural Resources; Maryland State Department of Education; Department of General Services; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2012
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