

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 877

(Senators Glassman and Simonaire)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Water Pollution Control - Reporting and Penalties

This bill increases the civil and administrative penalties applicable to a violation of the Water Pollution Control subtitle of the Environment Article. Specifically, the bill increases the civil penalty from up to \$10,000 to up to \$20,000 per violation, and increases the administrative penalty from up to \$5,000 per violation but not exceeding \$50,000 total, to up to \$10,000 per violation but not exceeding \$100,000 total. The bill also requires the Maryland Department of the Environment (MDE) to annually publish on its website the total amount of sewage overflow, in gallons, from sewerage systems into the Chesapeake Bay and its tributaries during the previous year, as well as the fines collected as a result of the sewage overflows.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, beginning in FY 2013 due to the collection of additional penalties. MDE workloads increase minimally to publish the amount of fines collected from sewage overflows, and potentially further to the extent the bill results in additional enforcement or litigation work. However, it is assumed that expenditures are not materially affected.

Local Effect: Local government expenditures may increase, potentially significantly, to pay additional penalties 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 increased penalties. 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 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. A large majority of overflow reports are made by local wastewater treatment plants.

State Revenues: Special fund revenues to the Maryland Clean Water Fund increase potentially significantly, beginning in fiscal 2013 due to the collection of additional penalties. Any such increase cannot be reliably estimated due to the variability of water pollution control penalties assessed each year and because many penalties are not assessed at the maximum amount authorized in statute. However, for contextual purposes, \$646,090 were collected in fiscal 2011 from penalties assessed for violations of the water pollution control laws. While it is unlikely that the amount of penalties collected would double, as many enforcement actions result in a settlement or the

assessment of less than a maximum penalty, the increase in special fund revenues may exceed \$100,000 annually.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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