

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 798 (Delegate Frush)
Environmental Matters

Environment - Radiation Sources - Podiatry and Chiropractic Radiation
Machines

This bill requires a State inspector of radiation machines at an “office or facility” to provide a specified notice to the office or facility if there is a violation that does not present a serious and probable danger to patients or employees. “Office or facility” means a specified podiatry office or facility and a specified chiropractic office or facility. 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 office or facility of the required procedure to inform the Maryland Department of the Environment (MDE) 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.

Fiscal Summary

State Effect: Radiation Control Fund revenues decrease by approximately \$1,000 on an annualized basis beginning in FY 2014 due to fewer fines collected. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: The bill establishes, with regard to podiatry and chiropractic offices, the same requirements that are in place with regard to dental offices. Chapter 592 of 2010 (SB 664) requires a State inspector to provide written notice to a

dental office if, based on an inspection of a dental radiation machine at the office, the inspector determines that there is a violation and the violation does not present a serious and probable danger to the patients or employees of the office or facility. Chapter 592 further prohibits MDE from imposing a fine on a dental office or facility for a violation if the corrective action is completed within 20 working days.

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 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 the 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.

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, 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.

MDE advises that the department takes only a small number of enforcement actions related to podiatry and chiropractic radiation machines each year. Assuming that penalties assessed in such cases likely drop to near zero due to the grace period established by the bill, MDE advises (and the Department of Legislative Services concurs) that Radiation Control Fund revenues decrease by approximately \$1,000 on an annualized basis beginning in fiscal 2014.

Additional Information

Prior Introductions: SB 308 of 2012, a similar bill that applied to podiatry radiation machines only, received an unfavorable report from the Senate Education, Health, and Environmental Affairs Committee. Its cross file, HB 1025 of 2012, was withdrawn.

Cross File: SB 608 (Senators Klausmeier and Young) - Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - February 20, 2013
mm/lgc

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