

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 799 (Delegate Frush)
Environmental Matters

Environment - Water Pollution Control - Penalty

This bill increases from \$5,000 to \$10,000 the maximum administrative penalty for a violation of the Water Pollution Control subtitle of the Environment Article.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, beginning in FY 2014 due to the collection by the Maryland Department of the Environment (MDE) of additional penalties. MDE workloads increase to the extent that the bill results in additional enforcement 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. Most wastewater treatment plants are owned by local governments, and a large majority of sewer overflows occur at wastewater treatment plants. Revenues are not affected.

Small Business Effect: Potential meaningful impact to the extent that 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: The Water Pollution Control subtitle generally pertains to the regulation of point source discharges to waters of the State. 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 maximum penalty of \$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 a maximum administrative penalty of \$5,000 per violation and \$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. Chapter 258 of 2009 (SB 408) increased the administrative penalty from \$1,000 to \$5,000 per violation. Penalties are paid into the Maryland Clean Water Fund.

Criminal (misdemeanor) penalties may also be imposed, with a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense, and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. Each day on which a violation occurs is a separate violation. Additional criminal penalties apply for making false statements in required documents.

State Revenues: Special fund revenues to the Maryland Clean Water Fund increase beginning in fiscal 2014 due to the collection of additional administrative penalties. Any such increase cannot be reliably estimated due to the variability of water pollution control administrative penalties assessed each year and because many penalties are not assessed at the maximum amount authorized in statute. However, for contextual purposes, about \$1.2 million in civil and administrative penalties were assessed in 155 actions under the water pollution control laws in fiscal 2012, although this bill applies only to administrative penalties. While it is unlikely that the amount of administrative penalties collected doubles under the bill, 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: SB 289 (Senator Simonaire, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, Department of Legislative Services

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mc/lgc

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