

Department of Legislative Services
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FISCAL AND POLICY NOTE
 First Reader

House Bill 885 (Delegate S. Howard, *et al.*)
 Environment and Transportation

Environment - Chesapeake Bay - Vessel Sewage Discharge Areas

This bill requires the Maryland Department of the Environment (MDE), in conjunction with the Department of Natural Resources (DNR), to designate areas in the Chesapeake Bay and its tributary waters where a vessel may discharge sewage. A vessel operator must ensure that any vessel with a Type I or Type II marine sanitation device, as defined under the Natural Resources Article, discharges sewage in the areas designated by MDE and DNR pursuant to the bill.

Fiscal Summary

State Effect: General fund expenditures for MDE increase by at least \$50,000 in FY 2018 for contractual assistance to designate vessel sewage discharge areas. Future year expenditures increase for continued monitoring and evaluation of designated discharge areas, but any such impact cannot be reliably estimated at this time. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	50,000	-	-	-	-
Net Effect	(\$50,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal overall, but potential meaningful impact on some small businesses (*e.g.*, marinas and charter boats) to the extent that the establishment of discharge areas affects the number of vessels in a given area or increases costs for vessel-based businesses. Small businesses that offer pumpout services may benefit.

Analysis

Current Law:

Federal Clean Water Act

The federal Clean Water Act (CWA) addresses a wide spectrum of water pollution problems, including marine sewage from boats in navigable U.S. waters (including coastal waters up to three miles offshore). The Act further provides for “no-discharge” by boats operated in enclosed lakes and reservoirs or in rivers not capable of interstate navigation. The U.S. Environmental Protection Agency (EPA) or states may establish no-discharge zones (NDZs) in which the discharge of sewage from all vessels is prohibited in specified waters. A state may designate portions of its waters as NDZs if the state determines that the protection and enhancement of water quality require greater protection than current federal standards allow; in this instance, EPA must determine if there are adequate sewage facilities available to support the NDZ status. A state may also make a written application to EPA for the issuance of a regulation prohibiting discharge from a vessel of any sewage into specified waters that have environmental importance or that serve as drinking water intakes.

Under CWA, the U.S. Coast Guard (USCG), or any other federal or state government entity under agreement with USCG, and the state in which the NDZ has been designated, can enforce vessel sewage provisions in the NDZ.

Under CWA, boats with installed toilets must have an operable USCG-approved marine sanitation device designed to either (1) hold sewage for pump out ashore or for discharge in the ocean beyond the three-mile limit or (2) treat the sewage to federal standards prior to discharge. Vessels operating in waters designated as an NDZ must retain all sewage, treated or not, for disposal ashore.

Maryland Law

In Maryland, the Natural Resources Article dictates the type of marine sanitation device that is required for certain types of vessels. NDZ and prohibited discharges, including the discharge of sewage from vessels while moored, berthed, or docked in waters of the State (except through a federally and State-approved marine sanitation device) are codified in regulations.

A “marine sanitation device” is any equipment on board a vessel that is designed to receive, retain, treat, or discharge sewage and any process to treat sewage on board. The definition specifies differences in Type I, II, and III marine sanitation devices. Type I devices treat sewage so that the discharged effluent meets specified standards for bacteria content and

contains no visible floating solids; Type II devices are similar, but must meet a higher standard of sewage treatment; and Type III devices retain sewage for shore-based disposal or discharge beyond the three-mile offshore limit.

“Sewage” is human body wastes and the wastes from toilets and other receptacles intended to retain body waste.

Vessels 65 feet in length or shorter that are equipped with an installed toilet must have a Type I, II, or III device, while longer vessels with installed toilets must have a Type II or III device. Type III devices are automatically certified, while Type I and II devices must have a certification label affixed that shows specified information. Vessel operators and lessees must ensure that:

- all pathways for overboard discharge of vessel sewage from any vessel with a Type III device are blocked or secured in such a way as to prevent any accidental or intentional sewage discharge by taking specified actions; and
- any installed in-line “Y valve” (*i.e.*, a device capable of diverting the flow of marine sewage so that a vessel’s marine sanitation device is bypassed and raw sewage is discharged directly into the water) must be secured to prevent the overboard discharge of sewage from any vessel with a Type III device by taking specified actions that totally eliminate the possibility of overboard vessel sewage discharge while in Maryland waters.

USCG and the Natural Resources Police may enforce marine sanitation device requirements. A person who violates these provisions of State law is subject to a civil penalty of up to \$2,000. MDE generally enforces NDZ prohibitions against discharge. A violator is subject to a fine of up to \$1,000.

Background: Sewage wastes discharged from boats can contain microorganisms, nutrients, and chemical products that may have harmful effects upon aquatic life and water quality. Even small amounts of microorganisms from sewage waste can introduce diseases like hepatitis to people in contact with the water. Bacteria can contaminate shellfish and make them unsuitable for human consumption.

The Department of Natural Resource’s Marine Sewage Pumpout Program for Recreational Vessels

DNR’s Marine Sewage Pumpout Program uses State and federal funding to install waste pumpout units at marinas for recreational vessels. Since 2000, DNR has funded the installation of 233 waste units. The Governor’s proposed fiscal 2018 budget includes \$404,452 in federal funds for the program.

No-discharge Zones

According to EPA, eight states – Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, Rhode Island, Vermont, and Wisconsin – have all (or nearly all) of their surface waters designated as NDZs. In addition, a number other states have segments of their surface waters designated as NDZs.

Currently, there are two NDZs in portions of Maryland waters. The Herring Bay NDZ is a 3,145-acre area of water located along the western shore of the Chesapeake Bay in southern Anne Arundel County. The Northern Coastal Bays NDZ is a 12,780-acre area of water that includes all tidal waters north of the Ocean City inlet to the Delaware state line. In 2016, in cooperation with the Chester River Association, Maryland petitioned EPA to declare the Chester River and its tributaries as a NDZ. The application is under review by EPA.

To initiate the NDZ process, an interested party, group, or local government can discuss their concerns with the appropriate state agency that addresses vessel sewage discharges. If the state determines an area of water is appropriate for NDZ designation, the state can submit an application to the EPA Regional Administrator to have the waters designated. The application and designation process varies depending upon the type of NDZ that the state is seeking.

State Expenditures: General fund expenditures for MDE increase by at least \$50,000 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring a contractor to develop a water quality-based approach to designate vessel sewage discharge areas. MDE anticipates that designating discharge areas requires an evaluation and determination of acceptable loading levels from sewage pollutants throughout the Chesapeake Bay and its tributaries. MDE also advises that the study required is a multiyear effort because pollution levels vary due to seasonal and meteorological variations. Once an area is designated, MDE must conduct ongoing monitoring to ensure the area can remain open for marine vessel sewage disposal.

General fund expenditures also increase in future years for continued monitoring and evaluation of discharge areas; however, any increase in costs in future years cannot be reliably estimated at this time.

DNR can work with MDE to designate discharge areas within the Chesapeake Bay and its tributaries with existing budgeted resources.

Additional Comments: As noted above, EPA regulates the discharge of vessel sewage under CWA and establishes approved NDZs through a well-established process in conjunction with states. According to DNR, the bill appears to establish a de facto NDZ

(in areas not designated as approved discharge areas) without the approval of EPA, as required by CWA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; City of Westminster; Maryland Department of the Environment; Department of Natural Resources; U.S. Environmental Protection Agency; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510