

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 893 (Senators M. Washington and Elfreth)
Education, Energy, and the Environment

Environment - Siting Requirements for Crematories and Crematory Incinerators
- Areas III and IV

This emergency bill prohibits, in specified areas of the State, a new crematory from being located within 1,000 feet of any of the following: (1) a comprehensive care facility; (2) an extended care facility; (3) a child care center; (4) a family child care center; (5) a public or nonpublic primary, elementary, or secondary school building; or (6) a residential property. The Maryland Department of the Environment (MDE) may not issue a permit under Subtitle 4 of Title 2 of the Environment Article (Ambient Air Quality Control – Permits and Registration) to a crematory, or a property or funeral home with a crematory incinerator, that is in violation of that prohibition. The bill does not apply statewide; it applies only in Areas III and IV, as defined in specified regulations (Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, Howard, Montgomery, and Prince George’s counties). MDE must adopt regulations to implement the bill.

Fiscal Summary

State Effect: Special fund revenues for MDE decrease minimally beginning in FY 2024 due to a reduction in permit fees collected from crematories, as discussed below. MDE can implement the bill and adopt necessary regulations with existing budgeted resources.

Local Effect: The bill does not have a direct, material effect on local government finances. However, the bill does have an operational effect on local governments located within the jurisdictions where the bill applies, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “crematory” is defined as a building, portion of a building, or structure that has the necessary appliances and facilities for cremation. “Cremation” means the process of reducing human remains to bone fragments through intense heat and evaporation using a mechanical process, a thermal process, or pulverization.

Current Law: In Maryland, cremation is regulated either by the Office of Cemetery Oversight (OCO) within the Maryland Department of Labor or the State Board of Morticians and Funeral Directors within the Maryland Department of Health, based on ownership of the crematory. Specifically, OCO and the board each regulate facilities in which their registrants/permit holders or licensees hold majority ownership. Independent (or free-standing) crematories are subject to the jurisdiction of OCO.

Crematories are also subject to MDE regulatory authority. Under MDE regulations, in Areas III and IV, except for certain types of incinerators, including crematory incinerators, a person may not cause or permit the construction or use of any incinerator. To operate any crematory in the State, the owner must procure separate air quality permits from MDE to construct and operate the facility.

An air quality permit to *construct* is a one-time permit that is required prior to construction of a crematory and/or installation of equipment therein. An air quality permit to construct does not have a specified expiration date; however, the permit is no longer valid if MDE determines as follows: (1) substantial construction has not commenced within 18 months of the date on which the permit was issued; (2) construction has been substantially discontinued for a period of 18 months after construction commenced; or (3) the source for which the permit was issued has not been completed within a reasonable period after the issuance of the permit. For crematories, MDE imposes an application fee of \$1,500 for an air quality permit to construct.

A State permit to *operate* a crematory is subject to a five-year limitation and conditioned on compliance with specified MDE regulations. MDE requires that a complete application for an initial permit to operate be submitted no later than 60 days before a crematory is to commence operating. A complete application for the renewal of a permit to operate must be submitted at least 60 days before the permit is set to expire. If a timely application for a renewal has been submitted, the current permit to operate remains in effect until MDE makes a final decision to issue or deny the new permit. Pursuant to MDE regulations, the holder of an air quality permit to operate a crematory must pay an annual fee consisting of a base fee of \$500 and, if applicable, an additional emissions-based fee for each ton of regulated emissions. (MDE advises that most crematories pay between \$500 and \$600 total.)

Air quality permit fees collected by MDE are deposited into the Maryland Clean Air Fund.

State Revenues: Special fund revenues to the Maryland Clean Air Fund decrease minimally beginning in fiscal 2024 due to a reduction in permit fees collected from crematories. According to MDE, there are approximately 32 crematories currently operating in the jurisdictions affected by the bill. MDE advises that all 32 crematories are located within 1,000 feet of one of the facilities or properties that the bill specifies as being prohibited for the siting of new crematories. MDE estimates that the Air Quality Permits Program processes an average of four crematory permits to construct each year that would likely be prohibited under the bill. Given that the application fee for a crematory permit to construct is \$1,500, special fund revenues decrease by an estimated \$6,000 annually; due to the bill's emergency status, special fund revenues also decrease minimally in fiscal 2024.

MDE further advises that crematories pay an average of \$500 per year for permits to operate. With fewer crematories being built in affected jurisdictions under the bill, special fund revenues from fees for permits to operate that would otherwise be collected from those crematories also decrease. Any such decrease is expected to be minimal; if four fewer crematories are paying the fee each year, special fund revenues decrease by an estimated \$2,000 annually.

The bill prohibits MDE from issuing a permit under Title 4, Subtitle 2 of the Environment Article to a crematory or a property or funeral home with a crematory incinerator that *is in violation of the bill's provisions*. MDE advises that it is unclear if the bill prohibits *existing* crematories from obtaining permits to operate to add new cremation units or replace damaged or worn-out units – or even from renewing their existing operating permits – if they are located within 1,000 feet of one of the specified facilities, centers, or properties. If the bill is intended to apply to *existing* facilities, MDE advises that all crematories located in the affected jurisdictions would eventually be forced to cease operations because they would not be permitted to replace existing cremation units as needed – and potentially to even renew their existing operating permits. Accordingly, to the extent existing facilities are affected, special fund revenues from fees for permits to operate that MDE would otherwise collect decrease further.

Local Fiscal Effect: The Maryland Municipal League and the Maryland Association of Counties each advise that the bill preempts local zoning authority in the jurisdictions where the bill applies. The bill's restrictions on building new crematories within 1,000 feet of a residential property or other specified facilities may result in a *de facto* ban on any new crematories in at least some of the affected jurisdictions. Even so, any direct impact on local government finances is anticipated to be minimal.

Small Business Effect: Small businesses, such as funeral home operators, planning to build new crematories in Baltimore City or other affected jurisdictions are likely to

abandon those plans due to the bill's siting requirements for new crematories. Existing small businesses that operate crematories in the affected jurisdictions (to the extent they are not prohibited from obtaining new or renewal operating permits under the bill) benefit from facing fewer new competitors, which may incentivize them to expand their operational capacity and/or raise prices. Small business crematories in parts of Maryland outside of the affected jurisdictions may experience increased demand for their cremation services.

In addition, other small businesses that operate in close proximity to a site where a new crematory would have been built, in the absence of the bill, avoid potential negative effects, such as poorer air quality.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Maryland State Department of Education; Maryland Department of the Environment; Maryland Department of Health; Anne Arundel County Public Schools; Department of Legislative Services

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