

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1374 (Delegates Embry and Boyce)
Environment and Transportation

Environment - Crematory - Setback Requirements and Permits

This emergency bill prohibits a person from locating a new crematory within 1,000 feet of (1) an assisted living or nursing facility; (2) a property that primarily serves children, including a child care center, a family child care home, a preschool facility, or a public or nonpublic elementary or secondary school; or (3) a residential property. The Maryland Department of the Environment (MDE) may not issue a permit to a crematory that violates this prohibition. 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, 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. A “residential property” means a building, structure, or portion of a building or structure that is designed principally and is intended for human habitation.

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. 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 49 crematories currently operating in Maryland. MDE advises that all 49 crematories are located within 1,000 feet of an assisted living or nursing facility, a property that primarily serves children, or a residential property. MDE estimates that the Air Quality Permits Program processes an average of eight 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 \$12,000 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 the State as a result of 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 eight fewer crematories are paying the fee each year, special fund revenues decrease by an estimated \$4,000 annually.

The bill prohibits MDE from issuing a permit to a crematory that *is located in violation of the bill's prohibition*. 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 or properties. If the bill is intended to apply to *existing* facilities, MDE advises that all existing crematories 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. 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 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 densely populated jurisdictions in the State are likely to abandon those plans due to the bill's siting requirements for new crematories. Moreover, it may prove difficult, even in less populated counties, for small businesses to find available sites where new crematories may be constructed.

To the extent that the bill significantly impedes the construction of new crematories in the State, existing small businesses that operate crematories benefit from facing fewer new competitors and may be incentivized to expand their operational capacity and/or raise prices – assuming the bill does not prevent them from being able to obtain the necessary permits to do so. To the extent the bill prohibits existing crematories from continuing to operate in the future, funeral homes and cemeteries will likely need to outsource cremation to facilities in other states.

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; Maryland Department of Labor; Baltimore City Public Schools; Baltimore County Public Schools; Montgomery County Public Schools; Department of Legislative Services

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