

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1243 (Delegate Jacobs, *et al.*)
Environmental Matters

Environment - Water Pollution Control - Penalties

This bill increases the maximum civil and administrative penalties applicable to a violation of the Water Pollution Control subtitle of the Environment Article and modifies the distribution of penalty revenue. Specifically, the bill increases the maximum civil penalty from \$10,000 to \$20,000 per violation and increases the maximum administrative penalty from \$5,000 per violation and \$50,000 total, to \$10,000 per violation and \$100,000 total. The distribution of administrative penalty revenue is modified to allocate (1) 75% to the Maryland Department of the Environment (MDE) for specified monitoring and surveillance activities (consistent with the distribution of all such penalty revenue under current law) and (2) 25% to the Department of Natural Resources' (DNR) Fisheries Research and Development Fund (FRDF) for oyster restoration purposes. The distribution of civil penalty revenue is modified to allocate all revenue to FRDF for oyster restoration purposes rather than to MDE for water pollution control programs.

Fiscal Summary

State Effect: Special fund revenues increase, potentially significantly, beginning in FY 2014 due to the collection of additional penalties. In addition, special fund revenues from water pollution penalties are redistributed from MDE to DNR in FY 2014 and future years; however, any impact cannot be reliably estimated. Expenditures are not directly 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 an administrative penalty of up to \$5,000 per violation and up to \$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 maximum administrative penalty from \$1,000 to \$5,000 per violation. Civil and administrative penalties are paid into the Maryland Clean Water Fund and used to support water pollution control core mission activities, such as inspection, permitting, and compliance.

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.

A criminal prosecution or suit for a civil penalty for violation of the Water Pollution Control subtitle must be instituted within three years of the violation.

Since January 1, 2009, MDE has implemented a new enforcement initiative to address unauthorized discharges of pollutants resulting from sanitary sewer overflows. Under this initiative, MDE has begun assessing penalties for all sewage overflows, with the exception of permitted combined sewer overflows, unless the owner or operator of the system clearly demonstrates that the overflow was beyond their control and in spite of taking all reasonable steps to properly operate, maintain, and improve the system. Previously, MDE targeted only those systems with numerous sewage overflows or large volume overflows for enforcement actions. Since July 2009, MDE has collected about \$1.1 million in penalties from enforcement of sewage overflow violations.

DNR's FRDF is composed of revenue from, among other things, Chesapeake Bay and coastal sport fishing licenses, commercial fishing licenses and permits, specified oyster and clam shell payments, the sale of seed oysters, specified fines or forfeitures, and general fund appropriations. FRDF revenues must be used for (1) replenishing fisheries resources and related research; (2) matching federal funds available for research and development of fishing resources; and (3) administrative costs.

State Revenues: Special fund revenues increase beginning in fiscal 2014 due to the collection of additional administrative and civil penalties. Any such increase cannot be reliably estimated due to the variability of water pollution control 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. While it is unlikely that the amount of 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 likely exceeds \$100,000 annually.

The bill also redirects water pollution penalty revenues – 25% of the administrative penalty revenue and 100% of civil penalty revenue – from MDE's Clean Water Fund to DNR's FRDF for oyster restoration purposes. The impact of this provision cannot be reliably estimated; however, MDE advises that while increasing penalties for water pollution violations may result in higher average settlements and judgments, any increase in MDE penalty funding is likely more than offset by the redirection of penalty revenue from MDE to DNR.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Amanda Mock

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