

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1358 (Delegate McMillan, *et al.*)
Environment and Transportation

Environment - Administrative Penalties - Statute of Limitations

This bill establishes an exception to the tolling of the statute of limitations for an action for an administrative penalty under the Environment Article until the action that caused the ongoing violation has ceased. If the Maryland Department of the Environment (MDE) knew or reasonably should have known of an ongoing violation and failed to notify the responsible person, the statute of limitations must run from the date that MDE knew or reasonably should have known of the violation.

Fiscal Summary

State Effect: General and/or special fund revenues may decrease beginning in FY 2017 to the extent that the potential earlier tolling of the statute of limitations for an ongoing violation results in the expiration or shortening of any MDE enforcement actions without the assessment and collection of penalties. Expenditures are likely not affected, but the bill may affect MDE inspection and enforcement workloads and make it more difficult for MDE to bring enforcement actions.

Local Effect: Local government expenditures may decrease to the extent that the potential earlier tolling of the statute of limitations for an ongoing violation reduces the number of administrative penalties assessed against a jurisdiction for a violation of State environmental laws. Revenues are not affected.

Small Business Effect: Potential meaningful benefit to the extent that the potential earlier tolling of the statute of limitations for an ongoing violation reduces the number of administrative penalties assessed against small businesses for violations of State environmental laws.

Analysis

Current Law/Background: MDE must bring a criminal prosecution or a suit for a civil penalty for violation of any provision of the Environment Article, or any regulation, order, or permit, within three years of the date that MDE knew, or reasonably should have known, of the violation.

Chapter 254 of 2015 established a five-year statute of limitations applicable to an action for an administrative penalty brought by MDE. Thus, MDE must bring an action for an administrative penalty for violation of any provision of the Environment Article, or any associated regulation, order, or permit, within five years of the date that MDE knew, or reasonably should have known, of the violation. For an ongoing violation, the limitations period begins when the violation ceases.

Generally, a prosecution for a misdemeanor under State law must be brought within one year after the date the offense was committed. However, there are more than two dozen exceptions to this general statute of limitations; of these exceptions, the most common alternative limitations period is three years. Additionally, the general statute of limitations in Maryland for civil actions provides a three-year limitations period.

The relevant statute of limitations period under federal environmental laws, including the Clean Water Act and Clean Air Act, is typically five years, which is the generally applicable statute of limitations established by the U.S. Congress for civil actions, suits, and proceedings.

State Revenues: A reliable estimate of any change in penalty revenues collected by MDE cannot be made, as it is dependent on future MDE enforcement decisions. General and/or special fund revenues may decrease each year, beginning in fiscal 2017, to the extent that MDE is unable to undertake enforcement actions that would otherwise result in the collection of administrative fines due to the new potential earlier tolling of the statute of limitations for an action for an administrative penalty.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of the Environment, Department of Legislative Services

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