

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 121 (Chair, Environment and Transportation Committee)(By Request - Departmental - Environment)

Environment and Transportation Education, Health, and Environmental Affairs

Environment - Hazardous Material Security - Repeal

This departmental bill repeals Maryland’s Hazardous Materials Security (MHMS) law, which requires facilities that store, dispense, use, or handle threshold amounts of hazardous materials to conduct and submit self-audits and a \$2,500 fee to the Maryland Department of the Environment (MDE) every five years. The bill repeals all related provisions, including those (1) directing fees collected from regulated facilities into the Community Right-to-Know Fund; (2) requiring MDE to adopt hazardous material security standards that meet specified requirements; and (3) establishing civil penalties for noncompliance.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: MDE special fund revenues from facility fees decrease by \$82,500 in FY 2021 and every five years thereafter due to the elimination of the program. Special fund expenditures also decrease beginning in FY 2018 due to the elimination of the program; most of the savings accrues in FY 2021 and every five years thereafter, when MDE would otherwise need to hire a contractor to review self-audits. It is assumed that the part-time position associated with the program is shifted to other duties within MDE.

Local Effect: The bill is not anticipated to materially affect local finances, as local governments are exempt from facility fees. The bill could result in a minimal decrease in workload for local governments that otherwise would be required to conduct self-audits.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Current Law/Background:

Maryland's Hazardous Material Security Law

Pursuant to Chapter 504 of 2004, every five years a hazardous material facility must conduct a self-audit of the security of the facility and submit this analysis, along with a \$2,500 fee, to MDE. The analysis must include potential security threats, vulnerabilities, and consequences to the facility; and any changes undertaken at the facility to implement the law.

Under current regulations, facilities are required to comply with specified hazardous material security standards and must (1) prepare a document prioritizing and analyzing potential security threats, vulnerabilities, and consequences; (2) develop and implement security measures commensurate with risks; (3) document security management programs, processes, and procedures; (4) establish training, drills, and guidance for employees, contractors, service providers, and others; (5) communicate, dialogue, and exchange information with employees, communities, and government agencies and officials; (6) conduct specified internal audits; and (7) certify to MDE that a qualifying third party has verified that the physical security measures that have been identified under the periodic analysis have been implemented.

Chapter 504 created an account within the Community Right-to-Know Fund that consists of facility fees collected under the MHMS law and any funds appropriated in the State budget for costs incurred by MDE to implement the law. Funds may only be used by MDE for processing the information submitted to MDE and for regulation.

Counties and municipalities are exempt from the facility fees. Additionally, local jurisdictions that adopt standards at least as stringent as those adopted under the MHMS law are exempt from the law. Current regulations also exempt from the law any facility subject to any comprehensive federal site security program.

A person who violates the MHMS law or any implementing regulation is subject to a civil penalty of up to \$1,000 per violation. Each day is a separate violation. Pursuant to current regulations, if MDE finds that a facility is not in compliance with the hazardous material security standards, MDE must refer the violation to the Department of State Police for enforcement.

Federal Chemical Facility Anti-Terrorism Standards

The MHMS law was enacted before the U.S. Chemical Facility Anti-Terrorism Standards (CFATS) went into effect. The CFATS program, which is implemented by the U.S. Department of Homeland Security (DHS), identifies and regulates high-risk chemical facilities to ensure they have security measures in place to reduce the risks associated with those chemicals. The program was initially authorized by Congress in 2007; in 2014, it was recodified and reauthorized as the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (the CFATS Act of 2014).

Applicability of Maryland's Hazardous Material Security Program

MDE advises that only 45 facilities in Maryland were required to report to MDE for the 2016 reporting cycle; of these, 12 are owned by local governments. These facilities have all been designated as low security risk facilities by DHS and are, therefore, not subject to federal regulation. All of the facilities covered by MHMS are also regulated by the U.S. Environmental Protection Agency (EPA) under § 112(r) of the federal Clean Air Act; as a result, these facilities must submit to EPA a Risk Management Plan (RMP), which is discussed in more detail below.

Other facilities that would have been regulated under MHMS were deemed by the CFATS program to be high risk and are regulated under the federal program instead.

Federal Clean Air Act Risk Management Plan Rule

The RMP Rule, which is enforced by EPA, requires facilities that hold more than a threshold quantity of extremely dangerous regulated hazardous substance to develop an RMP. RMPs must be revised and resubmitted to EPA every five years. An RMP must address three areas: (1) a hazard assessment that details the potential effects of an accidental release, an accident history of the last five years, and an evaluation of worst-case and alternative accidental releases; (2) a prevention program that includes safety precautions and maintenance monitoring, and employee training measures; and (3) an emergency response program that spells out emergency health care, employee training measures, and procedures for informing the public and response agencies should an accident occur.

State Fiscal Effect: Special fund revenues decrease by approximately \$82,500 in fiscal 2021 and every five years thereafter from fee revenues that would have been collected in the absence of the bill. This estimate is based on fiscal 2016 fee collections; in that year, 45 facilities were subject to the MHMS law, and 33 of those facilities were required to pay the \$2,500 fee.

Special fund expenditures for MDE also decrease beginning in fiscal 2018 due to the elimination of the program. Most of the savings accrues to MDE in fiscal 2021 and every five years thereafter, when MDE would otherwise need to hire a contractor to review audit reports submitted by regulated facilities.

This analysis assumes that the one part-time employee associated with the program is shifted to other activities within MDE; thus, the analysis does not reflect any personnel savings.

DLS notes that there is currently a fund balance in the MHMS account of the Community Right to Know Fund. While MDE advises that the current fund balance is sufficient to cover any remaining costs that may be incurred before the program is eliminated, it is unclear if any funds will remain unexpended at the time the program terminates.

It is assumed that the elimination of the enforcement provisions under the MHMS law, including the civil penalty provisions, does not materially affect State finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of State Police; U.S. Department of Homeland Security; U.S. Environmental Protection Agency; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2017
fn/lgc Third Reader - March 15, 2017

Analysis by: Kathleen P. Kennedy

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment – Hazardous Materials Security - Repeal

BILL NUMBER: HB 121

PREPARED BY: Department of the Environment
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON
MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation repeals a law that requires the owner or operator of a covered facility to analyze the security at their facility. A report concerning that analysis, usually referred to as a Hazardous Materials Security Plan, must be submitted to MDE every five years. Many covered facilities must engage a contractor(s) or local government to prepare the security reports, provide the third- party verification and perform compliance assistance. If the owner or operator is a privately owned facility, then a \$2,500 fee must also be paid. The total compliance cost for this program for privately owned businesses can be \$10,000 or more. The proposed legislation will relieve two small businesses covered by this law from the required fee, reporting obligations and compliance activities required by the program