

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 739

(The Speaker)(By Request - Office of the Attorney
General)

Environment and Transportation

Environment - Multidefendant Oil and Hazardous Substance Pollution Cases -
Effect of Settlement

This bill exempts certain pollution cases related to the discharge of oil and release of a hazardous substance from the Maryland Uniform Contribution Among Joint Tort-Feasors Act (MUCATA). The bill (1) requires a factfinder to make specified determinations of liability and assign comparative responsibility to all parties joined in the legal action; (2) authorizes the State to continue to pursue or begin new legal action if a settlement does not provide complete relief; (3) establishes that a settlement with the State for specified claims does not release other persons from liability but does reduce the remaining responsible persons' "proportionate share of liability," as specified; and (4) authorizes a person who satisfies specified claims with the State to seek contribution from other responsible persons. **The bill applies retroactively to all legal actions pending on the bill's July 1, 2021, effective date.**

Fiscal Summary

State Effect: Potential increase in special fund revenues for the Maryland Department of the Environment (MDE) and reduction of litigation costs for the Office of the Attorney General (OAG), as discussed below.

Local Effect: Potential indeterminate effect on local government finances, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The factfinder in an applicable action must (1) make a determination of the total liability in the legal action and (2) assign comparative responsibility to all parties joined in the legal action. “Proportionate share of liability” means the percentage of comparative responsibility assigned by the factfinder to a settling party pursuant to this determination.

Discharge of Oil Cases

For cases related to the discharge of oil, if the State obtained less than complete relief from a responsible person who has resolved the person’s liability with the State in a settlement, with respect to any *other* person responsible for the discharge who has not resolved the person’s liability, the State may continue to pursue an ongoing legal action or bring a new legal action against the person.

If a person responsible for the discharge resolves the person’s liability to the State in a settlement, that person is not liable for claims for noncontractual contribution or indemnity regarding any matter or claim addressed in the settlement. A settlement that resolves the liability of a particular person responsible for the discharge does not release from liability other persons responsible for the discharge, except as specifically provided for in the settlement, but does reduce the potential liability of other persons responsible by the settling person’s proportionate share of liability for all settled claims. A person responsible for the discharge who has resolved the person’s liability to the State in a settlement or through satisfaction of a judgment may seek contribution from any other person responsible for the discharge who has not settled the other person’s liability to the State in accordance with specified provisions.

Release of Hazardous Materials Cases

The bill applies similar provisions to an action brought by OAG to recover costs and interest from any responsible person who fails to reimburse MDE for expenditures MDE incurred to respond to a release or threatened release of a hazardous substance at a particular site.

The bill explicitly repeals application of MUCATA, including a right of contribution, in actions brought against a person who is responsible for the release or threatened release of a hazardous substance under Title 7, Subtitle 2 of the Environment Article.

In addition to the factfinder determinations mentioned above, the bill establishes that if a person responsible for the hazardous substance violation resolves the person’s liability to the State in a settlement, that person is not liable for claims for noncontractual contribution

or indemnity regarding any matter or claim addressed in the settlement. A settlement that resolves the liability of a particular person responsible for the release does not release from liability other responsible persons except as specifically provided for in the settlement but does reduce the potential liability of other persons responsible by the settling person's proportionate share of liability for all settled claims. A person responsible for the violation who has resolved the person's liability to the State in a settlement or through satisfaction of a judgment may seek contribution from any other person responsible for the discharge who has not settled the other person's liability to the State in accordance with specified provisions in the bill.

Current Law/Background:

Maryland Uniform Contribution Among Joint Tort-Feasors Act

MUCATA is contained in Title 3, Subtitle 14 of the Courts and Judicial Proceedings Article. "Joint tort-feasors" means two or more persons jointly or severally liable in tort for the same injury to person or property whether or not judgment has been recovered against all or some of them. Under the doctrine of joint and several liability, if two or more defendants are found liable for a single and indivisible harm to the plaintiff, each defendant is liable to the plaintiff for the entire harm. The plaintiff has the choice of collecting the entire judgment from one defendant or portions of the judgment from various defendants, so long as the plaintiff does not recover more than the amount of the judgment. If a defendant ends up paying for more than the defendant's share of the liability, the paying defendant may pursue action against the other tortfeasors/defendants for their proportionate share of the judgment paid by the paying defendant.

Under MUCATA, the right of contribution exists among joint tortfeasors. A joint tortfeasor is not entitled to a money judgment for contribution until the joint tortfeasor has by payment discharged the common liability or has paid more than a pro rata share of the common liability. A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

The recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasor. A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but it reduces the claim against the other tortfeasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim must be reduced if greater than the consideration paid. A release by the injured person of one joint tortfeasor does not relieve the joint tortfeasor from liability to make contribution to another joint tortfeasor unless the release (1) is given before the right of the other tortfeasor to secure a money judgment for contribution has

accrued and (2) provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all other tortfeasors.

MUCATA does not impair any right of indemnity under existing law.

Section 7-221 of the Environment Article specifies that a person who is liable for release or threatened release of a hazardous substance is generally subject to MUCATA, including a right of contribution, as if that person had caused an injury in tort.

Maryland Department of the Environment – Releases of Oil and Hazardous Substances

MDE has general authority to investigate and clean up releases of oil and hazardous substances.

Oil Control Program and Related Activities: The goal of MDE's Oil Control Program is to ensure the safe handling, transportation, and storage of petroleum products within Maryland and to ensure the remediation of releases when they occur. Inspectors investigate complaints of illegal dumping and the improper handling of oil as well as noncompliance with State and federal regulations. The Maryland Oil Disaster, Containment, Clean-Up and Contingency Fund was established in 1986 to provide funding to MDE's oil pollution prevention programs, such as permitting, enforcement, and oil spill response.

The Emergency Response Division (ERD) within MDE is the primary State unit that receives and tracks spill reports involving oil. ERD provides (1) 24-hour emergency response to spill incidents; (2) technical support to other programs within MDE; (3) site safety and technical support to the Environmental Crimes Unit during criminal search warrants; and (4) specific training to local fire, police, environmental health departments, and other interested parties upon request.

Under current law, known responsible parties (whether State agencies, private, or otherwise) are directly liable for damages to a person or real property from releases of oil, including from underground oil storage tanks. The responsible party must pay clean-up costs or reimburse the State for its costs to conduct these cleanups.

Controlled Hazardous Substance Enforcement Division: MDE's Controlled Hazardous Substance Enforcement Division oversees assessment and cleanup of hazardous waste sites by responsible persons. It also conducts assessment and cleanup of hazardous waste sites when no responsible person exists for a site or when the person is unable or unwilling to do the work. The Hazardous Substances Response Plan establishes the framework for conducting assessment and cleanup activities. The required work is broken into three phases: assessment; cleanup; and operation and monitoring.

The State Hazardous Substance Control Fund (SHSCF) was established to fund activities by MDE and by any State or local agency (with MDE approval) that are related to identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances. All application and permit fees, renewal fees, transporting vehicle certification fees, and all other funds that are collected by MDE pursuant to Subtitle 2 of Title 7 of the Environment Article (which governs controlled hazardous substances) are paid into SHSCF.

Generally, the person responsible for a release (or a threatened release) must reimburse MDE for all expenditures made from SHSCF by MDE in response to the release or threatened release of a hazardous substance at a particular site.

State Fiscal Effect: OAG did not respond to a request for additional information about the potential fiscal effect of the bill. While the bill could result in additional settlements, including in cases pending as of the bill's effective date due to the retroactive clause, the actual fiscal/operational impact of this happening is unclear at this time. To the extent that additional settlements do occur, the bill may increase special fund revenues from settlements in applicable cases. MDE advises that to the extent the bill increases the likelihood that defendants in multi-defendant oil and controlled hazardous substance cases enter into settlements with the State, the bill affects MDE. However, MDE cannot estimate a precise impact. If the bill facilitates settlements with defendants, the bill may also reduce OAG litigation. This estimate assumes that any reduction in resources devoted to litigation of applicable cases is redirected to other OAG cases.

Local Fiscal Effect: Similarly, the bill has an indeterminate effect on local finances. If the bill facilitates settlements with certain defendants, a local government defendant may benefit from the ability to settle its liability and avoid the expense of trial. Conversely, the bill may increase local government expenditures to an indeterminate extent. If a local government is a defendant in an applicable lawsuit, depending on how the factfinder determines each defendant's relative share of responsibility, the share a local government may be ordered to pay could be more or less than it would have been responsible for paying absent the bill.

Prince George's County advises that its Department of Environment's Stormwater Management Division implements capital water quality restoration and drainage projects throughout the county. If instances of illicit hazardous materials disposal or spills are better managed or held accountable through responsible parties, it may reduce this risk on the county's behalf. The county advises that it cannot develop an estimate of these type of instances in order to provide a precise fiscal impact.

The City of Annapolis advises that the bill may reduce the city's responsibility as a joint tortfeasor based on a factfinder's determination of comparative liability and reduces

potential liability by a settling person's proportionate share of the liability for all settled claims. The city may also seek contribution from any other responsible person who has not settled with the State.

Small Business Effect: The bill may have a meaningful effect on small business defendants in multidefendant actions to which the bill applies. Depending on how the factfinder determines each defendant's relative share of responsibility, the share a small business may be ordered to pay could be more or less than it would have been responsible for paying in the absence of the bill. However, to the extent that the bill facilitates settlements with certain defendants, a small business defendant may benefit from the ability to settle its liability and avoid the expense of trial.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 524 (The President)(By Request - Office of the Attorney General) - Judicial Proceedings.

Information Source(s): Montgomery and Prince George's counties; City of Annapolis; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Transportation; Office of the Attorney General; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2021
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