

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 90

(Senator West)

Education, Health, and Environmental Affairs

Environment and Transportation

Department of the Environment - Supplemental Environmental Projects
Database

This bill defines a “supplemental environmental project” (SEP) and requires the Maryland Department of the Environment (MDE) to create and maintain a database of SEPs that MDE may consider for implementation as part of a settlement of an enforcement action. In creating and maintaining the database, MDE must solicit input from communities in the State that are overburdened, underserved, or otherwise disadvantaged by environmental stressors. The bill establishes limitations and considerations MDE must take into account when choosing a SEP as part of a settlement of an enforcement action and before a violator undertakes a SEP.

Fiscal Summary

State Effect: General fund expenditures could increase, likely beginning in FY 2023, to the extent MDE hires a consultant to develop and maintain the required database and evaluate the considerations mandated by the bill; however, a reliable estimate of any increase in costs cannot be made at this time. To the extent the bill results in additional SEPs being undertaken in lieu of the payment of monetary penalties, State penalty revenues (multiple fund types) could decrease; however, a reliable estimate of any such decrease cannot be made at this time.

Local Effect: To the extent that SEPs are completed in lieu of monetary penalties, local penalty revenues could decrease; however, a reliable estimate of any such decrease cannot be made at this time. Local governments may benefit from any SEPs completed within their jurisdiction; however, no direct, material effect on local government expenditures is expected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A SEP is defined as an environmentally beneficial project or activity that is not required by law but that an alleged violator agrees to undertake as part of a settlement or enforcement action.

MDE is authorized to consider a SEP that is not in the SEP database with reasonable justification. MDE may not choose a SEP offered by the violator unless MDE approves the project and maintains documentation of the approval. Before a violator undertakes a SEP, MDE must (1) give priority consideration to the selection of a project located in the same geographic area impacted by the alleged violation and (2) ensure that the scope and cost of a chosen project is reasonably related to the nexus of the violation or the adverse impact of the violation and that the cost is sufficient to allow MDE and the alleged violator to reach a settlement.

Current Law: A SEP is an enforcement tool used by environmental agencies (such as the U.S. Environmental Protection Agency (EPA) and MDE) to augment traditional penalty actions when an entity violates an environmental law. Specifically, a SEP is a voluntary project undertaken by the violator as part of a settlement agreement or to offset monetary penalties for the violation. EPA requires a SEP to have a tangible environmental or public health benefit to the affected community or environment that is closely related to the violation being resolved but that goes beyond what is required under federal, state, or local laws.

Small Business Effect: To the extent the bill results in additional SEPs being undertaken, small businesses involved in the implementation of those projects could benefit from an increase in the demand for their services. Additionally, to the extent the bill results in additional opportunities for SEPs to be undertaken in lieu of the payment of monetary penalties, small businesses that violate a provision of the Environment Article could be affected.

Additional Comments: MDE notes that it is currently developing a SEP library of pre-approved SEPs in concurrence with a new MDE SEP policy the department is drafting.

Additional Information

Prior Introductions: SB 446 of 2021, a similar bill, passed the Senate with amendments and passed third reading with amendments in the House, but no further action was taken.

Designated Cross File: HB 595 (Delegate Mangione) - Environment and Transportation.

Information Source(s): Caroline, Howard, Montgomery, and Prince George’s counties; City of Annapolis; Maryland Department of the Environment; U.S. Environmental Protection Agency; Department of Legislative Services

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