

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1088 (Delegate Bridges)
Environment and Transportation

**Emissions Standards, Ambient Air Quality Standards, and Solid Waste
Management - Local Authority**

The emergency bill makes various changes related to the authority of a political subdivision to adopt ordinances, rules, and regulations that are at least as stringent as standards set by the Maryland Department of the Environment (MDE) in the areas of ambient air quality control and refuse disposal systems and solid waste regulation. The bill also expressly states that a current law requirement for MDE to approve a county water and sewerage plan does not limit (1) a county’s contracting authority or (2) a county’s authority to set emission standards or ambient air quality standards. Finally, the bill requires MDE, by October 1, 2023, to publish information on its website recognizing the legal authority of political subdivisions to adopt local ordinances, rules, or regulations to ensure clean air and to regulate solid waste management within the jurisdictional boundaries of the political subdivision so long as the local standards are at least as stringent as State and federal standards.

Fiscal Summary

State Effect: Although State expenditures may increase, any such increase cannot be estimated at this time, as discussed below. State revenues are likely not affected.

Local Effect: Although local finances may be affected, any such impact cannot be estimated at this time, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An ordinance, a rule, or a regulation adopted by a political subdivision pursuant to § 2-104 of the Environment Article may not be construed to be in conflict with a standard set by MDE if (1) the local standard is at least as stringent as the standard set by MDE and (2) it is technically possible for a regulated entity to comply with MDE's standard and the local standard.

The bill also specifies that, except as provided in the bill, Title 9 of the Environment Article (which governs refuse disposal systems and solid waste regulation) does not limit the power of a political subdivision to adopt any ordinance, rule, or regulation to regulate refuse disposal systems or solid waste. However, a political subdivision may not adopt any ordinance, rule, or regulation to regulate refuse disposal systems or solid waste in a manner that is less stringent than the standards set by MDE. An ordinance, rule, or regulation adopted in accordance with the bill's provisions may not be construed to be in conflict with a standard set by MDE if the local standard is at least as stringent as the standard set by MDE.

Current Law:

Powers of Political Subdivisions under Title 2 of the Environment Article

Broadly, Title 2 of the Environment Article, which governs ambient air quality control, does not limit a political subdivision's power to adopt ordinances, rules, or regulations that set emission standards or ambient air quality standards. However, a political subdivision may not adopt any ordinance, rule, or regulation that sets an emission standard or ambient air quality standard that is less stringent than standards set by MDE. Further, the governing body of any political subdivision may ask MDE to adopt rules and regulations that set more restrictive emission standards or ambient air quality standards in that political subdivision.

Federal Clean Air Act and the Maryland Healthy Air Act

The federal Clean Air Act (CAA) is the comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, the law authorizes the U.S. Environmental Protection Agency to establish National Ambient Air Quality Standards (NAAQS) to limit levels of "criteria pollutants" to protect public health and public welfare and to regulate emissions of hazardous pollutants.

MDE implements CAA at the State level and (1) has jurisdiction over emissions into the air and ambient air quality in the State; (2) is responsible for monitoring ambient air quality in the State; and (3) must coordinate all State agency programs on ambient air quality control. Maryland's Air Quality Planning Program writes State Implementation Plans and

regulations to reduce emissions and achieve the NAAQS for six criteria air pollutants: ground-level ozone; particulate matter; lead; carbon monoxide; nitrogen dioxide; and sulfur dioxide.

Solid Waste Infrastructure in the State, Generally

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. There are several examples of regional waste management partnerships in the State.

County Water and Sewerage Plans

Each county (including Baltimore City) must have an individual or group (with adjoining counties) plan that is approved by MDE that has a 10-year forecasted water and sewerage plan to demonstrate how safe and adequate water and sewerage facilities will be provided to support planned redevelopment and new growth that is outlined in their comprehensive land use plans.

State Expenditures: MDE anticipates that general fund expenditures increase (presumably beginning in fiscal 2023 due to the bill's emergency status) to hire additional staff to review (1) new local ordinances, rules, or regulations to ensure that the standards are at least as stringent as State standards and (2) updated operational manuals of affected refuse disposal systems and other solid waste facilities. MDE also anticipates that the bill may create conflict between CAA standards and local ordinances, rules, or regulations because the bill does not require local ordinances, rules, or regulations to go through required stringent review. However, it is unclear how that conflict may affect State finances and operations. Ultimately, any fiscal or operational impact on MDE depends on whether and how many political subdivisions choose to expand local ordinances, rules, or regulations in response to the bill and the content of those ordinances, rules, or regulations. Any attempt to provide a more specific estimate would be speculative at this stage.

For a discussion of the potential impacts on State agencies as permit holders, see the Additional Comments section below.

Local Fiscal Effect: If a political subdivision chooses to adopt, implement, and enforce a local ordinance, rule, or regulation in response to the bill, local finances may be affected. The Department of Legislative Services does not have any information about how many local jurisdictions may be interested in taking such action or the extent to which any future local ordinances, rules, or regulations might affect local finances.

For a discussion of the potential impacts on local governments as permit holders, see the Additional Comments section below.

Small Business Effect: For a discussion of the potential impacts on small businesses as permit holders, see the Additional Comments section below.

Additional Comments:

Effect on the Regulated Community: To the extent that the bill results in additional, more stringent standards being set at the local level, the bill may result in increased costs for the regulated community (facilities regulated under the State’s ambient air quality provisions and the State’s refuse disposal systems and solid waste provisions). Affected entities could include State agencies, local governments, and small businesses. Since any additional ordinances, rules, or regulations must be at least as stringent as State and federal standards, they are likely to result in additional compliance costs – and potentially additional permitting costs – for regulated entities. However, as discussed above, any actual impacts depend on whether and to what extent political subdivisions adopt stricter standards as a result of the bill’s changes, which cannot be predicted.

Relevant Court Case: In 2019, the Baltimore City Council passed and signed into law the Baltimore Clean Air Act (BCAA). Among other things, the ordinance, which applies to all commercial solid waste incinerators in Baltimore City, limits emissions of specified air pollutants and requires continuous air quality monitoring. In *Wheelabrator Baltimore, LP, et al. v. Mayor and City Council of Baltimore*, 449 F. Supp. 3d 549 (D. Md. 2020), the court addressed the question of whether or not the new standards were preempted by State law, among other things. Particularly, the court stated that it agreed with the plaintiffs in that the more restrictive regulations under BCAA were preempted by Maryland law. The court in *Wheelabrator* explains that BCAA is “conflict preempted” by Maryland State law because (1) it prohibits conduct that is expressly permitted under the State-issued permit and (2) it “second guesses” the complex federal and state regulatory scheme for air emissions.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Baltimore, Charles, and Garrett counties; Maryland Association of Counties; Northeast Maryland Waste Disposal Authority; City of Laurel; Maryland Municipal League; Office of the Attorney General; Maryland Department of the Environment; Department of Legislative Services

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