

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 228 (Senator Mooney)
Education, Health, and Environmental Affairs

Environment - Incinerator Permits - Conditions for Issuance

This bill prohibits the Maryland Department of the Environment (MDE) and any local jurisdiction from issuing a permit to build an incinerator unless it is to be located in an area zoned for heavy industry; complies with the local zoning requirements; and is at least three miles from any residential dwelling, church, school, park, or hospital. Existing incinerators may not be expanded, and if abandoned, may not be resumed.

The bill is to apply prospectively and may not impair any presently existing obligation or contract right.

Fiscal Summary

State Effect: Special fund revenues at MDE decrease minimally due to reduced collection of incinerator-related permit fees. Potential minimal decrease in workload for MDE to the extent that the bill reduces the number of permits to be renewed and incinerators regulated.

Local Effect: Expenditures may increase significantly beginning in FY 2011 in several counties, including Baltimore, Carroll, Frederick, and Harford counties, and Baltimore City, due to an increase in the cost of solid waste disposal. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: A person may not construct, modify, operate or use any source, including incinerators, which causes air emissions without a permit. Generally, there are two types of incinerators: (1) municipal solid waste (MSW) incinerators used for waste disposal and energy generation; and (2) medical waste incinerators used to dispose of hospital wastes.

Incinerators are pervasively regulated under State and federal environmental and public health laws due to their wide-ranging effects on all environmental media and community resources. For example, one MSW incinerator facility will utilize water resources, discharge both air and water pollution, and produce solid and potentially hazardous waste, but another MSW incinerator may generate renewable energy, reduce waste disposal to county landfills, and prevent greenhouse gas emissions related to global climate change. Several agencies, including MDE, the Department of Health and Mental Hygiene, the Public Service Commission, and the Department of Natural Resources' Power Plant Research Project are involved in permitting, regulatory enforcement, and research activities related to incinerators.

There are about 90 MSW incinerators currently operating nationwide, including four MSW incinerator sites in Maryland. These four incinerator facilities have the capacity to generate several hundred megawatts of energy (267 MW of which are certified as Tier 2 renewable sources in Maryland) and to handle several thousand tons per day of municipal solid waste. The Northeast Maryland Waste Disposal Authority (NMWDA) advises that planning is underway to add a new MSW incinerator facility in Frederick County and Baltimore City advises that an energy facility that may qualify as an MSW incinerator is being planned for a site within the city.

As discussed, MSW incinerators are both hailed for their waste disposal and renewable energy attributes and widely regulated due to various environmental impacts. As an energy source, MSW incinerators compare very favorably to coal and oil electricity generators in terms of carbon dioxide, sulfur dioxide, and nitric oxides emissions. However, MSW incinerators are significant contributors to the environmental deposition of mercury, dioxin, furan, and other toxic metals and organic compounds. Nevertheless, since U.S Environmental Protection Agency regulation under federal solid and hazardous waste laws began in the early 1990s, emissions of these toxic pollutants have fallen dramatically.

Similarly, the environmental effect of MSW incinerators may be compared with other types of solid waste disposal facilities. Recycling is generally considered the most environmentally optimal method of solid waste management. However, in the absence of composting or reusing waste materials, the municipal solid waste stream must either be

disposed of in a landfill or incinerated. A number of jurisdictions including Baltimore, Carroll, Frederick, Harford, and Montgomery counties, and Baltimore City now rely on incinerators as a significant component of their solid waste management plans. And because MSW incinerators are able to sell both metals extracted from the incoming waste stream as well as energy recovered from the incineration process, the additional revenues help defray other costs associated with incinerator operations and the counties' overall solid waste management.

Local Fiscal Effect: Legislative Services advises that at least two proposed incinerators may not be eligible to receive permits from MDE under the bill. These two incinerators are to be located in Frederick County and Baltimore City. In addition, each of the four existing MSW incinerators in Maryland will be prohibited from expanding their operations. At least two MSW incinerators, located in Baltimore City and Harford County, are currently planning or have recently considered expanding operations.

The proposed facility to be located in Frederick County has been approved by the county commissioners of both Carroll and Frederick counties. NMWDA advises that both counties have expended significant resources to date in planning the MSW incinerator and that each county as well as other nearby counties and municipalities may lose millions of dollars in the aggregate from foregone savings associated with lower waste disposal costs. Affected counties may also need to revise county solid waste management plans. In addition, Baltimore City advises that the bill may jeopardize a proposed \$900 million waste-to-energy project, worth several million dollars in future tax revenues.

Legislative Services advises, however, that the bill is prohibited from impairing any contract right existing as of the date of enactment. According to NMWDA, at least one contract relating to the proposed Frederick County incinerator has taken effect. Legislative Services is unaware of the existence of any contract relating to the proposed incinerator in Baltimore City. However, based on documents filed before the Public Service Commission, the company seeking to build and operate the MSW incinerator may have contracts in place before the bill's effective date.

Small Business Effect: To the extent that future construction associated with building or expanding incinerators is prevented by the bill, small construction and engineering contractors will be adversely affected, and small businesses engaged in solid waste hauling and disposal may also be affected.

Additional Information

Prior Introductions: SB 1056 of 2009 was referred to the Senate Rules Committee, but no further action was taken.

Cross File: None.

Information Source(s): Caroline and Montgomery counties, Baltimore City, Department of Natural Resources, Public Service Commission, Maryland Department of the Environment, Maryland Department of Planning, Northeast Maryland Waste Disposal Authority, Department of Legislative Services

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