

Department of Planning and Budget

2005 Fiscal Impact Statement

1. Bill Number SB 1089

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron Watkins

3. Committee Agriculture, Conservation and Natural Resources

4. Title Environmental enforcement

5. Summary/Purpose: The bill would authorize the Department of Environmental Quality to impose civil penalties after a formal administrative hearing. This authority was granted to the waste management program in 1998. Under the provisions of the bill, the Department may impose such penalties (up to \$32,500 for each violation, not to exceed \$100,000 per order) if the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the relevant regulatory Board or the Director, or by other means, and there is a finding that such violations have occurred, and (c) at least 90 days have passed since the issuance of the first notice of alleged violation. The actual amount of any penalty assessed would be based on the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The penalties would be subject to appeal. The bill also would help simplify water enforcement actions by allowing the State Water Control Board to delegate approval of consent orders, and increases the maximum civil penalty for violations of the air, waste, and water programs from \$25,000 to \$32,500.

The bill would require the Director of the Department of Environmental Quality to develop uniform procedures to govern the formal hearings conducted pursuant to the provisions of the bill to ensure they are conducted in accordance with the Administrative Process Act, any policies adopted by the State Water Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board and to ensure that the facility owners and operators have access to information on how such hearings will be conducted. In addition, the Director is required to develop and implement an early dispute resolution process to help identify and resolve disagreements regarding what is required to comply with the regulations promulgated by the State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board, and any related guidance. The process would be available after the issuance of a notice of alleged violation or other notice of deficiency issued by the Department. The early dispute resolution process must be developed by September 1, 2005, and information on the process would be provided to the public and to facilities potentially impacted by the provisions of the bill.

6. Fiscal impact: DPB cannot estimate any potential fiscal impact associated with the increased maximum penalties. Any such penalties would be deposited to the Virginia Environmental Emergency Response Fund.

7. Budget amendment necessary: No.

8. Fiscal implications: See Item 6.

9. Specific agency or political subdivisions affected: Department of Environmental Quality.

10. Technical amendment necessary: No.

11. Other comments: None.

Date: 02/08/2005 / mar

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cc: Secretary of Natural Resources