

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: HB1860

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

2. Patron: Lopez

3. Committee: Agriculture, Chesapeake and Natural Resources

4. Title: Aboveground storage tanks; fund; civil and criminal penalties.

5. Summary: Directs the State Water Control Board (the Board) to regulate aboveground storage tanks (AST) that measure more than 5,000 gallons in capacity and are used to contain dangerous substances other than oil. The bill directs the Board to adopt regulations that establish construction standards, requirements for registration, certification, and inspection, and other requirements of tank owners, and regulations that establish a schedule of fees. The bill authorizes the Board to require the owner to undertake corrective action, or to undertake its own corrective action, in the event of a release of a regulated substance. The bill requires tank owners to register their tanks, develop release response plans, upgrade certain older tanks, install containment infrastructure for certain tanks, notify certain parties in the event of a release of a regulated substance, and demonstrate their financial responsibility. The bill also creates the Aboveground Storage Tank Fund and provides for civil and criminal penalties for violations of requirements of the bill.

6. Budget Amendment Necessary: Yes. Items 367 and 394 of HB1500/SB900

7. Fiscal Impact Estimates: Preliminary.

7a. Expenditure Impact: DEQ Item 367

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2017	\$0	0	n/a
2018	\$2,444,000	22.0	GF
2019	\$2,182,000	22.0	GF
2020	\$2,182,000	22.0	GF
2021	\$2,182,000	22.0	GF
2022	\$2,182,000	22.0	GF
2023	\$2,182,000	22.0	GF

Expenditure Impact: DOC Item 394

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2017	\$0	0	n/a
2018	\$50,000	0	GF
2019	\$0	0	n/a
2020	\$0	0	n/a
2021	\$0	0	n/a

2022	\$0	0	n/a
2023	\$0	0	n/a

8. Fiscal Implications: This bill requires the State Water Control Board to implement a program to regulate aboveground storage tanks that measure more than 5,000 gallons in capacity and are used to contain dangerous substances other than oil. It is anticipated that this bill will have an expenditure and revenue impact. The Department of Environmental Quality (DEQ) anticipates an expenditure impact of \$2.44 million in FY 2018 and \$2.18 million annually thereafter, and 22 positions to administer the program. Until such time as the program collects sufficient revenue to cover the costs of administering the program, including enforcement, inspection, and compliance monitoring, it is anticipated that general fund support will be necessary.

The bill establishes the Aboveground Storage Tank Fund and provides for “all expenses, costs, civil penalties, charges, and judgements recovered by on behalf of the Board pursuant to this article and all moneys received as reimbursement in accordance with the applicable provisions of federal law shall be” deposited to this Fund. Additionally, the bill authorizes the Board to establish a schedule of fees to cover the costs of the program, including enforcement, inspection, and compliance monitoring.

Virginia does not have an inventory of the current number of non-petroleum above ground storage tanks (AST) in the state. For the purposes of developing an impact estimate, the department used West Virginia, which is a neighboring state and does have an AST program, as a proxy. Virginia is much larger than West Virginia, with a 2010 census of 8 million residents compared to West Virginia’s 1.85 million residents. Also, Virginia has 18,127 regulated underground storage tanks (UST) compared to West Virginia’s 4,380 regulated USTs. For purposes of this analysis, as Virginia has more than four times the population of West Virginia and regulates over four times the number of USTs that West Virginia regulates, this was extrapolated to estimate the number of ASTs in Virginia and that would be subject to regulation under the new program established in this bill.

West Virginia has 3,006 non-petroleum ASTs that are greater than 5,000 gallons. DEQ estimates that Virginia would have approximately 12,441 non-petroleum ASTs greater than 5,000 gallons. These would be inspected every three years, or the department would complete approximately 4,147 inspections each year. It is anticipated an inspector can conduct 200 inspections per year, thus, that 21 inspector positions would be required in order to conduct the estimated 4,147 inspections in each year. In addition to the inspector positions, it is anticipated that one program manager position will be required to oversee the program. It is anticipated that \$95,000 per year will be required to support each inspector position, this includes salary, benefits, training, and IT costs. Also, it is anticipated that \$125,000 per year will be required to support the manager position, this includes salary, benefits and nonpersonal services costs. Additionally, it is anticipated that the inspectors will be required to travel in the course of their duties, and that travel costs and securing mobile devices for the inspectors would be approximately \$62,000 per year. Thus, the annual expenditure impact to DEQ for program administration is estimated to be \$2.18 million.

In addition to the annual expenses, it is anticipated that the department will incur a one-time cost in FY 2018 in the amount of \$250,000 for the development and implementation of an online registration tool for owners. The inventory of tanks is expected to be several thousand. An online registration tool is an efficient mechanism for managing the expected volume.

In addition to the expenditure impact to DEQ, the bill is anticipated to result in a fiscal impact to the Department of Corrections. By creating new misdemeanors and new felonies, this bill could result in more persons being held in local and regional jails and in state prisons. It would be a misdemeanor, punishable by up to 12 months in jail and a fine of not more than \$100,000, either or both, to knowingly violate any of the regulations or orders pertaining to non-petroleum ASTs. Making a false statement, representation, or certification in any application record, report or other document would be a felony punishable by a term of imprisonment of one to three years and a fine of not more than \$100,000, either or both. Knowingly and willfully releasing, causing, or permitting a release of a regulated substance into or upon state waters would be a felony punishable by a term of imprisonment of one to 10 years and a fine of not more than \$100,000, either or both. Negligently releasing, causing or permitting the release of a regulated substance into or upon state waters would be a misdemeanor punishable by up to 12 months in jail and a fine of up to \$50,000, either or both.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this bill. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2016), the estimated total state support for local jails averaged \$32.82 per inmate, per day in FY 2015.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4, Code of Virginia, that the impact of the bill on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 780 of the 2016 Acts of Assembly requires that a minimum impact of \$50,000 be assigned to the bill.

All misdemeanor offenses carry the possibility of fines. All revenue from fines is deposited into the state Literary Fund.

This bill authorizes the Board to establish a fee to cover the program's costs. DEQ estimates the fee would need to be set at approximately \$875 per tank to cover the program's ongoing administration costs. If the fee were collected every five years for each non-petroleum AST over 5,000 gallons then the estimated annual revenue to the Aboveground Storage Tank Fund would be \$2.18 million.

Although the bill requires the Board to adopt regulations requiring every owner of an AST to demonstrate financial responsibility, such as self-insurance, insurance, guaranty, or surety, to comply with the bill's requirements, the bill also provides for the Fund to be used for corrective action, if necessary, in the event of a release of regulated substance into the environment from an AST. The fiscal impact of undertaking such a corrective action is indeterminate.

9. Specific Agency or Political Subdivisions Affected: Departments of Environmental Quality and Corrections, court system, localities.

10. Technical Amendment Necessary: No.

11. Other Comments: None.