HB 969

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 969 (Delegate McMillan, *et al.*)
Ways and Means

Repeal of Tax Subsidies for Purchase of Maryland-Mined Coal - Dedication of Revenue to Program Open Space

This bill repeals the Maryland-mined coal tax credits and requires that $14.7 million of public service franchise tax revenues be distributed annually to land preservation programs. Revenues are to be allocated to Program Open Space (POS), Rural Legacy, Heritage Conservation Fund, and Maryland Agricultural Land Preservation Fund (MALPF) in the same manner as these programs receive net transfer tax revenues as provided in Section 13-209(d) of the Tax Property Article.

The bill takes effect July 1, 2005 and applies to tax year 2005 and beyond.

Fiscal Summary

State Effect: General fund revenues could increase by approximately $1.6 million in FY 2006 due to coal mine credits no longer being claimed against the public service franchise and corporate income tax net of transfers required by the bill. Future years reflect revenue gain from coal tax credits no longer being claimed net of transfers required by the bill. Transportation Trust Fund (TTF) increase of approximately $96,000 annually in FY 2006 due to credits no longer being claimed against the corporate income tax. Special fund revenues and expenditures would increase by $14.7 million annually beginning in FY 2006 due to land preservation program transfers mandated by the bill.

($ in millions)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenue	$1.6	$2.2	$2.7	$3.1	$3.2
SF Revenue	14.8	14.8	14.8	14.8	14.8
SF Expenditure	14.7	14.7	14.7	14.7	14.7
Net Effect	$1.7	$2.3	$2.8	$3.2	$3.3

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: State aid to local governments under POS would increase by approximately $5.5 million annually beginning in FY 2006 due to increased POS funding. Local highway user revenues would increase by approximately $29,000 annually beginning in FY 2006.

Small Business Effect: Meaningful.

Analysis

Current Law:

Maryland-mined Coal Credits

Public service companies in Maryland can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. This tax credit can be claimed against the public service company franchise tax and cannot exceed the State tax liability for that tax year.

Cogenerators and electricity suppliers that are not subject to the public service franchise tax can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. The credit is restricted to the electricity suppliers that were defined before July 1, 1999 as an electricity company under the Public Utility Companies Article. This restriction does not apply if an electricity supplier is an affiliate of one of the suppliers that were defined as an electricity company prior to July 1, 1999. This credit can be claimed against the State income tax and cannot exceed the tax liability for that tax year.

Transfer Tax Revenue Distribution

The State transfer tax funds several programs in the Department of Natural Resources (DNR) and the Maryland Department of Agriculture. A portion of State transfer tax revenues (3%) is earmarked to defray administrative costs within DNR, the Department of General Services, and the Maryland Department of Planning. The remainder of the revenue is dedicated to various programs including POS, MALPF, Rural Legacy, and the Heritage Conservation Fund. **Exhibit 1** shows the distribution of State transfer tax revenues after administrative costs are deducted as specified by Section 13-209(d) of the Tax-Property Article.

Exhibit 1
Distribution of State Transfer Tax Revenues

POS	75.15%
POS Land Acquisition	1.00
MALPF	17.05
Rural Legacy	5.00
Heritage Conservation Fund	1.80
Total	**100.0%**

Of the transfer tax revenues distributed to POS, $1 million may be transferred by an appropriation in the State budget or by budget amendment to the Maryland Heritage Areas Authority Financing Fund within the Department of Housing and Community Development. Of the remaining funds, half is allocated for State acquisition and half is allocated to local governing bodies for acquisition and development of land for recreation and open space purposes.

Background:

Maryland-mined Coal Credits

Chapter 792 of 1988 established the tax credit for Maryland-mined coal purchased by public service companies, with a sunset provision of June 30, 1991. The credit allowed was $3 per ton of coal purchased by a public service company in excess of the number of tons purchased by the public service company in 1986. Chapter 832 of 1989 established a Maryland-mined coal tax credit for cogenerators and electricity producers not subject to the public service company franchise tax. The credit was equal to $3 per ton of coal purchased in excess of the amount that the cogenerator or electricity producer purchased in 1986. A cogenerator is a generating facility that produces electricity and another form of useful thermal energy (such as heat or steam) that is used for industrial, commercial, or heating and cooling purposes. The tax credit for cogenerators and electricity suppliers can be applied against the State income tax.

Chapter 700 of 2000 allowed the credit to be claimed for all amounts of coal purchased for both tax credits, not just the amount in excess of the amount purchased in 1986. Chapter 700 of 2000 also repealed the sunset provision originally established under Chapter 792 of 1988 for the tax credit available to public service companies. Chapter 700 of 2000 was not approved by the Attorney General's Office for constitutionality and legal sufficiency, in that it was determined that a court is likely to have serious problems under the Commerce Clause of the U.S. Constitution.

Maryland-mined coal has relatively high ash content and moderate levels of sulfur as compared to other types of coal such as anthracite. The sulfur and ash content contribute to acid rain and particulate pollution. As a result of amendments to the federal 1990 Clean Air Amendment, public service companies in Maryland significantly decreased their consumption of Maryland-mined coal. The Attorney General ruled in 1995 that consumption was not a requirement for claiming the credit. As a result, many companies have claimed the credit by acting as a broker, purchasing Maryland-mined coal and selling it to out-of-state companies who consume the coal.

Exhibit 2 lists the amount of credits claimed against the public service company franchise and corporate income taxes for tax years 2000-2003. Due to reporting restrictions, the amount of credits claimed against the corporate income tax is estimated. Exhibit 2 also lists the estimated amount of coal that is purchased and claimed as a credit. This estimate is based on the amount of credits claimed in each year and the amount of coal produced as reported by the State Bureau of Mines.

Exhibit 2
Amounts of Credits Claimed
Tax Years 2000-2003

Tax Year	Public Service Franchise Tax	Corporate Income Tax	Total	Percent of Coal Produced Estimated to Be Claimed as a Tax Credit
2000	$11,405,867	$900,000	$12,305,867	89%
2001	9,753,644	1,100,000	10,853,644	76%
2002	11,488,131	1,100,000	12,588,131	83%
2003	14,404,406	500,000	14,904,406	97%

Source: State Department of Assessments and Taxation; *Maryland Tax Expenditures Report Fiscal Year 2004*, Bureau of Mines; Department of Legislative Services

In addition, Maryland-mined coal is subject to State and local taxation. The State imposes a reclamation tax of $0.15 per ton on surface-mined coal. Nine cents per ton goes to the Bituminous Coal Open-Pit Mining Reclamation Fund and $0.06 per ton goes to the county in which the coal was extracted. There is a State $0.17 per ton reclamation tax on deep-mined coal. Counties can impose a $0.30 per ton tax on coal that is surface-mined. In fiscal 2003, Allegany and Garrett were the only counties that assessed this tax and collected a total of $517,022.

Land Preservation Programs

While the State's land preservation programs enjoyed healthy funding through 2002, in recent years the General Assembly has used transfer tax revenues as a means to balance the State's operating budget. As shown in **Exhibit 3**, budget reconciliation legislation enacted in each of the previous three sessions has diverted approximately $390 million of transfer tax revenues to the general fund. To compensate, other funding sources, primarily bond funds, have played an important role in funding land preservation activities.

Exhibit 3
Transfer Tax Revenues
Fiscal 2002 – 2005
($ in Millions)

Fiscal Year	Budgeted Transfer Tax Revenues[1]	Amount to Programs	Amount to General Fund	Replacement GO Funds
2002	$117.4	$114.4	$0.0	$0.0
2003	108.7	47.3	58.5	0.0
2004	136.8	9.9	141.5 [2]	58.3
2005	176.2	6.8	189.3 [3]	23.6
Total	**$495.7**	**$178.4**	**$389.3**	**$81.9**

Note: Amount to programs does not include 3% for administrative costs. Amount to general fund does not include unencumbered balances transferred by budget reconciliation legislation ($39.8 million).

[1]Reflects estimated revenues plus revenue over attainment from the second prior year.

[2]Includes $18 million in fiscal 2003 revenue over attainment that would have been budgeted in fiscal 2005.

[3]Includes $42 million in fiscal 2004 revenue over attainment that would have been budgeted in fiscal 2006.

Source: Department of Natural Resources

State Revenues: This bill repeals the Maryland-mined coal credits and requires $14.7 million of public service franchise tax revenues be distributed to land preservation programs beginning in tax year 2005. Based on the transfers mandated by the bill and estimated amount of coal tax credits that would have been claimed under current law, general fund revenues would increase by approximately $1.6 million in fiscal 2006, $2.2

million in fiscal 2007, $2.7 million in fiscal 2008, $3.1 million in fiscal 2009, and $3.2 million in fiscal 2010. TTF revenues would increase by approximately $96,000 annually beginning in fiscal 2006. The fiscal effects of repealing the coal tax credits and required land preservation program transfers are discussed below.

Repealing the Maryland-mined Coal Credits

As a result of repealing the Maryland-mined coal tax credit, general fund revenues would increase by approximately $16.3 million in fiscal 2006, $16.9 million in fiscal 2007, $17.4 million in fiscal 2008, $17.8 million in fiscal 2009, and $17.9 million in fiscal 2010. TTF revenues would increase by approximately $96,000 annually beginning in fiscal 2006. The estimated revenue gains, and out-year projections, are based on the following facts and assumptions:

- According to the Maryland Bureau of Mines, approximately 5.3 million tons of coal was mined in 2004. From 1999 to 2004 the amount of coal mined increased on average by 5.4 % annually.
- The amount of coal mined from 2004 through 2010 is estimated to increase on average by approximately 3%.
- Approximately 96% of all coal will be claimed as a credit against the public service company franchise tax.
- Cogenerators will claim approximately $400,000 against the corporate income tax.
- Public service companies and corporations claiming the credit have sufficient tax liability to claim the entire credit available.

State Expenditures: Exhibit 4 lists the annual amount of land preservation program expenditures beginning in fiscal 2006 based on the required distribution mandated by the bill and current distribution of transfer tax revenue.

Exhibit 4
Land Preservation Program Expenditures

Program Open Space	75.15%	$ 11,047,050
Program Open Space – Land Acquisition	1.0%	147,000
Agricultural Land Preservation Fund	17.05%	2,506,350
Rural Legacy	5.0%	735,000
Heritage Conservation Fund	1.80%	264,600
Total		**$14,700,000**

Small Business Effect: By increasing land preservation programs, farmers, most of whom are small businesses, could benefit.

Additional Information

Prior Introductions: A similar bill was introduced at the 2004 session as HB 769. The bill was referred to the Ways and Means Committee, but was subsequently withdrawn.

Cross File: None.

Information Source(s): Comptroller's Office, Maryland Department of the Environment (Bureau of Mines), State Department of Assessments and Taxation, Department of Legislative Services

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ncs/hlb

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