

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1539 (Delegate Smigiel, *et al.*)
Rules and Executive Nominations

Maryland Port Administration - Chesapeake and Delaware Canal - Dredged
Material Containment Areas - Remediation Plan

This bill requires the Maryland Port Administration (MPA) to develop and implement a plan for the remediation of drinking water supplies that have been adversely impacted by the placement of dredged material from the Chesapeake and Delaware Canal and the approach channels to the canal in containment areas. In conjunction with any application for a water quality certification that relates to the placement of specified dredged material in a dredged material containment area, MPA must submit to the Maryland Department of the Environment (MDE) a water remediation plan that includes specified elements.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: The bill generally codifies an existing (but contingent) component of the FY 2014 through 2019 *Consolidated Transportation Program* (CTP) for MPA and, therefore, is not expected to affect State finances, as discussed below. MPA workloads increase to develop and submit a water remediation plan to MDE, which is not currently required. To the extent the contingent event does not occur, or funding is otherwise removed from the CTP, the bill results in a significant increase in Transportation Trust Fund (TTF) expenditures.

Local Effect: The bill generally codifies an existing component of the FY 2014 CTP for MPA and, therefore, is not expected to affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The water remediation plan that MPA is required to submit to MDE must include, at a minimum, (1) a description of the properties that have water supplies impacted by the previous placement of dredged material in a containment area; (2) a detailed description of the plan; (3) a budget and a description of funding sources; (4) a schedule for the remediation; (5) a description of all required State and local regulatory approvals; (6) a copy of any interagency or interjurisdictional agreement related to the remediation; (7) a copy of any letter of commitment from a local approval authority; and (8) any other information that MDE determines to be necessary.

The bill specifies the findings of the General Assembly that (1) the placement of material dredged from the Chesapeake and Delaware Canal and the approach channels to the canal in upland containment areas has been found to have adverse impacts on groundwater and drinking water supplies and (2) the impacts on drinking water supplies must be fully studied and remediated and any future impacts addressed before the placement of any new dredged material in a containment area located near the Chesapeake and Delaware Canal, including the Pearce Creek and Courthouse Point containment areas.

Current Law/Background:

The Chesapeake and Delaware Canal

The Chesapeake and Delaware Canal was originally constructed by the Chesapeake and Delaware Canal Company between 1824 and 1829. The canal was expanded several times before and after being acquired, in 1919, by the federal government. The canal, which is now operated and maintained by the U.S. Army Corps of Engineers (the Corps), is currently 14 miles long, 450 feet wide, 35 feet deep, and crossed by five bridges operated by the Corps. Maintenance of the canal at its current width and depth, which is needed to support the significant volume of large cargo ships, requires periodic dredging.

Dredged Material Placement Oversight in Maryland

Chapter 627 of 2001 established an executive committee to provide oversight in the development of the State's plans for dredged material management. The executive committee consists of eight members, including members from MDE, the Department of Natural Resources, the Maryland Department of Transportation, and the Corps.

In September 2013, a workgroup of the executive committee reviewed federal plans for the placement of dredged material from 78 miles of federal navigation channels from the Chesapeake Bay, the Port of Baltimore, and the Chesapeake and Delaware Canal. While a 2005 plan called for the use of existing placement sites first, such as the Cox Creek,

Hart-Miller Island, Poplar Island, and Pooles Island containment areas, the Corps discussed at a meeting of the workgroup the challenges in the continued utilization of these areas (several of which are now full) and discussed potential alternatives, including the use of the Pearce Creek and Courthouse Point containment areas, among other options.

Pearce Creek Containment Area

Materials dredged from the canal have been deposited in the Pearce Creek and other containment areas in Maryland. The Corps has for decades been examining the effect that the placement of dredged materials in these containment facilities has on the water quality in surrounding communities. For example, a 1996 study conducted on the community of West View Shores near Earleville, Maryland found poor water quality in the area, but that the placement of dredged material in the Pearce Creek containment area was not the source of the problem.

More recently, however, the Corps commissioned a study conducted by the U.S. Geological Survey (USGS) regarding the water quality in and around the Pearce Creek containment area in preparation to reactivate the containment area for the deposit of dredged materials. The study was released in January 2013 and found, based on the sampling of 50 wells, that 96% of the water sampled violated federal secondary drinking water standards (meaning the taste, color, or odor of the water was affected) and 15% of the water samples exceeded primary standards for certain substances (meaning the level of the substances in the water exceeded health advisory levels).

In response to the USGS study, the Corps indicated that it would work with MDE and MPA to identify solutions to the water quality issues, but that it remained committed to reopening the Pearce Creek containment area. In March 2013, the Corps and MPA engaged in a community meeting to discuss potential solutions. According to documents from that meeting, the Corps investigated options for installing an impermeable barrier surrounding the containment area to eliminate any ongoing degradation of water quality from materials in the containment area, as well as to ensure that the future placement of dredged materials in the containment area does not further impact groundwater. According to MPA documents, it planned to investigate several options to provide drinking water to affected communities, including (1) drilling deeper wells; (2) using individual, onsite filtration systems; and (3) installing a community system. As discussed further below, the CTP now includes \$12.0 million for MPA to extend an existing municipal water system to property owners affected by contaminated water.

State Expenditures: As noted above, the fiscal 2014 through 2019 CTP contains a \$12.0 million grant to be provided in fiscal 2017 to the Town of Cecilton for extending water service to 241 customers affected by contaminated water. This grant is contingent,

however, upon the issuance of the necessary water quality certification by MDE to the Corps. MDE advises that it has not yet received the water quality certification application from the Corps, and that, once an application is received, it may take up to a year to issue a decision. Assuming the grant is made, and would be made even in the absence of the bill, the only impact of the bill is to require MPA to develop and submit the remediation plan, consisting of specified information, to MDE; the impact on MPA of providing that information is anticipated to be relatively minimal.

However, to the extent that MDE rejects the water quality certification application or the grant funding is otherwise removed from the CTP before fiscal 2017, TTF expenditures increase significantly to comply with the bill's requirement for MPA to develop and implement a remediation plan. It is unknown whether a remediation plan may be implemented for less than \$12.0 million – the currently planned approach. Unless an alternative remediation strategy is available at a lower cost, TTF expenditures increase by \$12.0 million under the bill if the budgeted grant is not made.

Local Expenditures: As noted, a \$12.0 million MPA grant for the Town of Cecilton is anticipated to be made in fiscal 2017 in the absence of the bill. Thus, the bill is not likely to have an impact on local finances. However, if the grant is not funded for any reason, the bill may result in a significant beneficial impact on local finances as MPA would be required to develop and implement the required remediation plan, which may reduce local expenditures to remediate water supplies.

Additional Information

Prior Introductions: None.

Cross File: SB 1096 (Senator Hershey) - Finance.

Information Source(s): Department of Natural Resources, Maryland Department of the Environment, Maryland Department of Transportation, U.S. Army Corps of Engineers, U.S. Geological Survey, Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2014
ncs/lgc

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