

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 28

(Senator Simonaire, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund - Use of Funds

This constitutional amendment includes the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in the Maryland Constitution and places restrictions on transfers from the fund and uses of the fund for purposes not related to the Chesapeake and Atlantic Coastal Bays.

Fiscal Summary

State Effect: If adopted, the constitutional amendment lessens the likelihood of transfers from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund to the general fund or a special fund beginning in FY 2017. Additionally, if the amendment is adopted, special fund revenues increase by more than \$100,000 annually, and general fund revenues decrease correspondingly, to the extent existing accrual of trust fund interest income to the general fund is considered a transfer and prohibited as a result of the bill.

Local Effect: If adopted, local governments benefit to the extent the constitutional amendment prevents transfers from the trust fund, making more funding available for competitive grants to local governments.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Consistent with current statutory language governing the use of the trust fund, the constitutional amendment requires that the trust fund only be used for the implementation of specified nonpoint source pollution control projects and establishes the intent of the General Assembly that, when possible, money in the trust fund be directed to local projects.

Money in the trust fund may not be transferred to the general fund or a special fund of the State or used for a purpose not related to the Chesapeake and Atlantic Coastal Bays unless (1) the Governor, by executive order, declares that a fiscal emergency exists and (2) the General Assembly passes legislation, by a three-fifths majority in each house, concurring with the use or transfer of the funds.

The constitutional restrictions do not apply to specified uses or transfers of funds in accordance with existing statutory law governing the fund.

Current Law/Background:

2010 Trust Fund Background

The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund was established in 2008 and is funded with a portion of revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. General obligation (GO) bond capital funding has also been allocated to the fund in fiscal 2013 through 2015. The Governor's proposed fiscal 2016 capital budget does not include GO bond funding for the trust fund. The trust fund is used for nonpoint source pollution control projects to help meet Chesapeake Bay restoration goals and to improve the health of the Atlantic Coastal Bays and their tributaries. Money in the trust fund is expended in accordance with work and expenditure plans developed each year and is required to be targeted, geographically and by practice, to proven, scientifically based projects that provide the most cost-effective and measurable water quality benefits to the Chesapeake and Atlantic Coastal Bays. Examples of nonpoint source projects that can be funded with the trust fund include cover crops, natural filters, and local watershed restoration projects, including stormwater management projects.

Fund Financial History

When the fund was established, it was allocated 2.3% of motor fuel tax revenues and 55% of sales and use tax revenues from short-term vehicle rentals, after certain initial distributions in each case. The trust fund has never received those full distributions, however, with subsequent legislation temporarily diverting portions of the revenues to the general fund. **Exhibit 1** shows diversions to the general fund over the past five years and a diversion that is planned to occur in fiscal 2016 pursuant to current law. The proposed Budget Reconciliation and Financing Act of 2015 (Senate Bill 57/House Bill 72) would divert an additional \$8.6 million to the general fund in fiscal 2016. It should be noted that this constitutional amendment does not affect the General Assembly's ability to continue diversions of motor fuel tax revenues and sales and use tax revenues from short-term vehicle rentals to the general fund, as it only restricts transfers of money *from* the trust fund.

Exhibit 1
Diversions to the General Fund Under Current Law
Fiscal 2011-2016
(\$ in Millions)

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Total</u>
Chapter 484 of 2010	\$22.1	-	-	-	-	-	\$22.1
Chapter 397 of 2011	-	\$20.2	\$15.1	\$11.5	\$8.0	\$4.6	59.5
Chapter 1 of 2012 First Special Session	-	-	8.0	-	-	-	8.0
Chapter 464 of 2014	-	-	-	<u>8.0</u>	<u>6.2</u>	-	<u>14.2</u>
Total	\$22.1	\$20.2	\$23.1	\$19.5	\$14.2	\$4.6	\$103.8

Note: This exhibit shows diversions of motor fuel tax revenues and sales and use tax revenues from short-term vehicle rentals that otherwise would have been deposited in the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.

Exhibit 2 shows the financial history of the trust fund over the past five years and the proposed fiscal 2016 budget, including transfers of fund balance out of the fund to the general fund.

Exhibit 2
Trust Fund Financial History
Fiscal 2011-2016
(\$ in Millions)

	<u>2011</u> <u>Actual</u>	<u>2012</u> <u>Actual</u>	<u>2013</u> <u>Actual</u>	<u>2014</u> <u>Actual</u>	<u>2015</u> <u>Approp.</u>	<u>2016</u> <u>Allow.</u>
Opening Balance	\$5.84	\$3.23	\$3.43	\$3.44	\$0.00	\$0.00
Available Tax Revenue¹	\$21.00	\$21.62	\$21.21	\$30.06	\$39.40	\$39.40
Transfers to the General Fund (GF)²						
Chapter 397 of 2011	-0.97					
Chapter 464 of 2014				-2.40		
Subtotal GF Transfers	-\$0.97	\$0.00	\$0.00	-\$2.40	\$0.00	\$0.00
General Fund Deficiency			2.80			
Available Revenue	\$25.87	\$24.85	\$27.44	\$31.10	\$39.40	\$39.40
Spending	-\$22.64	-\$21.42	-\$24.01	-\$31.10	-\$39.40	-\$39.40
Ending Balance	\$3.23	\$3.43	\$3.44	\$0.00	\$0.00	\$0.00

¹The available tax revenue in fiscal 2016 reflects the diversion of \$8.6 million in revenues to the general fund as proposed in the 2015 Budget Reconciliation and Financing Act.

²Transfers of fund balance.

Source: Department of Natural Resources

In addition to the transfers identified in Exhibit 2, since fiscal 2010, pursuant to budget reconciliation legislation, interest income on money in the trust fund has accrued to the general fund. Between fiscal 2010 and 2014, interest income ranged from a low of approximately \$92,400 to a high of approximately \$287,800. Accrual of interest income to the general fund may be considered a transfer under this constitutional amendment, and therefore prohibited under the bill, absent a declaration of a fiscal emergency and concurrence of three-fifths of each house of the General Assembly.

State Fiscal Effect:

Prohibition on Transfers

Assuming approval of the amendment in the November 2016 general election, this bill makes less likely any future transfers from the trust fund to the general fund or another special fund. As shown in Exhibits 1 and 2, relatively little funding has been *transferred from* the trust fund in the past compared to the revenues *diverted to* the general fund that otherwise would have been deposited in the trust fund.

To the extent that the accrual of trust fund interest income to the general fund is considered a *transfer* prohibited under the constitutional amendment (absent declaration of a fiscal emergency and concurrence of three-fifths of each house of the General Assembly), special fund revenues increase by more than \$100,000 annually, and general fund revenues decrease correspondingly.

Submitting the Constitutional Amendment for Voter Approval

State costs of printing ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). However, it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

Local Fiscal Effect:

Prohibition on Transfers

Assuming approval of the amendment in the November 2016 general election, local governments benefit to the extent the amendment prevents transfers from the trust fund that otherwise would have been made. The Department of Natural Resources (DNR) indicates that decreases in funding most directly affect competitive grants available to local governments and nongovernmental organizations.

Submitting the Constitutional Amendment for Voter Approval

Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on ballots. It is assumed,

however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

Small Business Effect: Assuming approval of the amendment in the November 2016 general election, small businesses may meaningfully benefit to the extent the amendment prevents transfers from the trust fund that otherwise would have been made. DNR indicates that a number of subcontractors used on funded projects are small businesses.

Additional Information

Prior Introductions: SB 1116 of 2014 was referred to the Senate Rules Committee, but no further action was taken.

Cross File: HB 302 (Delegate Simonaire, *et al.*) – Environment and Transportation.

Information Source(s): Department of Budget and Management, Department of Natural Resources, Comptroller's Office, Department of Legislative Services

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md/lgc

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