

**Department of Legislative Services**  
Maryland General Assembly  
2003 Session

**FISCAL AND POLICY NOTE**

House Bill 514 (Delegates Boschert and Rawlings)  
Environmental Matters

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**Local Government - Water and Wastewater Facilities - Design/Build/Operate  
Contracts - Funds**

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This bill authorizes a local government to form a public-private partnership for the purpose of entering into a “design/build/operate contract” for a water supply system or a wastewater facility. The bill also authorizes a local government to apply for a loan from the Maryland Water Quality Revolving Loan Fund or the Maryland Drinking Water Revolving Loan Fund to finance all or part of such a contract. The bill also provides that a loan from the funds may be used to finance engineering and consulting costs associated with developing a plan and a request for proposal to construct or renovate a water supply system or a wastewater facility using a design/build/operate contract. This loan may be repaid through the collection of a concession fee from the successful bidder for the contract.

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**Fiscal Summary**

**State Effect:** The bill would not directly affect State finances or operations; generally, the two revolving loan funds may already be used for design/build costs.

**Local Effect:** Nothing in State law prohibits local governments from entering into design/build/operate contracts. However, local finances would be affected to the extent local governments choose to enter into such contracts as a result of the bill. Presumably, local expenditures would decrease; however, because the fiscal effect will vary by project, any impact on local finances cannot be reliably estimated at this time.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** A design/build/operate contract means a contract with a term of up to 30 years that provides for both architectural and engineering design services, construction services, and operating services as part of a single contract.

**Current Law:** The Maryland Water Quality Financing Administration (WQFA) within the Maryland Department of the Environment (MDE) encourages capital investment for wastewater and drinking water projects pursuant to the federal Clean Water Act and the federal Safe Drinking Water Act. WQFA administers two loan funds: (1) the Water Quality Revolving Loan Fund (WQRLF), which was established in 1988 to provide low-interest loans for wastewater projects; and (2) the Drinking Water Revolving Loan Fund (DWRLF), which was established in 1993 to provide low-interest loans for drinking water projects. Both loan funds receive federal funding from the U.S. Environmental Protection Agency under the Capitalization Grants for State Revolving Funds federal assistance program.

Nothing in State law expressly prohibits local governments from entering into design/build/operate contracts. State law authorizes local governments to enter into contracts for water and sewerage systems.

**State Fiscal Effect:** The bill would not directly affect State finances. WQRLF and DWRLF can already be used to finance design/build contracts and other contracts for consultant services if minimal contract/procurement standards are met. MDE advises, however, that some of the bill's provisions are inconsistent with federal and State law governing the use of WQRLF and DWRLF:

- First, the definition of a design/build/operate contract in the bill indicates a loan term of up to 30 years. However, federal and State law generally require that the revolving loan funds may only be used to make loans of up to 20 years or loans to be fully amortized no later than 20 years after project completion.
- Second, it is unclear whether the intent of the bill is to allow a local government to use loans provided under WQRLF and DWRLF to finance operating and maintenance costs. The bill states that a local government may apply for a loan in order to finance *all* or part of a design/build/operate contract. Legislative Services advises that operating and maintenance expenses are not eligible costs under MDE's revolving loan funds.
- Finally, current law regarding WQRLF limits financing eligibility to wastewater facilities that are publicly-owned; to the extent a local government transfers

ownership rights to a private entity under a design/build/operate contract, this would exclude the local government from financing under WQRLF. Current law regarding DWRLF allows private entities to qualify for financing under specified conditions; however, any such loans would be taxable.

**Local Fiscal Effect:** Nothing in State law prohibits local governments from entering into design/build/operate contracts. However, local finances would be affected to the extent local governments choose to enter into such contracts as a result of the bill. In theory, design/build/operate contracts can result in cost savings to local governments by reducing the number of separate procurement actions and be delegating to and/or partnering with private entities to be responsible for all aspects of a capital project including operations. The use of such contracts as well as the fiscal effect on local governments will vary significantly by project and cannot be reliably estimated at this time.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Department of General Services, Washington Suburban Sanitary Commission, Kent County, Washington County, Worcester County, Department of Legislative Services

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