

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 881
Ways and Means

(Delegate Gordon, *et al.*)

Regulatory Units - Fee-Setting Authority

This bill revokes the fee-setting authority granted to various units of State government as well as some local health departments by providing that the fees in effect on October 1, 2004 shall remain in effect until altered by the General Assembly.

Fiscal Summary

State Effect: General and special fund revenues could be negatively impacted in FY 2005 and subsequent years, which could negatively impact federal matching funds. Shortfalls in revenues could result in an increased reliance on the general fund and the need for deficiency appropriations. However, any such impacts cannot be reliably estimated at this time.

Local Effect: A local health department's ability to increase inspection fees to cover costs is limited by the bill. Other local government revenues could decrease as State assistance is reduced in various areas due to lower revenue attainment. Any such impacts cannot be reliably estimated at this time.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill applies to all fees imposed under the Agriculture, Business Occupations and Professions, Business Regulation, Environment, Financial Institutions, Health-General, Health Occupations, Natural Resources, Public Safety, State Government, and Transportation Articles. It also applies to the application fee for a

certificate of authorization for use of a corporate name, certification and license fees related to the provision of emergency medical services, registration fees for the Mutual Consent Voluntary Adoption Registry, fees for copies of current Maryland Occupational Safety and Health (MOSH) regulations, registration fees for rehabilitation practitioners, and fees charged by the Public Service Commission for copies of commission documents.

Current Law: Many of the fees imposed under the Articles affected by the bill are set in statute, and legislative action is required to change them. In many cases, these statutory fees are deposited as revenue to the general fund; in others, they are special fund revenue and are used to cover all or a portion of the costs of providing the service for which the fee is charged.

Other fees affected are typically set by regulation or rule or through a public hearing process. Many of these fees are required to be set to meet cost-recovery requirements or self-sufficiency objectives. Generally, such fees are deposited in a special fund and used for a designated purpose.

Background: This bill affects numerous departments throughout State government. Illustrative examples are discussed below.

Regulatory Boards

Health Occupations Boards

All but one of the health occupations boards in the Department of Health and Mental Hygiene (DHMH) were converted from general fund to special fund boards when they were given fee-setting authority in 1992. The regulatory activities of these boards are funded by fee revenue from licensing the affected health care practitioners. Each of these boards has its own nonlapsing special fund. Licensing activity typically occurs on a biennial basis for health occupations boards; consequently, revenues may be alternately high in one year and low in the other. The ability to carry over fund balance allows the boards to cover their direct costs as well as the indirect costs charged by DHMH in both years. In addition, maintaining a fund balance allows the boards to cover unanticipated expenditures and to keep fees at the same level for several years. Otherwise, the boards would have to raise fees each renewal period to keep pace with inflation and other operating costs. The fees they charge are typically set by regulation.

The *1999 Joint Chairmen's Report* noted that the fund balances maintained by the health occupations boards were higher than necessary and requested a fund balance plan. The plan submitted by DHMH determined that boards should maintain between a 20% and

30% balance of their revenues, based on the size of the board, to cover both known and unforeseen expenses. Many boards reduced their fees in an attempt to drop their fund balances to a more appropriate level, some on a one-time-only basis. In a few cases, however, the boards' actions resulted in an inability to cover costs and triggered loans from other boards to cover their deficits. The Legislative Auditor has since advised that such loans are illegal. Consequently, these boards must bring in sufficient revenue to cover all their costs, and the affected boards have raised fees to do so. When reducing their fund balances and then restoring them, the boards reacted quickly and were able to do so through the regulatory process.

To help close the general fund deficit during the ongoing fiscal crisis, a portion of the fund balance from several health occupations boards has been transferred to the general fund through the Budget Reconciliation and Financing Acts of 2002 and 2003. Such transfers are again proposed in the Fund Transfers Act of 2004 (SB 509/HB 870). Although the affected boards still have sufficient fund balance to cover projected expenses in fiscal 2005 and 2006, a couple of them may need to raise fees in subsequent years to cover their costs.

Business Occupational and Professional Licensing Boards

Most business occupational and professional licensing boards in the Department of Labor, Licensing, and Regulation (DLLR) are supported by general fund appropriations and their fee revenue is deposited in the general fund; therefore, most of these boards would not be similarly affected.

Several years ago, the statutory fees charged by DLLR boards were reduced because the total fee revenue had exceeded total expenditures, with certain boards operating at a "deficit" and others covering those expenses. In reality, because these boards were general funded, the deficit was only on paper. Chapter 735 of 1997 brought certain boards' fees in line with their reported direct and indirect administrative costs, reducing the statutory licensing, certification, and renewal fees for eight boards. However, DLLR later advised that those fee reductions were based on inaccurate revenue estimates and cost allocations that did not reflect the actual costs incurred by each board.

Both the *1998 Joint Chairmen's Report* and *1999 Joint Chairmen's Report* directed DLLR to provide plans on making its boards and commissions self-supporting. SB 681 of 2001 would have created a special fund for the occupational and professional licensing boards in DLLR and granted the Secretary of Labor, Licensing, and Regulation the authority to set licensing and application fees to ensure that operating expenses did not exceed revenues. That bill passed the Senate but received an unfavorable report by the House Economic Matters Committee. A workgroup in the House Economic Matters

Committee focused on the issue of special funding for these boards. In addition, the *2001 Joint Chairmen's Report* directed the Legislative Auditor to review DLLR's cost allocation methodology.

Currently, a few DLLR regulatory boards would be affected by this bill; in particular, a five-year special-fund pilot program for the five design boards was implemented through Chapter 227 of 2003. These boards must cover both their direct costs and the indirect costs allocated to them through fee revenue. Their fees are now set by regulation.

Natural Resources Funding

The State Forest and Park Service in the Department of Natural Resources (DNR) sets certain fees with programmatic authority. These fees are often adjusted in times of poor attendance to encourage visitation and when an unforeseen circumstance impacts the services offered (*e.g.*, a beach closing due to high bacteria counts).

Other fees in DNR are set in statute. Due to concerns regarding DNR's use of its special funds, committee narrative in the *2002 Joint Chairmen's Report* requested the establishment of a workgroup to study the department's special funds, the statutory requirements for each fund, the appropriate level of administrative expenses to be deducted from each fund, streamlining measures that could be taken to reduce the special fund tracking burden on DNR, and whether DNR is using its special funds appropriately. In the course of its research, the workgroup found that many fees associated with DNR's special funds have not been changed in years. As a result, operating costs for some special fund programs are higher than the revenue generated from the associated fees.

The workgroup reported its findings and recommendations to the budget committees in January 2004. Among other things, the workgroup recommended that legislation be proposed to establish a stakeholder commission to develop annual recommendations for changing the fees associated with various DNR special funds. SB 762/HB 1259 of 2004 would implement those recommendations by repealing fees set in statute and authorizing DNR to adopt fees recommended by the stakeholder commission in regulation.

Other Cost Recovery and Price Sensitivity

Transportation

The modes within the Maryland Department of Transportation (MDOT) set their rates, charges, and/or fees to meet various objectives. For example, the Motor Vehicle Administration sets its fees through regulations to meet statutory cost-recovery requirements. These fees are adjusted annually as needed. The Maryland Port

Administration (MPA) increases its fees for services at the port (*e.g.*, dockage, wharfage, equipment rental, and terminal leases) through regulations as market conditions change and as services expand or otherwise change. Similarly, the Maryland Aviation Administration sets rates and charges at BWI Airport and Martin State Airport through the Airport Affairs Committee to recover its operating and some capital costs. The Mass Transit Administration sets its fares through a public hearing process.

Agriculture

Fees for several Maryland Department of Agriculture (MDA) programs are set in regulation or through programmatic authority. Charges for some program services change as the market place changes or in response to federal fee schedules – fees for grading services and fees based on federal standards often change during the year. Also, fees charged for animal health lab services may change to ensure cost recovery. Intentionally, however, many fees in MDA do not cover all costs to ensure that State services are used in certain circumstances so that any endemic situation is brought to the attention of the department.

State Fiscal Effect: The State fiscal effect cannot be reliably estimated at this time; however, general and special fund revenues could be negatively impacted, which could affect federal matching funds as well. Shortfalls in revenues due to an inability to react to unforeseen circumstances and market conditions could result in deficiency appropriations, an increased reliance on the general fund, and shifting of available special funds to meet cost-recovery requirements (within MDOT).

Local Fiscal Effect: Some programs affected by the bill have local impacts – local health departments currently set fees related to certain inspections (*e.g.*, wells under the Environment Article and food establishments under the Health-General Article), subject to statutory caps. Local health departments would not be able to modify their fee schedules without General Assembly approval. Other programs have cost-sharing elements or provide local aid (*e.g.*, MDA’s mosquito and gypsy moth programs and MDOT’s highway user revenues). To the extent revenues related to these programs are affected by the bill, local governments would be affected.

Additional Comments: The Budget Financing Act of 2004 (SB 508/HB 869) is part of the Administration’s budget reconciliation package. That bill repeals fees set in the Health-General Article and gives the Secretary of Health and Mental Hygiene fee-setting authority. The fiscal 2005 budget is balanced using \$1.0 million in additional fee revenue from increased community health fees. Some increases are to be phased in through fiscal 2007, increasing general fund revenues by \$2.4 million. Such phased-in increases would require legislative approval under this bill. That bill also removes the cap on certain fees

charged by local health departments; accordingly, any fee changes at the local level would also require legislative approval under this bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Department of Human Resources; Department of Natural Resources; Comptroller's Office; Maryland Department of the Environment; Maryland State Department of Education; Department of State Police; Maryland State Treasurer's Office; Department of Health and Mental Hygiene; Public Service Commission; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Maryland Department of Agriculture; Department of Budget and Management; Maryland Institute for Emergency Medical Services Systems; Workers' Compensation Commission; Judiciary; Department of Legislative Services

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