Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 881 (Senator Astle)
Finance Health and Government Operations

State's Right of Recovery - Grant Programs - Exemption for Lease of Federal Land

This bill prohibits the State, when seeking recovery for grants awarded under the Community Mental Health, Addiction, and Developmental Disabilities Facilities Capital Program, from: (1) recovering funds disbursed from the federal government if the federal government is the lessor of real property on which a project is constructed or a facility is operated; or (2) creating a lien against real property that is leased from the federal government on which a project is constructed or a facility is operated.

Fiscal Summary

State Effect: Exempting the federal government from repaying the State for capital grants issued for community facilities would not significantly affect State general fund revenues. The Department of Health and Mental Hygiene (DHMH) rarely seeks grant recoveries, and when it does, it recovers undistributed grant funds, equipment, and supplies. Any recoveries are deposited into the general fund.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State may award grants to qualified applicants for the acquisition, renovation, and equipping of community mental health facilities, addiction facilities, and developmental disabilities facilities. The State has the right to recover funds disbursed as grants and reasonable attorneys' fees incurred during the recovery proceedings if the recipient fails to complete a project or to commence operation of a facility. The funds may be recovered from either the grant recipient or the owner of the property on which the project or facility is located. In addition, the State may recover certain funds if, within 30 years of the completion of the project, the use of a facility changes or ceases to qualify as an approved facility. DHMH must record notice of the State's right of recovery in the land records of the county or Baltimore City in which the property is located before the State makes any funds available for the approved project. This record is not a lien; it only constitutes notice to any potential transferee, potential creditor, or other interested party of the possibility that the State may obtain a lien.

Federal enhanced-use leasing (EUL) authority is currently available to the Veterans Administration (VA) and the Department of Defense (DOD). A lease of VA property must enhance the use of the property and provide some space for an activity that contributes to VA's mission or otherwise improves services to veterans. VA receives fair consideration, money or in-kind, and the lease term may not exceed 75 years. For DOD, the EUL terms must promote national defense or be in the public interest, and the lease term may not exceed five years without federal approval. The lease proceeds may be used to fund facility maintenance and repair or environmental restoration at the military installation where the property is located.

Background: The Community Mental Health, Addiction, and Developmental Disabilities Facilities Capital Program assists in the acquisition, construction, renovation, and equipping of facilities to provide mental health, developmental disabilities, and substance abuse treatment services. It is considered essential to facilitate the deinstitutionalization of the mentally ill and developmentally disabled by assisting in the funding of residential facilities within the community. It also seeks to develop community resources to prevent institutionalization of the addicted. The State may fund up to 75% of the cost of each project. In fiscal 2005, there are 13 projects to be funded through the program. The total proposed funding for these projects is $9.8 million and the funding request is $8.4 million.

The federal government has entered into public-private partnerships where the federal government contributes real property and another entity (private or public) contributes financial capital and borrowing ability to redevelop or renovate the real property. These partnerships are advantageous to the federal government because they: (1) create financial returns for the federal government; (2) reduce costs in functionally inefficient buildings; (3) attain efficient and repaired federal space; and (4) convert buildings that are currently a net cost to the federal government into net revenue producers.

The partnerships benefit entities, including local and state governments, who may be able to lease property from the federal government at lower rates than what the local real estate market demands.

To date, the State has not issued capital grants to fund projects or facilities on leased federal property. The State may choose to lease federal property in the future to construct needed facilities. However, the federal government does not permit liens to be placed against federal property, and would likely not permit any recovery of funds.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Board of Public Works, Department of Health and Mental Hygiene (Developmental Disabilities Administration), Department of Legislative Services

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