

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 186

(Chairman, Appropriations Committee)

(By Request – Departmental – General Services)

Appropriations

State Finance and Procurement - Capital Grants - Lien for Recovery

This departmental bill permits the State to create liens against property for the repayment of amounts recoverable under capital grants. The bill provides procedures for including liens for recovery in grant agreements and for recovery of funds under specified circumstances.

The bill is effective July 1, 2004.

Fiscal Summary

State Effect: General fund revenues may increase due to the ability of the State to recover funds from grantees that have defaulted on a grant agreement with the State.

Local Effect: None.

Small Business Effect: The Department of General Services (DGS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill establishes the right of the State to recover funds and other amounts under a grant agreement. A grant agreement may contain a power of sale or an assent to decree. The Secretary of General Services is required to record the lien for real property in the land records of the county or Baltimore City in which the property is

located, and in the case of personal property, a financing statement filed with the State Department of Assessments and Taxation.

The grant agreement may limit the duration of the lien, and the lien is considered released of record as of the date or upon the occurrence of the event identified in the grant agreement. The notice of lien must provide any date or conditions upon which a lien shall be deemed released.

The Secretary may, with the approval of the Board of Public Works (BPW): (1) release a lien obtained under the provisions of this bill; or (2) subordinate a lien obtained under this bill to any other lien. Releases and subordinations are required to be recorded by, and at the expense of, the grantee. The bill also provides the circumstances under which a lien obtained under the provisions of this bill may be foreclosed.

Current Law: The State remedies available against a capital grant recipient that defaults on a grant agreement are limited to the remedies spelled out in the agreement. Typically, those remedies include requiring the grantee to repay the grant, recouping the amount of the grant already paid from funds due the grantee from any other current or State grant or loan, or withholding further payments under the grant agreement.

Under the Department of Health and Mental Hygiene's (DHMH) Community Mental Health, Addiction, and Developmental Disabilities Facilities Capital Program, the State has the right to recover funds. Projects receiving bond funds must record the State's right of recovery in the land records prior to receiving a disbursement from the program. If the provider defaults, DHMH can request that BPW authorize a lien on the property. A temporary lien is then placed on the property of the grantee until DHMH proves that the provider defaulted. The lien is made permanent until the provider pays the State back, BPW forecloses, or BPW waives its right to recover the funds.

Background: DGS indicates that when State funds are provided to a grantee for real property and that grantee defaults, the State will have recourse to recover the value of the property donated to the grantee.

DHMH states the rationale for the right of recovery is to allow providers to borrow the matching funds without having to request subordination in every instance. DHMH has not placed a lien on property in the past 30 years. One case is currently pending in the Adult Day Care Program.

State Fiscal Effect: The fiscal impact of the bill is difficult to ascertain. There have not been significant recorded instances of grantees defaulting on agreements with the State. DGS advises that a grantee recently requested BPW permission to transfer real property that had been originally purchased with State funds. The seller had not repaid funds from

the State loan and was seeking permission to transfer the property without repaying the State loan from the proceeds of the sale. Under the bill, the State could have the right to recover the value of the loan from the proceeds of the property sale.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of General Services, Department of Health and Mental Hygiene, Board of Public Works, Maryland Department of Transportation, Department of Budget and Management, University System of Maryland, Department of Legislative Services

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