SB 662

Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 662 (Senator Middleton)

Budget and Taxation | Ways and Means and Environmental Matters

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Agricultural Land Transfer Tax - Surcharge and Distribution of Revenue

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This bill establishes a 25% surcharge on an instrument of writing that transfers title to agricultural land which would be in addition to the current agricultural land transfer tax. The surcharge does not apply to transfers of two acres or less to a child or grandchild of the owner. The bill also alters the distribution of agricultural land transfer tax revenues.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: State special fund revenues and expenditures could increase by approximately $3.1 million annually beginning in FY 2009.

($ in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	$3.1	$3.1	$3.1	$3.1	$3.1
SF Expenditure	3.1	3.1	3.1	3.1	3.1
Net Effect	$0	$0	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill alters the distribution of agricultural land transfer tax revenues by providing that after distributions to the counties and the Woodland Incentive Fund:

- $2.5 million must be distributed to the Maryland Agricultural Land Preservation Fund (MALPF) beginning in fiscal 2009; this amount increases by 5% annually beginning in fiscal 2010;
- 37.5% (up to a maximum $4.0 million annually) must be distributed to a special fund for use by the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) for the Next Generation Farmland Acquisition Program;
- $4.0 million must be distributed into a special fund for use by MARBIDCO for a program facilitating preservation easement acquisition through the use of installment purchase agreements for easement purchases that have been approved by MALPF; and
- any remaining funds must be distributed to the Maryland Agricultural Land Preservation Fund.

The bill also provides that if revenues are insufficient to distribute $4.0 million to the special fund for MARBIDCO for an installment purchase agreement program for preservation easement acquisition, a deficiency must be made up from State transfer tax revenues that would otherwise be distributed to the Maryland Agricultural Land Preservation Fund.

The bill provides that MARBIDCO may use up to 3% of funds received for administrative costs for an installment purchase agreement program and the Next Generation Farmland Acquisition Program.

The bill states that it is the intent of the General Assembly that counties be encouraged to establish Priority Preservation Areas for agricultural land preservation and that new funds provided to MALPF for preservation easement acquisition be used only in Priority Preservation Areas after July 1, 2010.

Finally, the bill provides that funds received by MALPF after a specified date can only be used in Priority Preservation areas and that MALPF has additional flexibility in using resources to purchase agricultural land easements.

Current Law: Agricultural land transfer tax rates are as follows:

Acreage	Current Tax Rate
20 acres or more	5%
less than 20 acres assessed for agricultural use or as unimproved agricultural land	4%
less than 20 acres of agricultural land assessed as improved agricultural land or agricultural land with certain site improvements	3%

Agricultural land transfer taxes are paid by any person or business conveying title to agricultural land that is subject to the tax. Either the buyer or the seller, as determined by the contract of sale, may pay the tax.

The tax base is the amount of consideration paid for the property, including the amount of any mortgage or deed of trust assumed by the grantee, less the value of any improvements or any land not subject to the tax. The amount of consideration paid must be stated in the instrument of writing that transfers title to agricultural land. An instrument of writing is not subject to the agricultural land transfer tax if • the property tax on the land has been paid for five full consecutive taxable years before the transfer on the basis of an assessment other than the farm or agricultural use assessment; • the amount of agricultural land transferred is not greater than the applicable residential minimum zoning size in effect at the time of transfer and the transfer is to a member of the owner's immediate family for residential use; or • the transferee declares that the land will remain in farm or agricultural use for at least five full consecutive taxable years.

Background: All counties have the authority to impose the agricultural land transfer tax under the rates set by State law. **Exhibit 1** shows transfer tax revenues from fiscal 2000 through fiscal 2007.

The agricultural land transfer tax is collected by each county. In general, of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller. The Comptroller transfers up to $200,000 of these funds to the Woodland Incentive Fund and the remainder to the Maryland Agricultural Land Preservation Foundation Fund. Montgomery County retains two-thirds of its funds and transfers the balance to the Comptroller. The monies retained by each county are generally used as local matching funds under the State agricultural land preservation easement program and for other approved county agricultural preservation programs.

Exhibit 1
Maryland Agricultural Land Transfer Tax[1]
Fiscal 2000-2007
($ in Millions)

Fiscal Year	County Share	State Share	Total Net Revenues
2000	$7.8	$3.2	$11.0
2001	5.5	3.1	8.7
2002	5.9	3.0	8.9
2003	9.0	4.3	13.3
2004	10.4	5.4	15.8
2005	14.3	8.6	22.9
2006	11.5	8.7	20.2
2007	8.8	5.5	13.8

[1] Net of refunds.

Source: Maryland Department of Agriculture; State Department of Assessments and Taxation; Department of Legislative Services

The counties must spend or encumber all agricultural transfer tax revenues within three years from the date of receipt or remit the unspent or unencumbered portion to the Comptroller for deposit into the Maryland Agricultural Land Preservation Fund.

In 1990, the General Assembly created a program giving counties the ability to retain a larger share of the agricultural land transfer tax revenues if certain requirements were met. A qualifying county can receive 75% of the agricultural transfer tax revenues collected by that county (rather than 33%) and a portion of any surplus funds held by the foundation at the end of the fiscal year. In order to become certified to receive the additional funds, counties must develop effective farmland preservation programs that are approved by the Maryland Agricultural Land Preservation Foundation and the Maryland Department of Planning. Certification lasts for two years, and for a county to be recertified, the success of its program must be demonstrated.

MARBIDCO is a public corporation and instrumentality of the State. Its various purposes include • providing assistance to support, create, and sustain agricultural businesses; • providing financing and other assistance for product development, start-up and growth of growing and processing operations, and technological enhancements that benefit the environment and water quality; • facilitating and supporting access to high-quality technical resources for agricultural entrepreneurs; and • helping to make affordable capital and credit assistance available to various segments of the agricultural industry, from small farm land and equipment acquisition to processing and manufacturing operations.

When MARBIDCO was originally created in 2004 by the General Assembly, it was done so with the intent that it be funded within the existing resources of various State agencies and not be provided additional funding until "the State's fiscal crisis and structural deficit [was] resolved." The Agricultural Stewardship Act of 2006 (Ch. 289), however, mandated funding for MARBIDCO of $1.0 million in fiscal 2007 and $3.0 million in fiscal 2008, $3.5 million for fiscal 2009, growing to $4.0 million for fiscal 2010 through 2020. The proposed fiscal 2009 State budget, therefore, includes a $3.5 million appropriation for the corporation.

State Revenues: The proposed fiscal 2009 budget for MALPF assumes $5.0 million in agricultural land transfer tax revenues in fiscal 2009. As a result, imposing a 25% surcharge to current tax rates would result in an increase of $3.1 million annually (assuming constant collections).

State Expenditures: The bill requires agricultural land transfer tax collection to be distributed as described above. Based on annual collections of $8.1 million, the distribution of revenues, including the distribution to the Woodland Incentive Fund, would be as follows:

Fund	**Amount Required by Bill**	**Amount Distributed Fiscal 2009**	**Amount Distributed Fiscal 2010**
Woodland Incentive Fund	$0.2 million	$0.2 million	$0.2 million
MALP Fund	2.5 million	2.5 million	2.6 million
MARBIDCO – NGF	4.0 million	2.0 million	2.0 million
MARBIDCO – IPAs	4.0 million	4.0 million*	4.0 million*
MALP Fund	Remainder	0.0 million	0.0 million
Total	**$14.7 million**	**$8.1 million****	**$8.1 million****

*Distribution required from State transfer tax collections of $600,000 in fiscal 2009 and $700,000 in fiscal 2010.
**Does not include $600,000 and $700,000 in State transfer tax revenues in fiscal 2009 and 2010, respectively.

To the extent that $4.0 million is not distributed to MARBIDCO for an installment purchase agreement program, the difference between the actual amount distributed and $4.0 million must be made up with State transfer tax revenues that would otherwise be distributed to the Maryland Agricultural Land Preservation Fund. As shown, the amount of revenue raised by the 25% surcharge would be insufficient to make the required distributions. The fiscal 2009 budget assumes $166.3 million in transfer tax revenues, of which $18.6 million would be distributed to MALPF under the current transfer tax distribution formula. Under the bill, approximately $600,000 of the MALPF funds would be required to be distributed to MABIDCO for the installment purchase agreement program in fiscal 2009 and $700,000 would be required in fiscal 2010. In addition, the bill authorizes MARIDCO to retain 3% of revenues received for each program for administrative costs. This amounts to approximately $240,000 annually, which is not reflected on the distribution outlined above.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Comptroller's Office, Maryland Department of Agriculture, Department of Legislative Services

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