

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1619

(Delegate Haddaway, *et al.*)

Environmental Matters

Rural Broadband Communication Services - Railroads and Tributaries

This bill exempts nonprofit telecommunications services providers or their members from a prohibition against dredging or filling on State wetlands without a license and from any fees required by the Maryland Department of the Environment for the purpose of installing broadband communication infrastructure in rural and underserved areas. It also requires the Maryland Transit Administration to allow the use of any railroad right-of-way for the installation of broadband communication infrastructure in a rural and underserved area by a nonprofit telecommunications services provider or one of its members.

The bill takes effect July 1, 2008 and terminates June 30, 2020.

Fiscal Summary

State Effect: Potential foregone general fund and Transportation Trust Fund revenues through FY 2020 stemming from the fee exemptions granted to nonprofit telecommunications services providers. The extent to which revenues would decrease under the bill cannot be reliably estimated at this time but could be significant. No effect on expenditures.

Local Effect: None.

Small Business Effect: To the extent that the bill facilitates the development of broadband services in rural and underserved areas, small businesses in those areas could benefit.

Analysis

Current Law/Background:

Wetlands. The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways, including the 100-year floodplain. Permits granted for work in privately owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works.

BPW may require that compensation be made to the State as a condition of issuing a tidal wetlands license on State-owned land. MDE does not have the authority to assess fees, although HB 1056 of 2008 would give them that authority. Fees assessed by BPW for the installation of cables on State-owned wetlands include a nonrecurring, nonrefundable fee of \$1,000 and an annual fee of \$1 per linear foot of cable, adjusted every five years for inflation. Any monetary compensation paid to the State in conjunction with a wetlands license, along with specified penalties, are credited to the Tidal Wetlands Compensation Fund. MDE must use the fund for acquisition and conservation of wetland areas by the State, including cost-sharing assistance to landowners in the management and control of phragmites. Funds remain available until expended and may not be reverted under any other provision of law.

Rural Broadband and Rights-of-way. Chapter 269 of 2006 established the Rural Broadband Assistance Fund as a special nonlapsing fund within the Department of Business and Economic Development. Chapter 269 also established the Maryland Rural Broadband Coordination Board, which is responsible for the review and approval of RBAF disbursements to assist in the establishment of broadband services in rural and underserved areas of the State. The Maryland Broadband Cooperative is a public-private nonprofit partnership among DBED, five regional councils, and telecommunications companies serving Maryland. It is authorized to spend money from RBAF to plan, construct, and maintain broadband network access to rural communities on the Eastern Shore and in Western and Southern Maryland. With State, federal, and private funds, the cooperative has completed the first two phases of a planned three-phase project to extend broadband services to those three rural areas of the State. The Governor's proposed fiscal 2009 budget includes \$2.0 million in general funds toward project completion.

Chapter 269 also required the State Highway Administration to allow the use of any right-of-way under its jurisdiction by a nonprofit telecommunications services provider for the installation of rural broadband infrastructure without charging a fee. However, MTA, not SHA, controls railway rights-of-way.

State Fiscal Effect: In 2001, BPW approved a fee structure and standard licensing agreements for MTA to use when private parties wish to cross or run parallel to MTA-owned railway rights-of-way. The fee schedule has not been incorporated into either the Maryland Code or the Code of Maryland Regulations, and due to the timing of this bill's hearing, neither MTA nor the Maryland Department of Transportation was able to provide Legislative Services with a copy of the fee schedule. Moreover, the Maryland Broadband Cooperative, the most likely beneficiary of this bill, also was not able to respond to requests for information about the extent of its need for wetlands and railway access to complete planned work. Therefore, Legislative Services cannot estimate reliably how many right-of-way licenses would be requested. Nevertheless, MTA could experience foregone revenue from licensing fees that it would normally charge to a nonprofit telecommunications services provider to lay broadband cables across or parallel to railway rights-of-way. In the absence of the MTA fee schedule and projections of the number of potential licenses, Legislative Services cannot estimate the foregone revenue.

By exempting nonprofit telecommunications services providers from getting a license before dredging on State wetlands, the bill effectively exempts them from the BPW licensing fees, which are paid into the Tidal Wetlands Compensation Fund within MDE. In the absence of a response from the Maryland Broadband Cooperative, Legislative Services cannot estimate reliably the foregone special fund revenue that MDE would experience as a result of that exemption.

Additional Information

Prior Introductions: None.

Cross File: SB 1006 (Senator Colburn) – Education, Health, and Environmental Affairs.

Information Source(s): Talbot County, Maryland Department of Transportation, Department of Legislative Services

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