

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1431
Appropriations

(Delegates Boteler and Kach)

Professional Boards - Transfer of Funds - Repayment

This bill generally prohibits (1) the Governor from transferring money in a professional fund to the State's general fund; and (2) the General Assembly from authorizing the Governor to transfer money in a professional fund to the State's general fund. A "professional fund" means a fund or account established to receive fees, dues, or other payments from members of a profession and dedicated for use in the regulation or activities of the profession. Nevertheless, money in a professional fund may be transferred to the general fund if the funds are restricted by law to a purpose related to the profession. If the Governor transfers money in a professional fund to the State's general fund, the Governor must include an appropriation to repay the money in the annual budget bill for the following fiscal year.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: To the extent special fund revenues from professional funds are transferred to the general fund for unrelated purposes, general fund expenditures increase in the subsequent fiscal year.

Local Effect: The bill is not expected to affect local government operations or finances.

Small Business Effect: To the extent this bill prevents professional funds from being transferred to the general fund, small businesses in affected professional areas may benefit.

Analysis

Current Law: Numerous State regulatory boards and commissions are supported by fee revenue from the professionals they regulate. Some boards and commissions are supported by general funds, as fee revenue accrues to the general fund. However, others have dedicated special funds, where fee revenue is deposited and from which most or all costs are paid. For example, all but one of the health occupations boards in the Department of Health and Mental Hygiene (DHMH) are special funded; the Maryland Department of Agriculture's State Board of Veterinary Medical Examiners is special funded; most regulatory boards in the Department of Labor, Licensing, and Regulation (DLLR) are general funded but some are special funded. The Maryland Insurance Administration's (MIA) Insurance Regulation Fund is a special fund supported in part by fees from licensed insurance providers.

The Board of Physicians must submit all fees collected to the Comptroller of the State. If the Governor does not include in the State budget at least \$750,000 for the operation of the Health Personnel Shortage Incentive Grant Program and the Janet L. Hoffman Loan Assistance Repayment Program, as administered by the Maryland Higher Education Commission (MHEC), the Comptroller must distribute 12% of the fee revenue to these two programs and the remaining balance to the Board of Physicians Fund.

Background: Regulatory boards and commissions, supported by fee revenue from the community they regulate, often have their own nonlapsing special fund. The licensing activities of some of these entities may occur on a biennial basis; consequently, revenues may be alternatively high in one year and low in the other. The ability to carryover a fund balance allows boards and commissions to save money for large planned expenditures, address unanticipated expenditures, and keep fees at the same level for several years.

Budget reconciliation legislation in the past proposed transfers from board and commission special funds to the general fund, and some of these proposed transfers were ultimately implemented. Such transfers took place a limited number of times, and repayment from the general fund to the special fund for the transfer was not provided.

In the Budget Reconciliation and Financing Act of 2009 (House Bill 101/Senate Bill 166), the Administration proposes transferring \$606.2 million in fiscal 2009 special and nonbudgeted funds to the general fund to help balance the budget. Included among these proposed fund transfers are transfers from boards and commissions, as summarized in **Exhibit 1**. HB 101/SB 166 propose transferring \$2.0 million from DHMH's Maryland Health Care Commission Fund and \$605,035 from MIA's Insurance Regulation Fund to the general fund in fiscal 2009. Several health occupations boards within DHMH are also affected. For example, HB 101/SB 166 propose transferring \$3.0 million from the

Board of Physicians Fund and \$500,000 from the Board of Nursing Fund to the general fund before the close of fiscal 2009. HB 101/SB 166 also propose transfers from the State Board of Occupational Therapy Practice Fund and the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists (AUD/HAD/SLP) Fund before the end of fiscal 2010 in the amount of \$100,000 each.

Exhibit 1
HB 101/SB 166 – Transfers of Special Fund Balances (from “Professional Funds”)
to the General Fund
Fiscal 2009 and 2010

| | <u>Fiscal 2009</u> | <u>Fiscal 2010</u> |
|--|--------------------|--------------------|
| Department of Health and Mental Hygiene | | |
| Board of Physicians Fund | \$3,000,000 | \$0 |
| Maryland Health Care Commission Fund | 2,000,000 | 0 |
| Board of Nursing Fund | 500,000 | 0 |
| State Board of Occupational Therapy Practice Fund | 0 | 100,000 |
| State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists Fund | 0 | 100,000 |
| Maryland Insurance Administration | | |
| Insurance Regulation Fund | \$605,035 | \$0 |

Exhibit 2 shows the balance of each DHMH board affected by HB 101/SB 166 including the balance, income, expenditure, and proposed general fund transfer for fiscal 2009 through 2011. Only the fiscal 2009 beginning balance is a finalized number. Income, expenditures, and subsequent balances are all estimates provided by DHMH. To the extent possible, actual income and expenditures in fiscal 2008 were used as estimates in fiscal 2011. The Board of Physicians makes other regular transfers to MHEC for two scholarship funds. Exhibit 2 also shows the fund balance at the end of each fiscal year as a percent of total expenditures. The health occupations boards have set a target fund balance between 20% and 30% of expenditures needed for operations of the board for unexpected costs.

If HB 101/SB 166 pass as introduced, the Board of Physicians will have a \$3.3 million fund balance at the end of fiscal 2009, or 40.4%, of its annual required operating expenses; the Board of Nurses will have a \$1.0 million balance, representing 15.8% of its annual expenses; and the Board of Occupational Therapists and Board of AUD/HAD/SLP will be solvent at the end of fiscal 2010 when the transfer occurs, but both boards may run a negative balance by fiscal 2011.

Exhibit 2
DHMH Boards and HB 101/SB 166
Fiscal 2009-2011

| | <u>Board of Physicians</u> | <u>Board of Nursing</u> | <u>Board of Occupational Therapy</u> | <u>Board of AUD/HAD/SLP</u> |
|----------------------------------|--------------------------------|-----------------------------|--|---------------------------------|
| Fiscal 2009 Beginning Balance | \$7,502,277 | \$1,633,578 | \$543,384 | \$580,333 |
| Income | 7,930,980 | 6,312,797 | 75,000 | 72,700 |
| Expenditures | 8,170,072 | 6,427,997 | 529,652 | 290,586 |
| Transfer to MHEC | 964,805 | 0 | 0 | 0 |
| Transfer to GF per HB 101/SB 166 | 3,000,000 | 500,000 | 0 | 0 |
| Fiscal 2009 Ending Balance | \$3,298,380 | \$1,018,378 | \$88,732 | \$362,447 |
| Fund Balance as % | 40.4% | 15.8% | 16.8% | 124.7% |
| | | | | |
| Fiscal 2010 Beginning Balance | \$3,298,380 | \$1,018,378 | \$88,732 | \$362,447 |
| Income | 8,233,230 | 6,991,950 | 791,000 | 357,750 |
| Expenditures | 8,959,555 | 6,967,973 | 473,601 | 362,502 |
| Transfer to MHEC | 987,987 | 0 | 0 | 0 |
| Transfer to GF per HB 101/SB 166 | 0 | 0 | 100,000 | \$100,000 |
| Fiscal 2010 Ending Balance | \$1,584,068 | \$1,042,355 | \$306,131 | 257,695 |
| Fund Balance as % | 17.7% | 15.0% | 64.6% | 71.1% |
| | | | | |
| Fiscal 2011 Beginning Balance | \$1,584,068 | \$1,042,355 | \$306,131 | \$257,695 |
| Income | 8,122,268 | 5,851,923 | 75,000 | 95,000 |
| Expenditures | 8,092,953 | 5,205,162 | 387,169 | 369,752 |
| Transfer to MHEC | 835,152 | 0 | 0 | 0 |
| Fiscal 2011 Ending Balance | \$778,231 | \$1,689,116 | -\$6,038 | -\$17,057 |
| Fund Balance as % | 9.6% | 32.5% | -1.6% | -4.6% |

AUD/HAD/SLP: Audiology, Hearing Aid Dispensers, Speech-language Pathologists

GF: general fund

MHEC: Maryland Higher Education Commission

Source: Department of Health and Mental Hygiene; Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Department of the Environment, Department of Legislative Services

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