

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 70

(Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters

Bay Restoration Fund - Expanded Use of Funds

This departmental bill expands the authorized uses of the Bay Restoration Fund (BRF) to allow funds to be used as a source of revenue or security for the payment of principal and interest on bonds issued by a local government to finance eligible costs of enhanced nutrient removal (ENR) at wastewater treatment plants (WWTPs) with the approval of the Water Quality Financing Administration (WQFA).

Fiscal Summary

State Effect: None. As currently drafted, the bill is not anticipated to affect State finances or operations as discussed below.

Local Effect: None. As currently drafted, the bill is not anticipated to affect local finances or operations.

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

Analysis

Current Law: Chapter 428 of 2004 established the BRF, which is administered by the WQFA within the Maryland Department of the Environment (MDE). The main goal of the fund is to provide grants to owners of WWTPs to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with ENR technology. As a revenue source for the fund, Chapter 428 established a bay restoration fee on the users of WWTPs.

BRF revenues are used to award grants for up to 100% of the costs of planning, design, construction, and upgrade of WWTPs to ENR technology. Beginning in fiscal 2010, up to 10% of fund revenues may also be used for a portion of the operation and maintenance costs related to ENR technology. The fund is typically used to provide a source of revenue or security for the payment of principal and interest on bonds issued to finance the ENR upgrades and related activities for WWTPs.

Background: ENR upgrades of the State's 67 major publicly owned WWTPs are currently underway. As of January 2010, 12 ENR facilities are now operating; 14 are under construction; 25 are in design; and 16 are in planning. As of December 2009, the Comptroller had deposited approximately \$260.8 million into the BRF as a result of fees collected from WWTP users. However, MDE projects the total cost to upgrade the 67 major WWTPs to be about \$1.54 billion, with a resulting deficit of about \$659 million anticipated between fiscal 2012 and 2018.

The fiscal and policy note for Chapter 428 of 2004 estimated revenues of about \$822.5 million from the \$30 bay restoration fee, which was within the range of estimated costs (\$750 million to \$1 billion) for ENR upgrades at that time. However, more recent cost projections by MDE, based on detailed engineering analyses and recently opened construction bids, have led to an upward revision of the total estimated cost to about \$1.54 billion. A determination that revenue bonds secured by bay restoration fees are considered State tax-supported debt has limited, pursuant to the Maryland Constitution, the term of the bonds that may be issued to 15 years. Thus, debt service payments have been higher than originally anticipated.

The Bay Restoration Fund Advisory Committee has explored a number of options for addressing the anticipated deficit, including:

- increasing the bay restoration fee;
- reducing grants to below 100% of eligible costs;
- reprioritizing or delaying some ENR upgrades, or forgoing other upgrades based on the specific impacts of certain WWTPs on the Chesapeake Bay;
- allowing bay restoration fee revenue to make debt service payments on bonds issued by local governments that have a term of up to 30 years; and
- redirecting \$5 million per year from operating grants to capital funding.

This bill only addresses one of the five options the Bay Restoration Fund Advisory Committee is considering – namely, to allow bay restoration fee revenue to be used as a source of revenue or security for the debt service on locally issued bonds.

State Fiscal Effect: State tax-supported debt, such as bay restoration bonds issued by WQFA with a pledge of bay restoration fees, is subject to a constitutionally mandated 15-year repayment term. Local government bonds supported by revenue from the BRF, *if not considered a State tax-supported debt*, can be issued with a significantly longer repayment term of perhaps 30 years, which would significantly lower annual debt service costs. However, the State Treasurer's Office advises that, as currently drafted, any debt supported by a pledge of bay restoration fees under the bill is likely to be considered State tax-supported debt and would be subject to the 15-year repayment term; Legislative Services concurs with this assessment.

Assuming the debt issued under the bill is considered State tax-supported debt and subject to a 15-year repayment term, there will be no benefit to its issuance as compared to WQFA debt. In fact, as bonds issued by local government are considered more risky in the bond market, the debt service costs will be higher than for current WQFA bay restoration bonds. Further, a local government bond issuance under the bill diminishes the debt capacity of the issuing jurisdiction. For these reasons it is very unlikely any debt will be issued by local governments or supported by the State under the bill as currently drafted.

Additional Comments: MDE advises that it is aware that the bill as currently drafted does not accomplish its intended purpose.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Caroline, Calvert, Howard, and Montgomery counties; cities of Annapolis and Bowie; Maryland Department of the Environment; Comptroller's Office; State Treasurer's Office; Department of Legislative Services

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ncs/lgc

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Bay Restoration Fund – Expanded Use of Funds

BILL NUMBER: HB 70

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.