

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 45 (Delegate Cane)
 Environmental Matters Education, Health, and Environmental Affairs
 and Judicial Proceedings

Dorchester County - Bay Restoration Fee - Lien Against Property

This bill specifies that in Dorchester County an unpaid bay restoration fee is a lien against the property served by a wastewater facility, onsite sewage disposal (septic) system, or sewage holding tank. A notice of lien must be recorded in the county's land records.

Fiscal Summary

State Effect: Special fund revenues may increase by about \$34,600 in FY 2011 due to the collection of unpaid bay restoration fees in Dorchester County. Future year revenues reflect continued collections of unpaid fees. Expenditures are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	\$34,600	\$9,100	\$9,300	\$9,600	\$9,800
Expenditure	0	0	0	0	0
Net Effect	\$34,600	\$9,100	\$9,300	\$9,600	\$9,800

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

Local Effect: Although the bill improves the ability of billing authorities in Dorchester County to recover unpaid bay restoration fees, the bill is not anticipated to have a significant impact on local operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 428 of 2004 established the Bay Restoration Fund (BRF), which is administered by the Water Quality Financing Administration within the Maryland Department of the Environment. The main goal of the fund is to provide grants to owners of wastewater treatment plants to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal technology. As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks. The applicable fee varies for different classes of users.

Except for a wastewater facility without a billing authority, the fee must be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State. With respect to users who receive a water or sewer bill, the fee is to be listed as a separate charge on the bill. For users of septic systems or holding tanks that do not receive a water or sewer bill, current law requires that the county collect the fee, although the county may negotiate with a municipality to assume responsibility for collection within the municipal limits.

Fee revenues are required to be remitted by the billing authorities to the Comptroller who administers, collects, and enforces the fee. The Comptroller and the Central Collection Unit are authorized to collect revenues that should have been credited to the fund from billing agencies. Current law authorizes a local government, billing authority for a water or wastewater facility, or any other authorized collection agency to use any existing authority for collecting a water or sewer bill, a septic system bill, or a holding tank bill in order to enforce the collection of the fee.

Background: In 2007, the Maryland Office of the Attorney General issued an opinion that an unpaid tax or fee does not constitute a lien on real property unless the lien is expressly provided by law. The statute establishing the bay restoration fee does not itself create a statutory lien; rather, it authorizes local governments and other billing authorities to use their existing procedures for collecting water and sewer bills to collect the fee. In some jurisdictions, current law may provide for a lien that would encompass other charges that may appear on a water and sewer bill, such as the bay restoration fee. However, the opinion concluded that a local law simply making unpaid water and sewer charges themselves a lien would be insufficient to create a lien for other unpaid charges. The opinion indicated that, absent a statutory lien, an unpaid charge may not be collected through the tax sale process. The opinion recommended that the General Assembly consider the merits of creating a statutory lien for unpaid charges to provide a more uniform enforcement mechanism for collection of the bay restoration fee.

State Revenues: The Comptroller advises that, by authorizing the creation of a lien on the property of an individual with unpaid bay restoration fees, most, if not all, such unpaid fees will be paid. Although the Comptroller and Dorchester County were unable to provide current data, based on information provided in the 2009 session, the estimated total amount of unpaid fees to date is \$34,627. If all unpaid fees are paid in fiscal 2011, BRF revenues increase by \$34,454, which accounts for the 0.5% administrative fee retained by the Comptroller. This estimate may overstate the amount actually collected to the extent that fees remain unpaid even after the imposition of a lien. The average annual amount of unpaid bay restoration fees in Dorchester County was \$8,573 between fiscal 2007 and 2008. Assuming a continuation of that rate plus an additional 2.8% annual increase to reflect projected growth in collections, BRF revenues in future years increase by \$9,064 in fiscal 2012 and by \$9,847 in fiscal 2015.

Additional Information

Prior Introductions: SB 329 of 2009 passed in the Senate and received a hearing in the Environmental Matters Committee, but no further action was taken. SB 155 of 2008 passed the Senate and House with amendments, but the amendments could not be reconciled.

Cross File: SB 36 (Senator Colburn) - Education, Health, and Environmental Affairs and Judicial Proceedings.

Information Source(s): Dorchester County, Maryland Department of the Environment, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2010
ncs/lgc Revised - Enrolled Bill - April 21, 2010

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