Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 59 (Chair, Budget and Taxation Committee)(By Request - Departmental - Agriculture)

Budget and Taxation Ways and Means

Agricultural Land Transfer Tax - Distribution and Use of Revenue

This departmental bill updates the amount of agricultural land transfer tax revenue that must be allocated to the Maryland Agricultural Land Preservation Fund and alters the distribution of agricultural land transfer tax revenues. The bill deletes provisions clarifying the General Assembly's intent that counties be encouraged to establish priority preservation areas (PPAs) for agricultural land preservation and that new funds provided to the Maryland Agricultural Land Preservation Foundation (MALPF) for easement acquisitions be used only in PPAs after July 1, 2010.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: The bill primarily alters the purposes for which existing funds may be used. To the extent it requires administrative changes, they can be handled with existing budgeted resources.

Local Effect: The bill does not directly affect local finances; however, local jurisdictions may benefit to the extent MALPF receives additional revenue and distributes it to them.

Small Business Effect: The Maryland Department of Agriculture (MDA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill deletes provisions that:

- require $4.0 million in annual agricultural land transfer tax revenue to be allocated to the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) for implementing installment purchase agreements (IPAs) for easement purchases approved by MALPF;
- require MALPF to dedicate State property transfer tax revenues to MARBIDCO, that would otherwise be distributed to the Maryland Agricultural Land Preservation Fund, if agricultural land transfer tax revenues are insufficient to distribute $4.0 million to MARBIDCO's IPA program; and
- authorize MARBIDCO to use up to 3% of the agricultural land transfer tax revenue it receives for the IPA and Next Generation Farmland Acquisition programs for administrative costs.

The bill deletes a provision that gives MARBIDCO the flexibility to use specified resources for lump-sum easement purchase payments. However, it authorizes IPA funds dedicated before July 1, 2010, to be used for lump-sum easement purchase payments approved by MALPF.

Current Law: The agricultural land transfer tax was created in 1981 and is collected by each county. 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. Agricultural land transfer tax includes a specified surcharge on an instrument of writing that transfers title to agricultural land. In general, of the total collections, each county (except Montgomery) retains one-third of the funds and transfers the balance to the Comptroller. Counties with certified agricultural land preservation programs retain three-quarters of the funds and transfer the balance to the Comptroller. Funds retained by each county are generally used for approved county agricultural preservation programs.

Agricultural land transfer tax revenues remitted to the Comptroller by counties must be distributed as follows:

- up to $200,000 annually from land that is entirely woodland to the Department of Natural Resource's Woodland Incentives Fund;
- $2.5 million, plus 5% over the amount distributed for the preceding fiscal year, to MALPF;

- 37.5%, up to a maximum of $400,000 annually, to MARBIDCO's Next Generation Farmland Acquisition Program;
- $4.0 million to MARBIDCO's IPA program; and
- any remaining amount to MALPF.

If revenues are not sufficient to provide the full $4.0 million to MARBIDCO's IPA program, MALPF must transfer its share of State property transfer tax revenues to MARBIDCO for this purpose.

Exhibit 1 shows agricultural land transfer tax revenues from fiscal 2005 through 2009.

Exhibit 1
Maryland Agricultural Land Transfer Tax[1]
Fiscal 2005-2009
($ in Millions)

Fiscal Year	Total Net Revenues
2005	$22.9
2006	20.3
2007	13.8
2008	7.3
2009	3.3

[1] Net of refunds.

Sources: State Department of Assessments and Taxation, Department of Legislative Services

The Agricultural Stewardship Act of 2006 (Chapter 289) authorized counties to include a PPA element in their local comprehensive plans. PPAs must:

- contain productive agricultural or forest soils or be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking;
- be governed by local policies that stabilize the agricultural and forest land base so that development does not convert or compromise agricultural or forest resources;
- support the ability of working farms in the PPA to engage in normal agricultural activities; and

- be large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the PPA, as represented in its adopted comprehensive plan.

The Maryland Department of Planning and MALPF are required to evaluate and certify county PPAs.

Background:

MARBIDCO

MARBIDCO is a public corporation and instrumentality of the State. It was established in 2004 to support, create, and sustain agricultural businesses by 1) providing financing and other assistance for product development, start-up and growth of specified operations, and technological enhancements that benefit the environment and water quality; 2) facilitating and supporting access to technical resources; and 3) making capital and credit assistance available. The Governor's proposed fiscal 2011 budget for MARBIDCO includes $4.0 million in special funds for the IPA program, $675,000 in special funds for the Next Generation Farmland Acquisition Program, and $2.75 million in general funds for other programs. However, in the Budget Reconciliation and Financing Act of 2010 (House Bill 151/Senate Bill 141), the Administration reduces MARBIDCO's proposed fiscal 2011 budget by $1.9 million in general funds.

MALPF

MALPF, which was established by the General Assembly in 1977 and is part of MDA, purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, local matching funds, and the U.S. Department of Agriculture's Federal Farmland Protection Program. MALPF settled on its first purchased easement in October 1980. As of January 2010, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,079 farms covering 283,169 acres. The Governor's proposed fiscal 2011 capital budget for MALPF is $25.9 million. However, in the Budget Reconciliation and Financing Act of 2010, the Administration reduces MALPF's proposed budget by $11.8 million in special funds, contingent upon legislation authorizing bond funds for this purpose instead.

A MALPF IPA is a contract between MARBIDCO (MALPF's conduit partner) and the seller of an easement. Easement sellers who utilize IPAs receive 1) payment of the principal (the amount of the offer or the unpaid balance left at settlement) at the end of the period of the agreement; and 2) tax-exempt semi-annual interest payments during the period of the agreement. MALPF, through MARBIDCO, currently offers IPAs in $100,000 denominations for 10- or 15-year periods.

Constitutional Issues

Chapter 610 of 2008 requires $4.0 million in agricultural land transfer tax revenue to be allocated to MARBIDCO for an IPA program focused on agricultural land preservation. MARBIDCO and MALPF had intended to offer IPAs for periods of 15, 20, 25, or 30 years. However, the Office of the State Treasurer and the Office of the Attorney General recently advised that State constitutional provisions concerning tax-supported debt prohibit the use of IPAs with terms longer than 15 years. Accordingly, MARBIDCO has been limited to offering leveraged IPAs for easement purchases funded from transfer tax revenues with terms of 15 years or less. However, MALPF may implement self-funded IPAs for terms beyond 15 years by providing grants to MARBIDCO for individual easement purchases.

After July 1, 2010, agricultural land transfer tax revenue transferred to MARBIDCO must be used to purchase easements with IPAs and may not be transferred to MALPF. MDA advises this provision will put available revenues out of MALPF's reach if there is insufficient demand for MARBIDCO's IPA funding. Since current demand for IPA funding is low, MDA estimates that this statutory requirement may result in up to 700 acres of agricultural easement land not being preserved or being delayed in preservation.

State Fiscal Impact: While the bill does not have an overall impact on State finances, it does redirect agricultural land transfer tax revenues from MARBIDCO to MALPF. Specifically, the bill:

- redirects $4.0 million in annual agricultural land transfer tax revenue from MARBIDCO's IPA program to MALPF; and
- prevents MALPF's property transfer tax from being diverted to MARBIDCO in specified circumstances.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 25, 2010
a/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Agricultural Land Transfer Tax – Distribution and Use of Revenue

BILL NUMBER: SB 59

PREPARED BY: Maryland Department of Agriculture

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ 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.