SB 702

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 702 (Senators Pipkin and Colburn)
Finance

Public Utilities - Susquehanna River - Dam Floodgates

This bill requires the Public Service Commission (PSC) to order all owners of dams located on the Susquehanna River to keep the dam's floodgates open at all times.

Fiscal Summary

State Effect: Assuming that PSC can successfully order the Conowingo Dam (the only dam on the Suquehanna River in the State), to keep its floodgates open, there is a potential significant effect on State expenditures and revenues to the extent that the bill prompts the (1) State to implement more costly pollution reduction programs in order to meet federal Chesapeake Bay Total Maximum Daily Load (TMDL); and/or (2) federal government to withhold federal funds or establish new requirements to ensure pollution reductions occur. However, any impact cannot be reliably estimated at this time.

Local Effect: Potential significant effect on local finances and operations to the extent the bill prompts the (1) State to implement more costly pollution reduction strategies in order to meet Bay TMDL requirements; and/or (2) federal government to withhold federal funds or establish new requirements to ensure pollution reductions occur. However, any impact cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful impact on small business to the extent that the bill prompts the federal government to withhold federal funds or to establish new requirements to ensure pollution reductions occur.

Analysis

Current Law: PSC has authority to regulate public service companies in the State to promote adequate, economical, and efficient delivery of utility services without unjust discrimination. A "public service company" includes a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies. A public service company must furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, considering the conservation of natural resources and the quality of the environment. PSC does not have authority to regulate dams on the Susquehanna River.

Background:

The Conowingo Dam and the Susquehanna River Watershed

According to Exelon Corporation, the Conowingo Dam has been providing electricity since 1928. The Conowingo Dam has a license issued by the Federal Energy Regulatory Commission (FERC) that expires September 1, 2014. As a federally regulated dam, the Conowingo Dam is subject to numerous federal energy, dam safety, environmental, and emergency management laws.

The Maryland Department of the Environment (MDE) had previously identified the waters of the Conowingo Dam/Susquehanna River watershed as impaired by nutrients and sediments. A 2010 report specifically identified aquatic life as the designated use being impaired by phosphorus in the watershed. However, in 2011, MDE conducted a water quality assessment of the watershed and determined that the previous assessment was based on limited data and that, upon reassessment, aquatic life is not impaired at this time. However, the water quality assessment also noted that nutrient reductions will still be required to meet allocations assigned to the Northern Chesapeake Bay Tidal Fresh Bay Water Quality Segment by the Chesapeake Bay TMDL (Bay TMDL) established by the U.S. Environmental Protection Agency (EPA) on December 29, 2010.

In the Bay TMDL, EPA discusses the importance of several dams along the lower Susquehanna River as a factor influencing nitrogen, phosphorus, and sediment loads to the bay because of the large quantities of these pollutants contained in the dam's reservoirs. In the Bay TMDL, EPA assumed the current trapping efficiencies will continue. However, if future monitoring shows a change in the capacity of the Conowingo Dam to trap nutrients, the two-year milestone load reductions could be adjusted accordingly. EPA notes that it is imperative for New York, Pennsylvania, and Maryland to work together to develop an implementation strategy for addressing the sediment, nitrogen, and phosphorus behind the Conowingo Dam through their respective

Watershed Implementation Plans (WIPs), to prepare for any decrease in the dam's trapping efficiencies.

Currently, the State's Phase II WIP does not provide a strategy that specifically involves nutrient or sediment reductions from the Conowingo Dam, and neither Cecil County nor Harford County has discussed a role for the Conowingo Dam in its local Phase II WIP analysis submitted to MDE.

The Bay TMDL and the WIP Development Process

In December 2010, EPA established the Bay TMDL, which (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

Exhibit 1
Maryland's Pollution Reduction Goals in the Bay TMDL
(Million Pounds per Year)

Pollutant	2010 Loads	Bay TMDL Target Load	Percent Reduction
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load
Note: Target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

In 2010, each bay jurisdiction submitted a Phase I WIP that details how the jurisdiction will achieve its individual pollution reduction goals under the Bay TMDL. The Phase I WIP focused on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants, upgrading septic systems, and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the Bay TMDL is to be met.

On January 26, 2012, Maryland released for public comment a draft of the State's Phase II WIP, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin).

State/Local Fiscal Effect: Because the Conowingo Dam is a federally licensed facility subject to numerous federal laws, it is unclear whether the bill could even be implemented. It is further unclear what actions the federal government will take as a result of the bill, and how any such actions may affect State or local finances.

To the extent the bill prevents the State from making progress toward the requirements of the Bay TMDL, EPA may take action to ensure pollution reductions occur, including increasing oversight of State issued pollution permits, requiring additional pollution reductions, prohibiting new or expanded pollution discharges, redirecting federal grants, and revising water quality standards to better protect local and downstream waters. However, the impact on State and local governments cannot be reliably estimated at this time.

Additional Comments: Legislative Services notes that the bill orders PSC to order all dams on the Susquehanna River to keep their floodgates open at all times. However, the Susquehanna River stretches into Pennsylvania and New York, and it is unclear if PSC could successfully order dams located in those states to keep their floodgates open at all times.

Further, Legislative Services advises that the pond formed behind the Conowingo Dam acts as a heat sink for the Peach Bottom Nuclear Generating Station. Keeping the dam's floodgates open at all times could lower the pond level beyond what the federal Nuclear Regulatory Commission would permit.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission, Department of Natural Resources, Maryland Department of Agriculture, Maryland Department of the Environment, Cecil County, U.S. Environmental Protection Agency, Exelon Corporation, Department of Legislative Services

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