Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 833 (Senator Pipkin)
Education, Health, and Environmental Affairs

Regulations - Fees and Fines - Legislative Approval Required

This bill prohibits a regulation that increases a fee or fine that a unit of government is authorized to impose from taking effect until the General Assembly approves the increase through legislation.

Fiscal Summary

State Effect: General and special fund revenues from fees and fines could be negatively impacted in FY 2013 and subsequent years, which could potentially negatively impact federal matching funds. Shortfalls in revenues could result in increased reliance on the general fund and the need for deficiency appropriations. However, any such impacts cannot be reliably estimated at this time.

Local Effect: Local government revenues could decrease to the extent that State assistance is reduced due to lower fee and fine revenue attainment. Any such impact cannot be reliably estimated at this time.

Small Business Effect: Minimal.

Analysis

Current Law: The Joint Committee on Administrative, Executive, and Legislative Review (AELR) of the General Assembly is a statutory committee consisting of 20 members evenly divided between the House of Delegates and the Senate. Among other responsibilities, the committee is charged with reviewing regulations proposed or adopted by Executive Branch agencies and considering requests for emergency adoption of regulations.

Chapters 300 and 301 of 2010 require that regulatory submissions to the AELR Committee that increase (or decrease) licensing fees for regulated professions include a written justification for the fee change. For proposed fee increases, the written justification must include (1) the amount of revenue needed for the unit to operate effectively or to eliminate an operating fund deficit; (2) the year of the most recent fee increase; (3) whether fee revenue is retained by the unit or passed through to a national organization that administers a uniform licensing exam; (4) measures taken to mitigate the need for increased revenue; (5) a description of special circumstances that have had an adverse impact on the unit's operating expenses; (6) consideration given to the hardship imposed by a fee increase on the regulated profession; and (7) efforts to solicit the opinions of licensees regarding the unit's effectiveness and performance.

A unit of the Executive Branch that proposes a regulation must submit it for preliminary review by the AELR Committee at least 15 days before the proposed regulation is submitted for publication in the *Maryland Register*. A proposed regulation may not be adopted until after it is submitted to the AELR Committee and at least 45 days after its first publication in the *Maryland Register*. The unit must permit public comment on the proposed regulation for at least 30 days of the 45-day period after it is first published in the *Maryland Register*. If the AELR Committee determines that it cannot conduct an appropriate review within the 45-day time period and that additional time is needed, the committee can delay the adoption of the regulation by notifying the promulgating unit and the Division of State Documents before the expiration of the 45-day time period. If the promulgating unit is provided with this notice, the unit may not adopt the regulation until it notifies the committee in writing of its intention to adopt the regulation and provides the committee with a further period of review that terminates 30 days after the notice provided to the committee or 105 days after initial publication of the proposed regulation in the *Maryland Register*, whichever is later.

Failure by the AELR Committee to approve or disapprove the proposed regulation during the 45-day period of review may not be construed to mean that the AELR Committee approves or disapproves the proposed regulation. However, the unit may proceed with adoption of the proposed regulation if the AELR Committee has not taken action to either approve or disapprove it.

An Executive Branch unit may adopt a proposed regulation on an emergency basis if the unit declares that emergency adoption is necessary, the proposed regulation and its fiscal impact are submitted to the AELR Committee, and the AELR Committee approves the emergency adoption. A public hearing must be held on the emergency adoption of the proposed regulation if requested by a member of the AELR Committee. The Administrative Procedure Act also sets forth procedures that must be followed if the AELR Committee opposes adoption of a proposed regulation, and for the notice and publication of regulations once they are adopted.

State Fiscal Effect: The exact fiscal impact of this legislation cannot be reliably estimated at this time. However, general and special fund revenues would be affected for numerous agencies and entities under the bill beginning in fiscal 2013. For example, many units of government, including the Maryland Department of Transportation (MDOT), the Department of Housing and Community Development (DHCD); the Department of Natural Resources; the Department of Health and Mental Hygiene (DHMH), including the Health Services Cost Review Commission, the Maryland Health Care Commission, and all of the health occupations boards; and many of the business occupations and professional boards under the Department of Labor, Licensing, and Regulation rely on special funds obtained under the statutory authority to set fees and/or fines in regulations to support their operations. In some instances, such as the health occupations boards, special funds from fine and fee revenues are the sole source of revenue. Some of the fees charged by these boards are pass-through fees that are collected by the board on behalf of other entities, such as national examination entities, and the boards have no control over the amount of the fee.

According to the Department of Budget and Management, the bill will result in an increase in legislation in future years as agencies are required to submit legislation to increase fees or fines that, under current law, can be adjusted by regulation. The bill could make it more difficult for agencies to respond to demand for additional regulatory services if it is necessary to wait for a bill to pass rather than having regulations become effective about three months after submission. DHCD notes that, to the extent legislation to increase a fee or fine does not pass the General Assembly, units of government may be forced to seek alternative funding sources or reduce or eliminate programs or services to make up for the revenue shortfall.

According to MDOT, this bill could limit the Maryland Transportation Authority's (MDTA) ability to raise the revenues necessary to meet obligations under its trust agreement. This could in turn infringe upon the contractual rights of existing bondholders inherent in the trust agreement and be seen as a breach of contract. MDTA currently has an Aa3 rating from Moody's Investors Service, AA- from Standard & Poors, and AA- from Fitch Ratings. These ratings are among the highest granted for tolling authorities. If revenues slip below expectations and are not sufficient to meet the standards included in the trust agreement, MDTA increases its tolls and other fees to avoid defaulting on the trust agreement to the bondholders and to sustain its bond ratings. Credit rating agencies cite a toll entity's independent ability to set toll rates, free of political consideration or approval from an outside source, as a key factor in achieving an optimal credit rating.

Under the bill, special funded entities would have to better anticipate the need for fee increases and maintain higher fund balances to account for unanticipated expenditures and revenue reductions. Higher fund balances could subject these entities to additional special fund transfers under budget reconciliation legislation.

At times, regulatory fee increases are assumed in the State budget. For example, DHMH's Laboratories Administration performs newborn screening services for approximately 68,000 newborns annually. The fee for this screening is currently set in regulation at $70. The Governor's fiscal 2013 proposed budget presupposes $1.4 million in general fund revenues based on the assumption that DHMH will amend its regulations to increase the fee to $90. If subject to this bill, a separate bill would have to be introduced and adopted to increase this fee. Otherwise, DHMH would have to seek alternative funding for the anticipated $1.4 million in revenues that were not achieved.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Budget and Management, Department of Natural Resources, Department of Housing and Community Development, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, Comptroller's Office, Secretary of State, Maryland Department of Transportation, Department of Legislative Services

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