HB 1467

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1467 (Delegate McIntosh)
Environmental Matters and Ways and Means

Sustainable Communities - Financing and Designation

This bill authorizes specified counties and municipalities to finance the costs of infrastructure improvements located in or which support "sustainable communities" through tax increment financing (TIF). The Maryland Economic Development Corporation (MEDCO) may also enter into agreements with specified counties and municipalities to issue TIF-backed bonds on behalf of sustainable community "infrastructure investments." The bill establishes a Smart Growth Reinvestment Fund in the Maryland Department of Planning (MDP) to provide financial assistance to eligible projects in sustainable communities when a local government has issued bonds or created a special taxing district or TIF to specifically benefit a sustainable community. The bill also extends designations and the deadline to apply for redesignation for specified sustainable communities and establishes a reporting requirement.

The bill generally takes effect October 1, 2012, except for provisions related to the redesignation of sustainable communities, which take effect June 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by $5.0 million annually beginning in FY 2013 to capitalize the fund. Special fund revenues to the fund and expenditures from the fund increase accordingly. Nonbudgeted revenues and expenditures may increase for MEDCO to the extent it issues additional TIF-backed bonds.

($ in millions)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$5.0	$5.0	$5.0	$5.0	$5.0
NonBud Rev.	-	-	-	-	-
GF Expenditure	$5.0	$5.0	$5.0	$5.0	$5.0
SF Expenditure	$5.0	$5.0	$5.0	$5.0	$5.0
NonBud Exp.	-	-	-	-	-
Net Effect	($5.0)	($5.0)	($5.0)	($5.0)	($5.0)

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

Local Effect: Meaningful. The enabling of TIF for sustainable community infrastructure investments and additional financing options through MEDCO will positively affect local governments.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Enhanced Tax Increment Financing for Sustainable Communities

Under current law, specified counties and every municipality in the State may create a special taxing district, levy *ad valorem* or special taxes, and issue bonds and other obligations for purposes of financing infrastructure improvements or the operation and maintenance of improvements located in transit-oriented development (TOD) districts and State hospital redevelopments. The bill adds "sustainable communities" as an additional type of eligible district. A special fund may be created by the county or municipality with respect to the special taxing district to facilitate these actions. A "sustainable community" under the bill has the same meaning as it does under current provisions relating to sustainable communities in the Housing and Community Development Article.

The special taxing district is terminated when (1) the bonds issued by the municipal corporation or county and any related MEDCO obligations are no longer outstanding; and (2) the municipal corporation or county determines not to use the monies in the special fund for the payment of infrastructure improvement costs in a sustainable community. Upon termination of the special taxing district, any moneys remaining in the special fund on the date of the termination may be paid to the general fund of the county or municipality.

In addition to the uses for TIF bond proceeds authorized under current law, the bill allows TIF bond proceeds to be used for "infrastructure improvements" and schools in sustainable communities.

In a sustainable community, "infrastructure improvements" include (1) historic preservation or rehabilitation; (2) environmental remediation, demolition, and site preparation; (3) parking lots, facilities, or structures of any type whether for public or private use; (4) highways or transit service that support sustainable communities; and (5) affordable or mixed income housing.

In addition, MEDCO may enter into agreements with certain counties and every municipality to use proceeds from a special taxing district, including TIF, to repay debt service on bonds issued by MEDCO on behalf of sustainable community infrastructure improvements. TIF-supported bonds may cover the expense of construction, operation, or maintenance of infrastructure improvements, and local tax revenues attributed to the development may be pledged for repayment of MEDCO bonds.

Smart Growth Reinvestment Fund

The bill establishes a Smart Growth Reinvestment Fund, administered by MDP, to provide financial assistance to eligible projects in sustainable communities when a local government has issued bonds or created a special taxing district or TIF specifically to benefit the sustainable community in specified circumstances. The fund consists of:

- money appropriated in the State budget for the purposes of the fund;
- proceeds of a sale of bonds, notes, or other obligations of the State; and
- any other money from any other source accepted for the benefit of the fund.

The fund may be used only to pay administrative costs directly related to the fund and to make grants and loans for eligible projects in sustainable communities. MDP must adopt regulations to carry out the purposes of the fund. The regulations must include application and public notification procedures and specified selection criteria MDP must consider in evaluating loan applications, including proposed matching contributions and the geographic distribution of loan assistance from the fund.

With the approval of the Secretary of Planning, for each loan, MDP may set the principal, the maturity, the repayment terms, and an interest rate. MDP may grant a loan from the fund at an interest rate lower than rates on other loans from the fund if the loan recipient is a nonprofit organization or a political subdivision.

A loan from the fund may be secured by a mortgage lien, including a subordinate mortgage lien, a guarantee of repayment, or another form of acceptable collateral.

MDP, without prior approval or execution by the Board of Public Works, may (1) take title to a mortgaged property by foreclosure or by deed instead of foreclosure; (2) convey title to a buyer; and (3) obtain and seek enforcement of a deficiency judgment. An individual or business entity may receive a loan only if the recipient can document that private financing is unavailable.

Extension of Sustainable Community Designation Status

The bill also extends both the designation status of specified designated sustainable communities and the deadline by which they can apply for redesignation. Any community legacy area approved by the Community Legacy Board prior to June 1, 2010, is considered a sustainable community until June 1, 2013. Any designated neighborhood approved by the Secretary of Housing and Community Development prior to June 1, 2010, is considered a sustainable community until June 1, 2013.

By June 1, 2013, a sponsor must file an application to redesignate any approved designated neighborhood as a sustainable community for projects to remain eligible for financial assistance from the various programs that support sustainable communities.

Reporting Requirement

By October 1, 2017, MDP, in consultation with the Department of Housing and Community Development (DHCD) and the Maryland Department of Transportation (MDOT), must jointly report to the General Assembly on whether TIF or a special assessment district has been used by a local jurisdiction in a sustainable community, and if so, the impact of the financing on the infrastructure improvements within the sustainable community.

Current Law: The General Assembly has granted 12 counties (Anne Arundel, Baltimore, Calvert, Cecil, Charles, Garrett, Harford, Howard, Prince George's, St. Mary's, Washington, and Wicomico) and Baltimore City broad authority to create special taxing districts and to levy *ad valorem* taxes and issue bonds and other obligations for purposes of financing infrastructure improvements. The types of infrastructure improvements authorized under current law include storm drainage systems, water and sewer systems, roads, sidewalks, lighting, parking, park and recreational facilities, libraries, schools, transit facilities, and solid waste facilities.

Special Taxing Districts

All counties have authority to establish special taxing districts for limited purposes, such as drainage or street lighting improvements. In addition, the governing bodies of counties that have adopted charter home rule or code home rule also have broad authority under the Express Powers Act to create special taxing districts to carry out most "municipal-type services." The number of special taxing districts established under this authority varies significantly.

Tax Increment Financing

TIF is a public financing method that uses future gains in tax revenues to finance current improvements. It is designed to channel funding toward improvements in distressed or underdeveloped areas where development might not otherwise occur. TIF creates funding for public projects that may otherwise be unaffordable to localities, by borrowing against future property tax revenues.

Chapter 182 of 2009 authorized certain counties and municipalities to finance the costs of certain infrastructure improvements located in or supporting a TOD. The Act authorized MEDCO to enter into agreements with certain local jurisdictions to use proceeds from a special taxing district, including TIF, to repay debt service on bonds issued by MEDCO on behalf of TOD projects. Chapter 726 of 2010 extended the same financing authority for the counties, municipalities, and MEDCO to State hospital redevelopments.

Maryland Economic Development Corporation

MEDCO is a nonbudgeted entity that allows the State to own or develop property for economic development purposes. MEDCO was created in 1984 with the mission to help expand, modernize, and retain existing State business and to attract new business to the State.

MEDCO purchases or develops property that is leased to others under favorable terms, and it makes direct loans to companies throughout the State to maintain or develop facilities. It also often serves as the conduit for loans administered by the Department of Business and Economic Development (DBED). MEDCO issues bonds to raise funds for its loans. The bond debt consists primarily of revenue bonds and notes payable to government agencies such as DBED. The debt represents nonrecourse obligations because MEDCO is not liable to bondholders and lenders in the event of a project or borrower default. Each project must have self-supporting revenues, and no projects are cross-collateralized. As a result, MEDCO debt is not debt of the State, and there is no implied State guaranty or State obligation to protect bondholders from losses.

MEDCO has been involved in 235 projects totaling in excess of $3.5 billion. Of these, MEDCO currently owns and operates 14 as operating facilities, meaning the corporation is involved in management decisions and has a hand in ensuring successful daily operations. For other projects, MEDCO serves as an arms-length financing entity.

Designation as a Sustainable Community

Pursuant to the Sustainable Communities Act of 2010 (Chapter 487), there are multiple pathways and associated timeframes to designation as a sustainable community. A community legacy area approved by the Community Legacy Board prior to January 1, 2008, is considered a sustainable community until June 1, 2012. A community legacy area approved by the Community Legacy Board on or after January 1, 2008, is considered a sustainable community until June 1, 2013.

Any designated neighborhood approved by the Secretary of Housing and Community Development prior to June 1, 2010, is considered a sustainable community until June 1, 2012. By June 1, 2012, a sponsor must file an application to redesignate any approved designated neighborhood as a sustainable community for projects to remain eligible for financial assistance from the various programs that support sustainable communities.

A sustainable community designated (or resdesignated) after June 1, 2010, retains its designation for five years. To maintain a sustainable community designation, an updated action plan and application must be sent every five years to DHCD. There is no limit on the number of times an area may be redesignated as a sustainable community.

A sustainable community also includes an area that has been designated as a Base Realignment and Closure (BRAC) revitalization zone or has been designated as a TOD district. The areas do not need to apply for redesignation, but they must submit an action plan to be eligible to apply for sustainable community resources.

Background: This bill is the result of efforts by the Funding Workgroup of the Sustainable Growth Commission which was established by Chapters 488 and 489 of 2010 and is staffed by MDP. The workgroup focuses on identifying new financing mechanisms to support the State's Smart, Green, and Growing initiatives, and it researched TIF extensively in 2011.

According to DHCD, there are approximately 150 sustainable communities in the State, including BRAC and TOD districts that are automatically designated. DHCD anticipates redesignating an additional 20 to 25 sustainable communities in the months before the June 1, 2012 deadline in current law for specified sustainable communities. Legislative Services notes that, were a sustainable community to lose its designation due to the current deadline, it could reapply for designation at any time. Pursuant to the Sustainable Communities Act of 2010, most areas that formerly were designated as community legacy areas or designated neighborhoods must renew their designations by June 1, 2012.

DHCD advises that, among other things, this bill will provide local jurisdictions with additional time to apply for redesignation, which may help them prepare a more comprehensive revitalization strategy.

Current State programs that provide financial incentives to designated sustainable communities include:

- *Community Legacy Program* – Administered by DHCD, the program provides local governments and community development organizations with financial assistance to strengthen communities through such activities as business retention and attraction, encouraging homeownership, and commercial revitalization. Program funds are restricted to designated sustainable communities. The proposed fiscal 2013 capital budget for the program includes $6.0 million in general obligation (GO) bonds for the program.

- *Neighborhood Business Development Program* – Administered by DHCD, the program provides loans through gap financing, *i.e.*, subordinate financing, to new or expanding small businesses and nonprofit organizations. Program funds are restricted to designated sustainable communities. The proposed fiscal 2013 capital budget includes $4.3 million for the program ($2.4 million in GO bonds and $1.9 million in pay-as-you-go or PAYGO special funds).

- *Maryland Sustainable Communities Tax Credit* – Administered by the Maryland Historical Trust, State income tax credits are available based on a percentage of the qualified capital costs expended in the rehabilitation of a qualified structure. Nonhistoric qualified rehabilitated structures in designated sustainable communities can be eligible for a 10% credit. A 20% credit for historic structures is also available. The program awarded $11.2 million in credits in fiscal 2011 and $7.0 million in credits in fiscal 2012.

- *Job Creation Tax Credit* – Administered by DBED, the tax credit is designed to encourage businesses to expand in or relocate to the State. Enhanced incentives are provided in designated revitalization areas, including sustainable communities. The standard credit is 2.5% of annual wages up to $1,000 per new job. For businesses located in a revitalization area, the credit is 5% of annual wages up to $1,500 per new job, and the threshold to qualify for the tax credit drops from 60 to 25 jobs created. Credits can be claimed only for qualified positions at a newly established or expanded facility that commences operations before January 1, 2013.

- *Sidewalk Retrofit Program* – Administered by MDOT, the program helps finance the construction and replacement of sidewalks along State highways. The program covers 50% of the cost for approved projects. For projects located in a sustainable community, the program covers 100% of the cost. The *2012-2017 Consolidated Transportation Program* includes $2.5 million for the program in fiscal 2013.

State Fiscal Effect: The bill does not mandate an appropriation to capitalize the Smart Growth Reinvestment Fund in MDP. However, Legislative Services advises that the fund will require a significant appropriation to adequately fulfill its intended purpose. Therefore, assuming implementation of the bill, $5.0 million, at a minimum, is needed to capitalize the fund. This level of funding is consistent with similar funds that support sustainable community investment, such as the Community Legacy Program ($6.0 million in the proposed fiscal 2013 capital budget), and the Neighborhood Business Development Program ($4.3 million in the proposed fiscal 2013 capital budget).

Therefore, general fund expenditures increase by $5.0 million in fiscal 2013 to capitalize the fund and by $5.0 million annually thereafter. Special fund revenues to the fund and expenditures from the fund increase accordingly as the fund receives revenue from the general fund which is appropriated to provide grants and loans for infrastructure projects by MDP. At some point in the future, the need for State funds to capitalize the program may decrease if the program operates primarily as a loan program and loans are repaid.

Nonbudgeted revenues and expenditures may increase for MEDCO to the extent it issues additional TIF-supported bonds for counties and municipalities for infrastructure improvements in sustainable communities. However, MEDCO bonds supported with TIF revenues would be considered State debt for *affordability* purposes. State debt policy is that State debt outstanding cannot exceed 4% of State personal income and that State debt service costs cannot exceed 8% of revenues supporting State debt. While there is some room for additional State debt in the future, how much additional debt MEDCO may be able to issue under the bill cannot be reliably estimated at this time.

MDP can adopt the necessary regulations and advises it can administer the new fund with existing budgeted resources. The bill's reporting requirement can also be handled with existing budgeted resources.

The extension of current designations and the deadline to apply for redesignation for specified sustainable communities is not anticipated to materially affect State finances.

Local Fiscal Effect: Generally, MEDCO may issue conduit debt for development projects by dedicating a portion of operating revenues for repayment of the bond principal and interest. The bill allows certain counties and municipalities to pledge future tax revenues in lieu of operating revenues for sustainable community infrastructure improvement projects. The bill also authorizes certain counties and municipalities to use

TIF-supported debt for purposes that may not be authorized under current law and also allows certain counties and municipalities to issue this debt through MEDCO instead of directly through the local government. In instances where the project does not generate enough revenues through the special taxing district, the county or municipal government may be responsible for repayment of the debt.

The extension of current designations and the deadline to apply for redesignation for specified sustainable communities is not anticipated to materially affect local finances.

Small Business Effect: Increased financing resources in sustainable communities for infrastructure improvements could benefit small businesses located in those communities.

Additional Comments: Although the bill specifies that investment earnings from the fund accrue to the fund, it does not amend § 6-226 of the State Finance and Procurement Article to exempt the fund from existing law that requires all investment earnings and interest from special funds to accrue to the general fund.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning, Maryland Economic Development Corporation, Comptroller's Office, Department of Business and Economic Development, Maryland Department of Transportation, Department of Budget and Management, Sustainable Growth Commission, Department of Legislative Services

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