

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 809

(Senator Frosh)

Judicial Proceedings

Appropriations

Maryland Legal Services Corporation Funding - Abandoned Property Funds

This bill increases, from \$500,000 to \$1.5 million, the amount the Comptroller is required to distribute from abandoned property funds to the Maryland Legal Services Corporation (MLSC) and clarifies that the money is to be distributed to the MLSC Fund. The bill also repeals provisions requiring the Governor to *appropriate* the specified funding.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund revenues decrease by \$1.0 million annually beginning in FY 2014, reflecting the distribution of additional abandoned property funds to the MLSC Fund. Special fund revenues to the MLSC Fund increase by \$1.0 million annually beginning in FY 2014; special fund expenditures increase correspondingly. In addition, the bill may improve operational efficiency for the Judiciary to the extent it decreases the number of *pro se* litigants.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
GF Revenue	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)
SF Revenue	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
SF Expenditure	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Net Effect	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)

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

Local Effect: The bill may increase operational efficiency in the circuit courts to the extent it decreases the number of *pro se* litigants.

Small Business Effect: None.

Analysis

Current Law/Background: MLSC was established by the Maryland General Assembly in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases.

The Governor is required to appropriate at least \$500,000 annually to support the activities of MLSC. This money comes from the State Unclaimed Property Fund. Additionally, lawyers are required to place small or short-term client trust funds into an Interest on Lawyer Trust Accounts (IOLTA) account, the interest on which is paid into the MLSC Fund.

In addition to these funds, a surcharge on filing fees in circuit court civil cases and District Court civil and summary ejectment cases is also deposited into the MLSC Fund.

The funds collected from the IOLTA, the surcharge, and the abandoned property funds are deposited by the Administrative Office of the Courts into the MLSC Fund, which MLSC then distributes in the form of grants to various organizations that perform the legal assistance services. Since MLSC's creation, it has made grants of more than \$182.0 million. In fiscal 2012, operating grants of \$15.5 million were awarded to 34 legal services providers. From those funds, more than 159,000 individuals and families received legal assistance in matters such as foreclosure, eviction, elder care, domestic violence, child custody, employment, food stamps, veterans' benefits, and other issues.

Constitutionality of Statutory Funding Provisions

Pursuant to Commercial Law Article § 17-317(a)(2), the Comptroller distributes \$500,000 from abandoned property revenue to MLSC as a revenue distribution. This is not an appropriated transfer. The Human Services Article further requires the Governor to appropriate at least \$500,000 to the MLSC Fund supported by or in addition to the funds from abandoned property. The Judiciary appropriates the special fund revenue from the IOLTA and the court filing fees as a special fund appropriation within the Judiciary budget. It does not budget any general funds for this purpose since the \$500,000 is placed in the MLSC Fund through a revenue distribution.

The Office of the Attorney General (OAG), in a letter dated January 29, 2013, provided requested advice concerning MLSC and the statutory provisions relating to its funding. Specifically, an issue was raised as to whether the General Assembly may constitutionally mandate that the Governor include an appropriation within the Judiciary budget. The letter noted that Chapter 765 of 1998 (SB 332), which created the MLSC Fund, placed the fund and its administration in the Judiciary. Chapter 765 also specified

that expenditures from the fund are to be made in accordance with Section 7-108(a)(4) of the State Finance and Procurement Article, which provides that the Governor must include in each budget bill, without revision, the appropriations requested for the Judicial Branch of the State government, as certified by the Chief Judge of the Court of Appeals.

The letter advised that, in OAG's view, the Governor has no authority to amend, to add to, or subtract from, the Judiciary's budget as certified by the Chief Judge and transmitted to the Governor. The Governor is constitutionally prohibited from taking independent action to follow a mandate to include a particular appropriation in the Judiciary's budget; therefore, the appropriation provision in the Human Services Article is not a valid mandate.

The letter also noted that current statutory language was ambiguous as to (1) whether the distribution, as required in the Commercial Law Article, is a distribution to MLSC or the MLSC Fund; (2) whether the distribution is subject to the appropriation process; and (3) whether the funds that the Comptroller is required to distribute are the same or separate funds than those that are authorized to be transferred to the MLSC Fund by the Governor. It was recommended that these provisions be amended to clarify the interaction between the two statutes.

Funding Concerns

Due to declining IOLTA revenue, as well as an increasing demand for legal services, the General Assembly passed Chapter 486 of 2010 (SB 248), which increased the maximum surcharge on civil cases filed in circuit courts from \$25 to \$55. In the District Court, the maximum authorized surcharge also increased from \$5 to \$8 for summary ejectment cases and from \$10 to \$18 for all other civil cases. The higher maximum surcharge increased filing fee revenue between fiscal 2010 and 2011, which allowed MLSC to increase grant funding levels to pre-2010 levels while relying less heavily on its reserve fund. The increased surcharges were set to terminate June 30, 2013, but were extended through June 30, 2018, pursuant to Chapters 71 and 72 of 2013.

State and Local Fiscal Effect: Special fund revenues for the MLSC Fund increase by \$1.0 million annually beginning in fiscal 2014, reflecting the increased revenue distribution from abandoned property funds. Special fund expenditures increase correspondingly as MLSC uses the fund to award grants to legal service providers. Because net proceeds from abandoned property are distributed to the general fund (after administrative costs and required distributions are made), general fund revenues decrease by \$1.0 million annually beginning in fiscal 2014.

Those litigants with civil claims who cannot afford legal representation must appear "*pro se*," *i.e.*, the litigants must represent themselves. The Judiciary advises that *pro se*

litigants require significantly more time from the courts. The additional funding provided under this bill may improve operational efficiency in the District Court and the circuit courts to the extent it decreases the number of *pro se* litigants.

Additional Information

Prior Introductions: None.

Cross File: HB 1303 (Delegate Dumais, *et al.*) - Appropriations.

Information Source(s): Department of Budget and Management, Comptroller's Office, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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