

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 836 (Senators McFadden and Ferguson)
 Budget and Taxation

Housing and Community Development - Community Development Program Act

This bill establishes a Community Development Program (CDP) within the Department of Housing and Community Development (DHCD) to provide financial assistance for community development projects and community development organizations around the State. DHCD must adopt regulations to carry out the program. The bill also establishes a Community Development Fund as a special fund within DHCD to support the program; the fund consists primarily of revenue from a community development transfer tax that is established by the bill.

Fiscal Summary

State Effect: Special fund revenues increase by approximately \$151.3 million beginning in FY 2017 and by \$212.2 million in FY 2018 due to the establishment of the community development transfer tax; in future years, special fund revenues continue to increase due to an increase in home sales. Special fund expenditures increase correspondingly to provide financial assistance and to cover DHCD’s administrative costs. General fund revenues increase beginning in FY 2017 from interest earnings of the new special fund.

(\$ in millions)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
SF Revenue	\$151.3	\$212.2	\$221.4	\$230.6	\$239.8
SF Expenditure	\$151.3	\$212.2	\$221.4	\$230.6	\$239.8
Net Effect	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

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

Local Effect: Local government revenues may increase significantly to the extent local jurisdictions are eligible to receive financial assistance under the program. The circuit courts can handle the bill’s requirements with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Community Development Board

The bill establishes a Community Development Board in the program and establishes provisions relating to the membership of the board. The board must (1) make recommendations on and determine how the fund is to be used and (2) report on the activities of the fund and make any recommendations regarding the fund to the Governor and the General Assembly by December 31 of each year.

Community Development Fund

The stated purpose of the fund is the same as the stated purpose of CDP. DHCD must administer the fund with the assistance of the board. The fund consists of (1) revenue distributed to the fund from the community development transfer tax established by the bill; (2) money appropriated in the State budget; and (3) any other money from any other source accepted for the benefit of the fund. Any interest earnings of the fund are credited to the general fund.

The fund may be used only for (1) administrative expenses of DHCD in administering the program and (2) financial assistance for community development projects and community development organizations as specified under the bill. Expenditures from the fund may be made only in accordance with the State budget.

In consultation with the board, DHCD must administer the fund to provide financial assistance (including capital and operating grants) for:

- affordable housing;
- neighborhood revitalization for residential and commercial areas;
- housing counseling and foreclosure prevention;
- community organizing;
- small business development;
- community services; and
- any other community development purpose as determined by DHCD.

The financial assistance may be provided in the form and manner DHCD determines appropriate and may include providing capital and operating grants.

Community Development Transfer Tax

The bill establishes a community development transfer tax on an instrument of writing (1) recorded with the clerk of the circuit court for a county or (2) filed with the State Department of Assessments and Taxation (SDAT), as specified. The rate of the tax is 0.5% of the consideration payable for the instrument of writing. The consideration includes the amount of any mortgage or deed of trust assumed by the grantee. The consideration includes only the amount paid or delivered in return for the sale of the property and does not include the amount of any debt forgiven or no longer secured by a mortgage or deed of trust on the property.

The rate of the tax is also 0.5% of the consideration paid for the transfer of a controlling interest in a real property entity as defined in the Tax-Property Article that has developed real property under the Low Income Housing Tax Credit Program. The consideration is the actual payment made by the purchaser to the seller for the purchase of the controlling interest.

The consideration payable must be described in (1) the recitals or the acknowledgement of the instrument of writing or (2) a statement under oath that accompanies the instrument of writing and that is signed by a party to the instrument or by an agent of a party.

Except as specified, the tax applies to conveyances that transfer the real property of a corporation to its stockholders, the real property of a limited liability company to its members, or the real property of a partnership to its partners. The bill also specifies various instruments of writing that are not subject to the tax.

The tax must be paid to the clerk of the circuit court where the instrument of writing is recorded or to SDAT. An instrument of writing that is taxable under the bill may not be recorded in any county unless a statement is attached to or stamped on the instrument of writing indicating that (1) the community development transfer tax has been paid and (2) the amount of the community development transfer tax paid.

Use of Community Development Program Funds

In any fiscal year that bonds secured by a pledge of the community development transfer tax are outstanding, the revenue from the tax must be used to pay the principal of and interest on the bonds before any other distribution is made.

SDAT must deduct the cost of administering the tax from the taxes collected under the bill and credit those revenues to an existing special fund it uses for administrative costs. The remaining revenues must be paid to the Comptroller for deposit in the Community Development Fund. For each fiscal year, up to 3% of the revenues in the fund may be appropriated in the State budget for salaries and related expenses in DHCD. The remaining balance must be allocated as provided in the State budget.

Current Law/Background: The counties and Baltimore City are authorized to impose locally established recordation tax rates on any business or person (1) conveying title to real property or (2) creating or giving notice of a security interest (*i.e.*, a lien or encumbrance) in real or personal property by means of an instrument of writing.

The State and most counties impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). In some jurisdictions, a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage.

For purposes of local recordation taxes, which are applied to each \$500 or fraction of \$500 of consideration payable or of the principal amount of the debt secured for an instrument of writing, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee. For purposes of the State transfer tax, the consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

County governments collected \$699.4 million in local recordation and transfer taxes in fiscal 2014 and are expected to collect \$743.3 million in fiscal 2015 and \$748.1 million in fiscal 2016. These amounts are significantly lower than the amounts collected in fiscal 2006 when the soaring real estate market yielded recordation and transfer taxes totaling \$1.2 billion. The State is estimated to collect \$185 million in transfer tax revenues in fiscal 2017.

State Fiscal Effect:

Community Development Transfer Tax Revenues

Special fund revenues from the community development transfer tax increase by approximately \$151.3 million beginning in fiscal 2017, which reflects the bill's October 1, 2016 effective date. In fiscal 2018, special fund revenues increase by approximately \$212.2 million. These estimates are based on projected revenues from the existing State transfer tax but reflect the fact that purchases by first-time homebuyers are

assessed the full rate of the community development transfer tax (first-time homebuyers are exempt from the transfer tax under current law; sellers pay the 0.25% rate that applies to these purchases). Special fund revenues continue to increase in subsequent fiscal years, which reflects an increase in home sales over time.

SDAT Administrative Costs

The bill requires SDAT to deduct the cost of administering the community development transfer tax from the taxes collected and credit those revenues to an existing special fund that SDAT uses to cover its administrative costs. Thus, special fund revenues and expenditures for SDAT may increase minimally in fiscal 2017. Although SDAT did not provide an estimate for the amount of additional resources it may need to implement the bill, this analysis assumes that any administrative costs incurred by SDAT are negligible.

Community Development Fund in the Department of Housing and Community Development

After SDAT deducts any administrative costs, which are assumed to be minimal, the remaining community development transfer tax revenues are deposited into the Community Development Fund within DHCD. Although the bill authorizes DHCD to use up to 3% of the revenues deposited in the fund to cover its administrative costs, the department advises that it can implement the bill with one additional program manager.

Thus, DHCD’s administrative expenditures increase by \$74,730 in fiscal 2017, which accounts for the bill’s October 1, 2016 effective date. This estimate reflects the cost of hiring an additional program manager to assist with oversight and management of the program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$69,765
Operating Expenses	<u>4,965</u>
Total FY 2017 DHCD Admin. Expenditures	\$74,730

Future year administrative expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Any balance remaining in the Community Development Fund after DHCD’s administrative costs are paid is assumed to be spent on program activities as specified in the bill. Based on the anticipated revenue stream and DHCD’s anticipated administrative costs, as much as \$151.2 million may be available in fiscal 2017 for financial assistance. By fiscal 2021, the estimated funds available for financial assistance grow to

\$239.7 million. To the extent administrative costs incurred by either SDAT or DHCD are higher than currently anticipated, the amount available for financial assistance under the program decreases accordingly.

Although the bill suggests that DHCD may issue bonds under the program, it does not *require* the department to do so. Therefore, this analysis assumes that DHCD uses program revenues as they are received each year and does not issue bonds. To the extent that DHCD issues bonds under the program, however, special fund revenues and expenditures increase accordingly.

General Fund Revenues from Interest Earned and Economic Development

The bill specifies that any interest earnings of the fund are credited to the general fund. Thus, general fund revenues increase accordingly beginning in fiscal 2017.

Although not a direct impact, the bill may also result in an increase in State revenues from increased economic development.

Local Fiscal Effect: Local government revenues may increase significantly to the extent local jurisdictions are eligible to receive financial assistance under the program for community development projects; although the bill does not explicitly indicate that local jurisdictions may apply for funds, it is assumed that local jurisdictions could be sponsors of eligible projects.

The circuit courts can handle the bill's requirements with existing resources.

Although not a direct impact, the bill may also result in an increase in local revenues from increased economic development.

Small Business Effect: Small businesses that are able to secure funding under the program for community development projects (*e.g.*, affordable housing construction, neighborhood revitalization for commercial areas, etc.) may be able to expand as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1274 (Delegate Hixson, *et al.*) - Environment and Transportation and Ways and Means.

Information Source(s): Department of Housing and Community Development, State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Comptroller's Office, Department of Legislative Services

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md/lgc

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