Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 539 (Delegates C. Watson and Lierman)

Environment and Transportation Education, Health, and Environmental Affairs

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Local Governments - Resilience Authorities - Authorization

This bill authorizes counties and municipalities to solely or jointly establish and fund resilience authorities, subject to specified requirements. Resilience authorities may issue and sell State and local tax-exempt bonds for resilience infrastructure projects and other related financing purposes. Bonds issued by resilience authorities are limited obligations and are not a pledge of the faith and credit or taxing power of the local governments. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: General and/or special fund revenues from income and property taxes increase, likely beginning no earlier than FY 2022, to the extent that resilience projects funded as a result of the bill maintain or generate additional economic growth. The amounts, if any, cannot be reliably estimated at this time. The bill does not otherwise materially affect State finances or operations.

Local Effect: Local revenues increase from bonds issued under the bill beginning as soon as FY 2021 to the extent that local governments choose to establish resilience authorities. Local expenditures from bond proceeds and/or direct local government support increase beginning that same year for authorized purposes. Local revenues further increase, likely beginning no earlier than FY 2022, from income and/or property tax revenues to the extent that resilience projects funded as a result of the bill maintain or generate additional economic growth. The amounts, if any, cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A local government may create a resilience authority by local law in accordance with the bill, subject to various specified requirements. Such a local law is administrative in nature and not subject to referendum. Notwithstanding any other provision of law or charter provision, the authority granted by the bill is self-executing and fully authorizes a local government to establish a resilience authority.

Except as otherwise provided in the bill or the local law establishing the resilience authority, the procedures of the incorporating local government control any personnel matter relating to the internal administration of the resilience authority.

Resilience Authority Powers – Includes Issuing Tax-exempt Bonds

Except as limited by the local law establishing the resilience authority or its articles of incorporation, a resilience authority has all the powers under the bill. A resilience authority has and may exercise all powers necessary or convenient to undertake, finance, manage, acquire, own, convey, or support resilience infrastructure projects, including the power to:

- acquire by purchase, lease, or other legal means, but not by eminent domain, property for resilience infrastructure;
- establish, construct, alter, improve, equip, repair, maintain, operate, and regulate resilience infrastructure owned by the incorporating local government or the resilience authority;
- receive money from its incorporating local government, the State, other governmental units, or private organizations;
- *subject to approval of the local governing body*, charge and collect fees for its services and to back its bond issuances;
- have employees and consultants as it considers necessary;
- use the services of other governmental units; and
- act as necessary or convenient to carry out the powers granted to it by law.

Notwithstanding any other provision of law, a resilience authority may issue and sell bonds periodically, subject to specified requirements. Bond proceeds may be used for resilience infrastructure projects, to refund outstanding bonds, pay interest on outstanding bonds, and for related costs. Bonds issued by a resilience authority are limited obligations and are not a pledge of the faith and credit or taxing power of an incorporating local government. The principal and interest on the bonds are exempt from State and local taxes.

Local Government May Fund Authority Projects

Notwithstanding any other provision of law or charter, the local governing body may dedicate any revenues of the local government for repayment of bonds and to support the operations or resilience infrastructure projects of a resilience authority.

Modification and Termination Procedures – Disposition of Assets and Obligations

Subject to the provisions of the bill and any limitations imposed by law on the impairment of contracts, the incorporating local government, in its sole discretion, by local law may:

- set or change the powers, structure, organization, procedures, programs, or activities of the resilience authority;
- determine the revenue sources of the resilience authority, including the use of general fund revenue and general obligation bonds;
- establish the budgetary and financial procedures of the resilience authority; and
- terminate the resilience authority.

On termination of a resilience authority (1) title to all property of the resilience authority must be transferred to and be vested in the incorporating local government and (2) all obligations of the resilience authority must be transferred to and assumed by the incorporating local government.

Annual Reporting Requirement

On a date and in a format designated by the incorporating local government, a resilience authority must, at least annually, report to the incorporating local government on the activities of the resilience authority. A related report must also be provided to specified committees of the General Assembly each year.

Current Law: Counties and municipalities are not expressly authorized to create resilience authorities in the manner specified in the bill. Several counties and Baltimore City have established related local revenue authorities. There are also many State-level revenue authorities and similar financing entities.

Background: Revenue authorities, as they are usually referred to in State law, are generally quasi-governmental instrumentalities that can be established at the State, county, or municipal level. The structure of these entities depends on their purpose. A common characteristic is an ability to finance projects (for the public benefit) outside of the normal governmental budget/debt issuance process, meaning that the debt is not considered government debt. Bonds are a common financing method, although how the bonds are structured varies. For example, bonds may pledge project revenue (*e.g.*, parking fees from a newly constructed garage) or nonproject revenue (*e.g.*, annual appropriations from the government).

Resilience financing authorities, which can be considered a type of revenue authority, focus on infrastructure resilience and related issues. Many examples of such entities are referred to as "green banks" – particularly if they also fund clean or renewable energy initiatives. Many resilience projects do not generate an obvious revenue stream, which makes traditional forms of financing difficult. Financing for resilience infrastructure can incorporate nontraditional methods, such as resilience bonds, which monetize future avoided costs (such as losses due to a flood) to fund current investments. Several state authorities in the northeast, in addition to the Montgomery County Green Bank, could be categorized as resilience financing authorities.

The resilience financing authority model is under consideration by the City of Annapolis as a potential method for funding infrastructure improvements at City Dock to mitigate the effects of climate change and rising sea levels.

Small Business Effect: Small businesses may benefit from resilience projects funded by resilience authorities, either directly through contracts for services, or indirectly through more resilient infrastructure at their location. The effect on any particular small business is unknown, but could be meaningful. Conversely, *subject to the approval of the local governing body*, resilience authorities may establish fees to back their bond issuances – which may be paid by small businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 457 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of General Services; Department of Natural Resources; State Department of Assessments and Taxation; Maryland State Treasurer's Office; Maryland Municipal League; Baltimore City; Anne Arundel, Howard, Montgomery, and Prince George's counties; City of Annapolis; Department of Legislative Services

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