

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1328 (Delegate Hornberger)
 Environment and Transportation

Counties and Municipalities - Water Transfer Fee - Authorization

This bill authorizes the governing body of a county or municipality to impose a fee on a person who (1) holds a permit under Title 5, Subtitle 5 of the Environment Article and (2) transfers surface water or groundwater outside a watershed located wholly or partially within the county or municipality. The bill also specifies that the governing body of the county or municipality may provide for the amount of the fee and any other provision necessary to carry out the fee. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$123,300 in FY 2023; out-year expenditures reflect annualization, inflation, and ongoing costs. The bill also has several potential operational impacts on the Maryland Department of the Environment (MDE), as discussed below. State revenues are not directly affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	123,300	144,500	148,700	152,600	156,800
Net Effect	(\$123,300)	(\$144,500)	(\$148,700)	(\$152,600)	(\$156,800)

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

Local Effect: To the extent that a local government chooses to impose a fee as authorized under the bill, local revenues increase, as early as FY 2023. Local expenditures are not anticipated to be materially affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Title 5, Subtitle 5 of the Environment Article governs the appropriation or use of waters, reservoirs, and dams in the State. In order to conserve, protect, and use water resources in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as is feasible, the appropriation or use of surface waters and groundwaters of the State.

Generally, a permit must be obtained from MDE to appropriate or use, or to construct any structure that may appropriate or use any waters of the State.

Permits must also be obtained from MDE to construct, reconstruct, or repair any reservoir, dam, or waterway obstruction; and to construct, reconstruct, change, or make an addition to any conduit, pipeline, wire cable, trestle, or other device, structure, or apparatus in, under, through, or over the bed or waters of the Potomac River, as specified.

Applicable Penalties

In addition to being subject to an injunctive action, a person who violates any provision of Title 5, Subtitle 5 of the Environment Article relating to water appropriation and use or any rule, regulation, order, or permit adopted or issued under any such provision is liable for a civil penalty up to \$5,000 per violation. Each day is a separate violation. MDE is also authorized to seek injunctive relief. Additionally, a person who violates any provision of Title 5, Subtitle 5 of the Environment Article or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under the subtitle is guilty of a misdemeanor and subject to fines, imprisonment, and enjoinder, as specified under § 9-343 of the Environment Article.

State Fiscal Effect:

Maryland Department of the Environment – Administrative Expenditures

According to MDE, in fiscal 2021, over 440 water appropriation and use permits were issued, and there are currently 6,877 active water appropriation and use permits in the State. MDE advises the bill results in an increased workload for its Water Supply Program which already has a permitting backlog and cannot absorb the additional workload under the bill. Additional staff would be required to process permits and deal with the conflict between local governments and permit holders that might arise as a result of the imposition of water transfer fees under the bill. General fund administrative expenditures for MDE increase by \$123,327 in fiscal 2023, which accounts for a 90-day start-up delay from the bill's July 1, 2022 effective date. This estimate includes salaries, fringe benefits, one-time equipment costs, and ongoing operating expenses as shown below:

Positions	2
Salaries and Fringe Benefits	\$108,641
Equipment	13,096
Other Operating Expenses	<u>1,590</u>
Total MDE FY 2023 Expenditures	\$123,327

The bill does not directly affect State permit revenues since the fee authority under the bill applies to local governments. Additionally, according to MDE, local governments do not have the legal authority to impose fees on a State agency.

Local Fiscal Effect: To the extent that a local government imposes a fee as authorized under the bill, local revenues increase. The magnitude of any such increase in local revenues cannot be made at this time because it depends on a number of unknown factors including the amount of the fee, the timing and frequency of the fees, and who a local government chooses to levy the fee against. Since the bill does not define watershed, the applicability of the fees authorized to be charged under the bill is broad and could apply to permitted transfers out of both small and large watersheds. For example, watersheds can be defined locally to include small streams; however, they can also be defined on a much larger scale to include the entire Chesapeake Bay.

To the extent that a local government imposes a fee against another local government, expenditures may increase. The magnitude of any such increase in local expenditures depends on a number of unknown factors and cannot be reliably estimated at this time.

According to MDE, depending on the amount of fees charged by a local government, the bill could ultimately affect municipal drinking water access. Under current law and policy, surface water and groundwater in Maryland is owned by the State, and certain property owners have the right to use water. This bill gives additional authority to the local jurisdiction where the water is located and could have potentially far-reaching effects on the appropriation and use of water in the State.

Additionally, the bill does not specify how a water transfer fee would be derived. MDE notes that if the local government is required to pay the fee, the overall economic impact on local government can be significant depending on the size of the fee.

Small Business Effect: Costs may increase for any small business that must pay a new fee to transfer surface or ground water under the bill. The ultimate impact depends on a number of unknown factors but could be significant. Examples of small businesses that are subject to permits under Title 5, Subtitle 5 of the Environment Article include farms, private and publicly owned water supply companies, water bottling companies, and sand and gravel mines.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; City of Havre de Grace; Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2022
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