

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 407 (Senator Astle)
Education, Health, and Environmental Affairs

Public Ethics - Chesapeake Bay Trust - Exemptions and Conflict of Interest Provisions

This bill exempts the trustees and employees of the Chesapeake Bay Trust from the State Public Ethics Law. Instead, the bill requires the board of the trust to adopt provisions to govern the public ethics of the trustees and employees relating to conflicts of interest for nonprofit organizations. A copy of these provisions must be kept on written file and made available for public inspection at the principal office of the Chesapeake Bay Trust.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: The bill does not affect State finances.

Local Effect: The bill does not affect local finances.

Small Business Effect: None.

Analysis

Current Law/Background: The Chesapeake Bay Trust is a private, nonprofit, grant-making organization established by the General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality and aquatic and land resources of the Chesapeake Bay and other aquatic and land resources of the State. The trust awards grants to community-led environmental, education, and habitat restoration projects through a portfolio of programs and

administers the Chesapeake Conservation Corps Program. The trust is governed by a board of trustees and has general powers and duties that include:

- solicit and accept gifts, grants, legacies, or endowment of money from the federal government, the State government, local governments, and private sources;
- provide grants to nonprofit organizations, community associations, civic groups, schools, or public agencies for citizen involvement projects;
- develop projects for sponsorship by corporate and business organizations or private individuals;
- develop criteria for such projects;
- make, execute, and enter into any contracts and other legal instruments; and
- receive appropriations as provided in the State budget.

Since its inception, the trust has awarded \$55 million in grants and receives approximately \$5 million in contributions annually. The trust's funding comes from (1) sales of *Treasure the Chesapeake* commemorative license plates; (2) donations from Maryland's Chesapeake Bay and Endangered Species Fund income tax check-off program; (3) federal and State government contributions; and (4) private and corporate contributions.

The trust is exempt from the provisions of the State Finance and Procurement Law, the provisions of law that govern the State Personnel Management System, and specified provisions of the State Personnel and Pensions Law. It is subject to provisions of the State Finance and Procurement Article to the extent of State appropriations, if any. Contracts and grants awarded by State agencies to the trust are generally subject to State procurement law, unless the State agency making the contract or grant is exempt. The trust is authorized to carry out its corporate purposes without obtaining the consent of any department, board, or agency of the State.

The trust recently became aware of a conflict in statute that may affect its primary source of funding. The Public Ethics Law prohibits officials or employees of the State from soliciting or accepting gifts in most circumstances. However, the law that governs the trust expressly authorizes it to, "solicit and accept gifts, grants, legacies, or endowment of money from the federal government, the State government, local governments, and private sources." If the trust is considered an agency of the State, it is required to follow the Public Ethics Law unless specifically exempted. The trust believes that it is an independent, nonprofit, grant-making entity whose trustees and employees are neither State officials nor State employees. A formal opinion has been requested from the Attorney General regarding this conflict, but the trust has not yet received a response.

The trust reports that it currently has its own conflict of interest policy and code of ethical standards that reflect the intent of the Public Ethics Law. For example, recognizing that the trust may be asked to consider proposals or issues involving organizations in which a board member has a direct interest, trust members are required to disclose associations and potential conflicts and remove themselves from any vote on a proposal that may pose a conflict of interest. Additionally, trust staff may not serve on boards of organizations that seek funds from grant programs on which they serve as staff leads.

Additional Information

Prior Introductions: None.

Cross File: HB 129 (Delegate S. Robinson) - Environmental Matters.

Information Source(s): Department of Natural Resources, State Ethics Commission, Chesapeake Bay Trust, Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2014
ncs/kdm

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