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REVISITING THE RAIN TAX

Fix It or Scrap It?

BY JOHN J. WALTERS

TWO YEARS AGO, THE SO-CALLED "RAIN TAX" became the talk of Maryland as residents in some of the state's most populous counties were first assessed the levy. Legislation authorizing the tax—the Watershed Protection and Restoration Program—had passed both houses of the Maryland General Assembly and was signed into law by then-governor Martin O'Malley the year before[1] with relatively little public attention. At the time, it became just another of the multitude of taxes and fees that state residents pay each and every year. But in the subsequent years it has become a symbol of excessive Maryland taxation and overreach. Gov. Larry Hogan harnessed frustration with the tax to propel his surprise 2014 gubernatorial victory, and his administration is now working with some state legislators to repeal the tax.[2]

To be fair to the program, it's not actually a tax on rain.[3] It's a tax on impervious surfaces: streets, rooftops, and the like. Those surfaces increase rainwater flow into sewers, storm drains and streams, carrying along pollutants and ultimately depositing them in the Chesapeake Bay. The more expansive those surfaces are, the more polluted runoff they create, and the higher the filtration costs will be if those pollutants are to be kept out of the Bay. If the water goes untreated, it contributes to the Bay's "nutrient load," upsetting a healthy balance of aquatic life.

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A polluted Chesapeake Bay affects all residents of Maryland, but undoubtedly some residents contribute more to the problem than others. In economic parlance, such pollution is an "externality"—foisting the cost of some people's activity onto other people. No one—Democrat or Republican—should favor a "free ride" for anyone when it comes to pollution. Correcting market failures like externalities and requiring people to pay for the costs of their actions is one of the few legitimate functions of government that everyone should agree upon, regardless of party affiliation or political ideology.

If we leave the discussion there, the rain tax seems acceptable—if properly applied, it would result in the owners of impervious surfaces covering the cost of the pollution their surfaces generate. If anything, the tax should be praised for efficiently discouraging people from building impervious surfaces and raising funds for a noble environmental goal. So why is the rain tax back in the harsh spotlight? Because it deserves to be there.

WHY REVISIT THE RAIN TAX?

The program continues to draw criticism—rightly—because it was flawed from its inception and implemented poorly by most of the 10 jurisdictions[4] that are required to levy the tax.[5] And because several counties, reacting to pushback and anger over the tax from residents who already feel overburdened by state taxation, are seeking to modify and reduce their rates.[6] And because Governor Hogan has teamed with Sen. James Brochin (D–Balt. Co.) to introduce legislation to repeal the tax for good.[7]

If Governor Hogan is successful in repealing the rain tax, the 10 jurisdictions affected by the legislation will lose an estimated $110 million in annual revenue intended to fund projects to filter the runoff.[8] Put another way: Maryland residents and businesses would get to keep $110 million of their own money, to use for their own needs, if the rain tax goes away. That's no trivial sum—neither to the counties that would be spending it nor to the people and companies that would be forking it over. That $110 million can do a lot of good for either party, public or private.

Taking on the rain tax is not going to be a slam dunk. The State of Maryland and its counties undoubtedly "need the money." Without that revenue, Governor Hogan and county leaders would have to choose between letting local stormwater remediation projects—mandated by federal regulation—go unfunded or finding the money to pay for the projects in already tight state and local budgets.

SPENDING TOO MUCH FOR TOO LITTLE

If Governor Hogan wants to make a winning case for repealing the rain tax, he'll have to show state legislators that Maryland can "save the Bay" without it. The best way to do this would be to show the state already has the funding it needs to make meaningful reductions in the amount of pollution that flows into the Chesapeake Bay.

Over the past three decades, the state has spent $15 billion on Bay restoration efforts,[9] yet the Chesapeake continues to ail. In his recent State of the State speech,[10] Hogan mentioned that Maryland received a D+ from the Chesapeake Bay Foundation on the health of the Bay and that we need "a new approach" to cleanup and preservation. That approach should include a full reevaluation of where to focus state and county efforts so that the most efficient cleanup methods receive primary funding.

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Part of Maryland's problem is that, too often, projects get bogged down by an inefficient bureaucracy that wastes both time and taxpayer money while the Bay continues to suffer. According to the 2014 Trust Fund Tracker from the Maryland Department of Natural Resources,[11] the vast majority of county stormwater remediation projects (29 out of 32) are mired in either the design or permitting process. That's a very large percentage of $25 million in Bay cleanup money stuck in neutral, and it doesn't inspire much faith that rain tax money will be used effectively.

STOP CHASING THE SMALL FISH

As it stands now, Maryland's $14.4 billion 10-year plan to restore the Bay devotes over 95 percent of funding to pollution sources that account for only 7 percent of total pollution.[12] No private business on earth would ever try to justify spending 95 percent of their budget to solve only 7 percent of a problem. Spending should be commensurate with anticipated return; no spending should be undertaken whatsoever until enough information is available to choose projects that stand to yield the highest return.

Before spending billions to build a better storm drain system, Maryland needs to address the overwhelming amount of nutrient-dense sediment that has accumulated in the Conowingo Dam at the northern end of the Bay. That sediment floods into public waterways every time a big storm rolls through the region, drenching the Bay in phosphorus and nitrogen.[13] In 2011, Tropical Storm Lee caused the dam to release 19 million tons of sediment into the Bay—39 percent of all sediment introduced into the Bay via the Susquehanna River between 2002 and 2011—in a matter of days.

Spending the estimated $4.2 billion to fully dredge the waters behind the Conowingo Dam and effectively restore its ability to serve as a nutrient sink, trapping future phosphorus and nitrogen, is a much better use of taxpayer money. The state can then focus time and resources on improving storm drains once the bigger fish have been fried.

STOP PLUNDERING FROM BAY TRUST FUNDS

Governor Hogan also needs to show that the money taxpayers are already contributing for Bay cleanup is really being used—and used well—for its stated purpose. According to the Maryland Department of Natural Resources, the Chesapeake and Atlantic Coastal Bay Trust Fund (CACBTF) raised nearly $110 million from 2009 through 2014.[14] The Bay Restoration Fund (BRF), founded in 2005 and funded by the "flush tax" and septic fees, has raised over $900 million to date.[15]

If the trend continues for the CACBTF, that fund will earn an average of $22 million annually. The BRF is predicted to earn around $110 million each year (after the doubling of the flush tax in 2012) plus another $8 million annually from septic fees. That's $140 million supposedly dedicated to Bay cleanup each year. But as was so often the case during Governor O'Malley's time in office, there was very little to the term "Trust Fund."

The BRF reports in its 2015 Annual Status Report that $290 million had been transferred to the General Fund over the years to temporarily bridge gaps in the state budget.[16] The money was replaced, but with General Obligation (GO) Bonds. This is like paying your gas and electric bill with grocery money and then swiping a credit card at Whole Foods. You can pat yourself on the back for a problem solved—until you get the bill in the mail later and owe interest on meals long ago consumed.

The CACBTF fared much worse. O'Malley took more than $40 million from it over the years ($8 million in 2010,[17] $19 million in 2011,[18] $8 million in 2014, and an anticipated $6.2 million set aside for transfer in 2015[19]) for the General Fund, and there's no mention of replacing the money with matching GO Bonds, let alone actual revenue. That's just money the state raised for Bay cleanup that went elsewhere.

CLOSING RECOMMENDATIONS

As taxes go, the rain tax is a reasonable target for repeal. It's unpopular already, and if Governor Hogan and his team play their cards right, they can demonstrate to ecologically minded citizens that the same goal of pollution reduction can be achieved more effectively with other projects that we already have the funding for. This should be a win-win for Marylanders everywhere: (slightly) fewer taxes and a healthier Chesapeake Bay.

Even if state legislators seem unwilling to give up the extra $110 million in annual funding that their jurisdictions are predicted to earn from the rain tax, there are still a few key Bay cleanup reforms that Hogan should implement: better analysis of return on investment and better oversight of spending so the money goes where it's supposed to and remediation projects don't languish in bureaucracy-land forever.

The Governor could also push for the repeal of other, unrelated taxes that ostensibly go toward Bay cleanup if he is unsuccessful at repealing the rain tax. The CACBTF, for example, is funded via the state motor fuel tax and taxes on rental cars. Perhaps these and other similar taxes could be eliminated. That way, the rain tax would at least be a useful tax for a specific purpose—not simply another tool to aid in government bloat and act as a piggy bank for the General Fund.

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