

Department of Legislative Services
Maryland General Assembly
2007 Special Session

FISCAL AND POLICY NOTE
Revised

House Bill 23

(Delegate McIntosh, *et al.*)

Environmental Matters

Rules

Chesapeake Bay 2010 Trust Fund

This bill establishes a Chesapeake Bay 2010 Trust Fund, beginning July 1, 2008, to provide funding for various purposes aimed primarily at restoring and preserving the Chesapeake and Atlantic Coastal Bays, the Patuxent River, and all waters of the State, and meeting related commitments and goals of the Chesapeake 2000 Agreement (C2K). The fund primarily consists of unspecified revenues distributed to it in the annual State budget and net proceeds of specified bonds. The money is distributed each fiscal year in accordance with a specified annual expenditure and work plan and other requirements, including minimum distributions for agricultural non-point source pollution projects and grants to local governments. The bill also establishes a BayStat accountability and management process to, among other things, assess the effectiveness of government efforts to restore the waters of the State.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: Special fund revenues and expenditures could increase correspondingly beginning in FY 2009. The amount of funding available cannot be anticipated from this bill alone.

Local Effect: Local government revenues would increase due to receipt of stormwater management and other grant funding. Local government expenditures could increase if a local match is required for grant funding or to comply with specified reporting requirements.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Chesapeake Bay 2010 Trust Fund

The Chesapeake Bay 2010 Trust Fund primarily consists of unspecified revenues distributed to it in the annual State budget and net proceeds of bonds issued by the Maryland Water Quality Financing Administration (WQFA) within the Maryland Department of the Environment (MDE). The money in the fund is allocated each fiscal year in accordance with the following requirements and an annual BayStat expenditure and work plan:

- The Maryland Department of Agriculture (MDA) receives at least 30% of the total available revenues from the fund for agricultural non-point source pollution control projects, up to 1.5% of which may be used for the administrative costs associated with grant programs.
- The Department of Natural Resources (DNR) *may* receive up to 10% of the total fund revenues for municipal park grants.
- DNR is allocated an unspecified amount of additional funds for non-point source pollution control projects, including grants to local governments and other specified entities – up to 1.5% of which may be used for the administrative costs associated with the grant programs.
- MDE is allocated an unspecified amount for non-point source pollution control projects – including stormwater management-related grants and technical assistance to local governments. Up to 5% of the *total fund revenues* may be used by MDE to administer its grant program.
- The Maryland Department of Planning (MDP) is allocated an unspecified amount which must be used for technical assistance for implementing non-point source pollution control projects.
- At least 30% of the money in the fund must be allocated for grants to counties, bi-county agencies, and municipal corporations, exclusive of money allocated for

municipal park grants. A local match of grant funding may be required and a specified reporting requirement applies to any county, bi-county agency, or municipal corporation that receives grant money.

BayStat Accountability and Management Process

The bill establishes a BayStat accountability and management process to

- track and assess the progress of government programs aimed toward improving the water quality in the Chesapeake Bay as well as the enforcement of pollution laws relevant to the bay;
- provide accurate and timely data to the Governor, the General Assembly, and the public about the efficacy and cost effectiveness of those government programs;
- identify measurable goals for bay restoration and new threats to the health of the bay;
- increase accountability to the citizens of the State about progress toward restoring the bay, including annual reporting; and
- increase awareness of and public participation in the bay's restoration.

Participants in the process include the Secretary of Agriculture, the Secretary of the Environment, the Secretary of Natural Resources, the Secretary of Planning, and the President of the University of Maryland Center for Environmental Science.

BayStat Expenditure and Work Plan

The bill requires the BayStat participants to prepare an annual BayStat expenditure and work plan for the Chesapeake Bay 2010 Trust Fund that complies with the above-mentioned distribution requirements and allocates funding in a manner that most effectively reduces nutrient and sediment loadings in the State's waters, based on specified cost efficiency, scientific, and program performance criteria.

The expenditure and work plan must be submitted for review, as specified in the bill, to a Trust Fund Technical Review Committee, consisting of two members of the General Assembly and seven specified members appointed by the Governor. The plan has to be made available online for public comment. The technical review committee has to meet with BayStat participants twice each fiscal year to review the status of the implementation of the expenditure and work plan for that fiscal year.

Fund Expenditure Reallocation within a Fiscal Year

The BayStat participants have to establish standards for reallocation of up to 15% of the expenditures in the work plan during the course of a fiscal year, in response to any change in conditions affecting the State's waters. Any reallocation

- may only be allowed if it would enhance nutrient reduction;
- may not apply to municipal park grants; and
- must be reviewed by the Trust Fund Technical Review Committee and submitted for review and comment to specified General Assembly standing committees.

Current Law/Background:

Chesapeake Bay Restoration

The health of the Chesapeake Bay has declined significantly over the past several decades due to nutrient and sediment pollution. In 1999, the U.S. Environmental Protection Agency (EPA) identified the bay as an impaired water body. In 2000, the Chesapeake Bay partners (the bay states, the District of Columbia, the Chesapeake Bay Commission, and EPA) negotiated C2K, specifying restoration goals to improve the bay and its tidal tributaries and remove them from the EPA's List of Impaired Waters by 2010. As part of C2K, specific pollution reduction goals have been allocated to the various bay states. Maryland's reduction goals are summarized in **Exhibit 1**. In 2004, Maryland contributed approximately 20% of the bay's total nitrogen, phosphorus, and sediment load. The largest source of Maryland's nutrient and sediment pollution is runoff from agricultural lands, followed by urban runoff and point sources.

Exhibit 1 Maryland's Pollutant Reduction Goals

<u>Pollutant</u>	<u>1985 Loads</u>	<u>2004 Loads</u>	<u>2010 Goal</u>
Nitrogen (million lbs/yr)	82.4	56.9	37.3
Phosphorus (million lbs/yr)	6.8	3.8	2.9
Sediment (million tons/yr)	1.3	1.0	0.7

Source: U.S. Environmental Protection Agency's Chesapeake Bay Program

In April 2004, DNR released Maryland's Tributary Strategy, which includes nutrient and sediment control actions specific to each of Maryland's 10 major tributary basins, including the Patuxent River, necessary to reduce pollution from every source and achieve the nutrient reduction goals established in C2K. A statewide implementation plan for the tributary strategy was recently developed that does not identify everything needed to meet the tributary strategy goals. Instead, the plan defines goals that are realistically attainable within appropriate timeframes, with the expectation of updates being made as new funding sources and technologies emerge and understanding of the response in water quality to actions taken in the watershed improves. Several efforts aimed at reducing the amount of nutrients and sediment flowing to State waters are underway, including:

- the upgrading of significant wastewater treatment plants in the State that discharge to the Chesapeake Bay with state-of-the art enhanced nutrient removal (ENR) technology;
- State cost share assistance and other programs to encourage the implementation of agricultural best management practices on agricultural land, reducing nutrient and sediment runoff; and
- pollutant emissions limits under the Healthy Air Act, taking effect in 2009 and 2010, that are expected to reduce the amount of nitrogen entering the bay through atmospheric deposition.

Despite these and other ongoing efforts, however, the State is expected to fall significantly short of its C2K 2010 pollution reduction goals absent further action. The Chesapeake Bay Foundation, for example, estimates that existing programs and funding sources, upon full implementation, will serve to reduce the State's nitrogen pollution by approximately 10 million pounds per year, representing only half of the 20 million pounds per year of nitrogen pollution reduction estimated to be needed to meet the State's C2K 2010 goal.

Atlantic Coastal Bays

Maryland's coastal bays are shallow water lagoons behind Ocean City and Assateague Island covering 175 square miles and providing habitat for a wide range of aquatic life. Similar to the Chesapeake Bay, the coastal bays face threats from development, nutrient and sediment loading, and other stresses associated with human activities – according to the Maryland Coastal Bays Program, a federal, State, and local partnership that has worked to create a conservation and management plan for the bays.

A 2004 assessment of the bays conducted by the program found that the bays' tributaries generally showed poor to very degraded water quality largely due to high nutrient inputs, while the open bays had good to excellent water quality. The 2004 assessment also found the southern coastal bays to generally have better water quality than the northern coastal bays. However, DNR indicated in 2006 that the nitrogen and phosphorus concentrations in the southern coastal bays may be rising.

Stormwater Management

The EPA's Chesapeake Bay Program reports that progress has been made toward meeting the C2K nutrient and sediment reduction goals in the areas of agriculture, wastewater, and atmospheric deposition of nitrogen. However, urban/suburban

stormwater is the one pollution sector where progress has been negative due to population growth and related development.

Stormwater management for new development in Maryland is addressed through a requirement that each county and municipality adopt ordinances necessary to

- implement a stormwater management program and
- to generally restrict the development of any land unless the landowner has submitted a stormwater management plan consistent with the local ordinance. The stormwater management plans generally serve to minimize the adverse stormwater impacts of new development.

Controlling stormwater pollution originating from existing development without effective stormwater control measures, however, is a significant and costly challenge. Maryland's Tributary Strategy calls for up to 40% of the development existing prior to the introduction of stormwater management requirements to be retrofitted with stormwater management measures.

BayStat

BayStat was established by executive order in February 2007 as a joint project of MDA, MDE, DNR, and MDP. It was established as an accountability process for measuring and evaluating State initiatives directed toward restoring the Chesapeake Bay, with the intent of ensuring those government programs are coordinated and operating at their highest efficiency.

This bill generally codifies and expands on the BayStat process by requiring, for example, the preparation of an annual BayStat expenditure and work plan for the Chesapeake Bay 2010 Trust Fund, among other things.

State Fiscal Effect: Special fund revenues and expenditures would increase in fiscal 2009 and future years. The amount of revenues that would accrue to the fund each year, and corresponding expenditures, cannot be anticipated from this bill alone as the bill does not specify the source of revenues for the fund (other than bond proceeds). Federal funding could increase to the extent special fund revenues are able to serve as matching funding for federal grants.

The proceeds from bonds issued by WQFA could be affected by overall State debt limitations. According to the Capital Debt Affordability Committee's (CDAC) October 2007 report, the State's outstanding tax-supported debt will approach the State's current personal income affordability criterion of 3.2% of personal income in fiscal 2011 and 2012, but will improve thereafter. Under the CDAC projection, there will be just over \$160 million in remaining debt capacity within the 3.2% limit during those two years, but that capacity is expected to expand thereafter.

The distribution of special fund expenditures among MDA, MDE, DNR, and MDP would occur according to the annual BayStat expenditure and work plan prepared for each fiscal year and cannot be determined at this time. A large portion of fund expenditures would likely be directed toward grants for the various purposes specified in the bill, though expenditures are expected to also fund new grant administration and technical assistance positions.

DNR indicates it may require a new administrative position in addition to the two full-time equivalent (FTE) positions and a portion of another FTE position currently dedicated to the BayStat program under its budget. MDA, however, indicates that the bill's requirements could likely be accommodated with its existing commitments to the BayStat program. It is assumed for the purposes of this analysis, that the additional requirements for the program under the bill, notably the preparation of the annual BayStat expenditure and work plan, could be handled with existing budgeted resources of the agencies currently supporting the program. To the extent additional resources are needed, they may be requested through the annual budget process.

Other Funding

The bill specifies that money expended from the fund is supplemental to and may not take the place of funding that otherwise would be appropriated for the activities the fund is intended to support. The additional funding therefore should not affect current funding levels for the activities from other sources.

DNR and MDA have indicated that new State funding may serve as leverage for new federal or other funds directed toward the same programs the fund is intended to support, but cannot estimate to what extent this might occur.

Local Fiscal Effect: Local governments would benefit directly from stormwater management-related grants and various other grants, collectively receiving a minimum of 30% of the money distributed under the annual BayStat expenditure and work plan. However, some grants could require a local match. Local governments would also benefit from technical assistance provided for under the bill. Municipal corporations could further benefit to the extent money is allocated to DNR for municipal park grants.

Certain local governments could require contractual services to meet the reporting requirements of the bill relating to estimated nutrient reductions and the time frame for the reductions.

Small Business Effect: Small business farmers would benefit from cover crop and best management practices cost sharing and technical assistance. Small businesses doing

restoration work would have the opportunity to bid for any contractual services required by DNR. Small businesses involved in resource-based industries could also indirectly benefit from increased bay restoration-related efforts.

Additional Comments: HB 5 of the 2007 special session, as passed by the House, also establishes a Chesapeake Bay 2010 Trust Fund, which must be used for implementation of the State's tributary strategy. The fund would primarily consist of specified portions of existing revenues from the motor fuel tax and the sales tax on short-term vehicle rentals (which is expected to generate just over \$50 million for the fund in fiscal 2009). HB 5 specifies that if this bill, HB 23, is enacted, the provision of HB 5 establishing a Chesapeake Bay 2010 Trust Fund would be null and void. However, the provisions in HB 5 that capitalize the fund by directing specified portions of existing revenues would still take effect in fiscal 2009.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of the Environment, Maryland Association of Counties, Maryland Municipal League, Chesapeake Bay Foundation, Chesapeake Bay Program, Coastal Bays Program, Department of Legislative Services

Fiscal Note History: First Reader - November 1, 2007
mll/ljm Revised - House Third Reader - November 16, 2007
Revised - Clarification - December 13, 2007

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