

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 487 (Delegate Jacobs, *et al.*)  
Environmental Matters

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Environment - Watershed Implementation Plan - County Implementation

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This bill specifies that a local jurisdiction may not be required to implement a Watershed Implementation Plan (WIP) activity or strategy to implement the Chesapeake Bay Total Maximum Daily Load (Bay TMDL) unless funding sufficient to pay for it is provided by the State or federal government.

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Fiscal Summary

**State Effect:** State expenditures (all funds) may increase significantly for the State to fund local activities or to implement actions required in the Phase II WIP that would otherwise be undertaken by local governments. The bill has potentially significant fiscal and operational ramifications for the Maryland Department of the Environment related to its permitting authority and potential litigation. Federal fund revenues may decrease significantly to the extent that the State fails to comply with the Bay TMDL and the U.S. Environmental Protection Agency (EPA) or other federal agencies withhold funds as a result.

**Local Effect:** Local government revenues increase significantly to the extent the State and/or federal government provide additional funding so that local governments continue to undertake the activities called for in the WIP. To the extent such funding is not provided, local expenditures decrease for those jurisdictions that cease to implement programs designed to achieve the requirements of the Bay TMDL. However, to the extent the bill results in EPA sanctions, local expenditures may increase significantly if federal permits are revised to include significantly more stringent requirements in order to meet the reductions called for in the Bay TMDL.

**Small Business Effect:** Meaningful.

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## Analysis

### Current Law/Background:

#### *The Bay TMDL and the WIP Development Process*

In December 2010, EPA established the Bay TMDL, which (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

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### Exhibit 1 Maryland's Pollution Reduction Goals in the Bay TMDL (Million Pounds Per Year)

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

Note: Target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

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In 2010, each bay jurisdiction submitted a Phase I WIP that details how the jurisdiction will achieve its individual pollution reduction goals under the Bay TMDL. The Phase I WIP focused on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants, upgrading septic systems, and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the Bay TMDL is to be met.

On January 26, 2012, Maryland released for public comment a draft of the State's Phase II WIP, which provides implementation strategies for the five major basins in Maryland

(the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland’s portion of the Susquehanna River basin).

*Anticipated Costs and Available Funding*

For contextual purposes, **Exhibit 2** shows that the preliminary estimated cost of implementing the Phase II WIP associated with the Bay TMDL exceeds \$7.5 billion through calendar 2017 and is about \$14.7 billion through calendar 2025. The annual costs to the State, local governments, and other entities are not separately identified in the plan and are not known at this time. However, there are a number of current State programs that provide funding for actions identified in the plan. Existing State funding sources are preliminarily projected by the Department of Legislative Services to provide approximately \$2.8 billion in funding for various Chesapeake Bay restoration programs between fiscal 2010 and 2017.

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**Exhibit 2**  
**Estimated Phase II WIP Costs for Interim and Final Targets Under the Bay TMDL**  
**(\$ in Millions)**

<u>Source Sector</u>	<u>Cost of 2017 Strategy 2010-2017</u>	<u>Cost of 2025 Strategy 2010-2025</u>
<b>Agriculture</b>	<b>\$498</b>	<b>\$928</b>
<b>Municipal Wastewater</b>	<b>2,384</b>	<b>2,384</b>
Major Municipal Plants	2,322	2,322
Minor Municipal Plants	62	62
<b>Stormwater</b>	<b>3,826</b>	<b>7,607</b>
Maryland Department of Transportation (MDOT)	467	1,500
Local Government	3,359	6,107
<b>Septic Systems</b>	<b>799</b>	<b>3,746</b>
Septic System Upgrades	336	2,533
Septic System Connections	439	1,125
Septic System Pumping	24	88
<b>Total</b>	<b>\$7,507</b>	<b>\$14,665</b>

Note: Exhibit does not reflect costs associated with controlling combined sewer and sanitary overflows or the implementation of the Healthy Air Act.

Source: *Phase II Watershed Implementation Plan*; Maryland Department of the Environment

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## *Funding Shared Across All Levels of Government and the Private Sector*

While the State provides funding for some of the strategies in the WIP, the cost of others is anticipated to be borne by the private sector, local governments, and the federal government. With respect to federal funding for example, about \$78.7 million in federal funds were appropriated in the fiscal 2012 State budget for purposes associated with restoring the Chesapeake Bay, although not necessarily for the specific purpose of implementing the Bay TMDL.

The State's share of the costs to implement the Phase II WIP has not yet been determined as noted above. The Governor's proposed fiscal 2013 budget includes a total of \$743.2 million in funding (\$354.8 million in special funds, \$137.5 million in MDOT funds, \$114.8 million in general obligation bonds, \$62.6 million in federal funds, \$35.5 million in general funds, and \$38.1 million in other funds) for bay restoration activities, although not necessarily for the specific purpose of implementing the Bay TMDL.

With respect to identifying future funding sources for WIP activities, the Task Force on Sustainable Growth and Wastewater Disposal, which was established by Governor O'Malley under Executive Order 01.01.2011.05, addressed these concerns, among others. The task force met throughout the 2011 interim and reviewed and studied issues such as increasing the bay restoration fee in order to cover the existing shortfall in the Bay Restoration Fund (BRF) and close the funding gap for implementing other WIP requirements associated with developed land best management practices (BMPs), including strategies to address septic systems, stormwater management, and the upgrade of "major minor" wastewater treatment plants (WWTPs). Under one recommendation, the task force envisioned:

- a 50% State share of costs for the upgrade of major minor WWTPs with biological nutrient reduction technology;
- a 50% State share of costs for stormwater retrofits;
- the transfer to local governments of 15% of the gross BRF revenue generated within each jurisdiction for implementation of approved stormwater BMPs, increasing to 25% in fiscal 2018, if recommended by the Bay Restoration Fund Advisory Committee; and
- using competitive awards for local governments to maximize cost effectiveness of the distribution of funds statewide, including competitive grants for upgrading 10 of the largest minor WWTPs upgrades to enhanced nutrient removal technology.

Legislative Services advises that the legislation that has been introduced by the Administration to increase the bay restoration fee (SB 240/HB 446) would not result in an increase in revenue sufficient to support the allocations proposed by the task force, nor would it expand the authorized uses of the BRF to support activities not currently authorized, such as stormwater retrofits.

### *Consequences of Not Meeting the Bay TMDL Target Reductions*

Early in the Bay TMDL development process, EPA notified states of the accountability framework in place to ensure that the watershed states initiate the WIP development process and ultimately achieve the required nutrient and sediment reductions. The accountability framework includes a number of backstop measures that EPA may take to ensure that the required reductions are achieved in the absence of effective state WIPs. These backstop measures include expanding water permit coverage to currently unregulated sources, objecting to inadequate permits, requiring net improvement offsets for new or increased point source discharges, establishing finer scale allocations in the Bay TMDL, requiring additional load reductions from point sources, increasing and targeting federal enforcement efforts, conditioning and redirecting federal grant funds, and initiating the development of local nutrient water quality standards.

**State/Local Fiscal Effect:** Although the potential ramifications of this bill are unknown, the bill will likely have a significant impact on State and local operations and finances. Under one scenario, in order to ensure that local governments continue to implement the strategies called for in the WIP, the State and/or the federal government would need to significantly increase their expenditures to pay for activities and strategies that otherwise would be paid for at the local level. In this scenario, assuming no change in funding provided by the federal government, State expenditures (all funds) increase significantly, while local government revenues for these activities increase correspondingly. In order to fund these local activities at the State level, however, the State would either need to increase State fees or taxes or redirect spending from other priorities.

Under another scenario, if funding provided by the State and federal government is not provided in an amount sufficient to pay for local activities and strategies in the WIP, under this bill, local governments could theoretically choose *not* to implement the activities and strategies called for in the WIP. If this were to occur, the State would likely not be able to achieve the reductions called for under the Bay TMDL, and local governments could be in violation of certain federal permits (such as permits issued to local wastewater facilities). This could elicit any number of responses by EPA, as described above. Any decrease in federal funding, withholding of permits, establishment of new permits, reallocation of load reductions, loss of existing State permitting authority, or other sanctions will have significant fiscal and operational impacts on the State and local governments.

**Small Business Effect:** Small businesses across many sectors of the Maryland economy are holders of permits issued by EPA. Permit-related costs may increase for many small businesses should the State fail to comply with the Bay TMDL to the extent that EPA exercises its authority to rewrite, withhold, or establish new permits, which are some of the consequences noted by EPA in its accountability framework. Additionally, many small businesses that are engaged in operations associated with planned or existing Chesapeake Bay restoration efforts may experience a reduction in the demand for their services to the extent that local governments cease implementing the activities and strategies called for in the WIP; particularly affected might be construction contractors associated with stormwater management, which accounts for a large share of the anticipated local costs for implementing the Phase II WIP. Finally, small businesses that are engaged in other sectors affected by the WIP, such as farmers, could be significantly impacted to the extent any reduction in local activities results in the relocation of nutrient and sediment load reduction targets to their sectors.

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### Additional Information

**Prior Introductions:** HB 6 of the 2011 special session was assigned to the House Rules Committee, but no further action was taken on it. Its cross file, SB 12, was assigned to the Senate Rules Committee, but no further action was taken on it.

**Cross File:** Although SB 822 (Senator Pipkin, *et al.* - Education, Health, and Environmental Affairs) is designated as a cross file, it is different.

**Information Source(s):** Baltimore, Charles, Frederick, and Montgomery counties; Maryland Department of the Environment; U.S. Environmental Protection Agency; Task Force on Sustainable Growth and Wastewater Disposal; Department of Budget and Management; Department of Legislative Services

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