

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 78

(Delegate C. Watson)

Environment and Transportation

Education, Health, and Environmental Affairs

Bay Restoration Fund - Authorized Uses

This bill expands the criteria used to determine how to allocate funding from the Bay Restoration Fund (BRF) Wastewater Account by including climate resiliency and flood control as issues for the Maryland Department of the Environment (MDE) to consider when determining the priority of funding for specified projects. The bill also specifies that the types of stormwater control measures that a local government can receive BRF funding for under current law (if the local government has implemented a system of charges to fully fund a stormwater management program) include stormwater measures relating to water quality, climate resiliency, or flood control. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Overall finances for the BRF Wastewater Account are not affected; the bill merely changes the priority ranking for certain projects and expands the authorized uses of the account. MDE can promulgate implementing regulations with existing budgeted resources. Revenues are not affected.

Local Effect: Local grant revenues and expenditures are likely affected by the change in priority ranking and could also be affected to the extent that BRF funding is provided for stormwater measures relating to water quality, climate resiliency, or flood control instead of other authorized uses. Any such impact cannot be reliably estimated at this time.

Small Business Effect: Minimal overall, but potential meaningful impact on some small businesses depending on the projects that receive funding under the bill.

Analysis

Bill Summary: The bill adds climate resiliency and flood control to the factors MDE must base funding awards on when allocating funding for (1) combined sewer overflow abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations; (2) nitrogen reduction from on-site sewage disposal (septic) systems; and (3) the most cost-effective and efficient stormwater control measures by local governments who have implemented a system of charges to fully fund a stormwater management program.

Current Law:

Bay Restoration Fund

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned Wastewater Treatment Plants (WWTPs) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and Maryland Department of Agriculture's (MDA) Cover Crop Program.

As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks and Chapter 150 of 2012 doubled the fee for most users. Of the fee revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account, commonly referred to as the Septics Account. The remaining funds collected from users of septic systems and sewage holding tanks (40%) must be transferred to the Maryland Agricultural Water Quality Cost Share Program within MDA to provide financial assistance to farmers for planting cover crops.

Priority of Uses of MDE's Wastewater Account

Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account and used, among other specified uses, to provide grants for up to 100% of the eligible costs to upgrade WWTPs to ENR.

Pursuant to Chapters 124 and 153 of 2015, beginning in fiscal 2018, the priority for project funding from the Wastewater Account is as follows:

- (1) ENR upgrades at major WWTPs (design capacity of at least 500,000 gallons per day (gpd));
- (2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gpd);
- (3) as determined by MDE and based on water quality and public health benefits, for the following:
 - a. beginning in fiscal 2016, combined sewer overflow abatement, rehabilitation of existing sewers and upgrading conveyance systems, including pumping stations;
 - b. nitrogen reduction from on-site sewage disposal (septic) systems; and
 - c. the most cost-effective and efficient stormwater control measures by local governments who have implemented a system of charges to fully fund a stormwater management program.

MDE is required to determine the eligibility and priority ranking of a project based on criteria established in regulations. The project criteria includes (1) nutrient loads currently discharged and the projected nutrient load reduction; (2) cost-effectiveness in providing water quality or public health benefits; (3) relative effectiveness of water quality benefit to the Chesapeake Bay or other impaired body of water; (4) the existence of an administrative or civil compliance order or of a compliance schedule in a discharge permit; (5) sustainability benefits, such as water reuse, asset management, full cost pricing, energy conservation, and smart growth; and (6) readiness to proceed to construction.

Background: According to the Comptroller's Office, through December 31, 2019, a total of \$1.2 billion in bay restoration fees collected from wastewater facility users had been deposited in MDE's Wastewater Account. In addition, of the fee revenues collected from users of septic systems and sewage holding tanks, almost \$181.0 million had been deposited in MDE's Septics Account and \$129.2 million had been provided to MDA to support the planting of cover crops.

As of October 2019, BRF had supported ENR upgrades to 63 major wastewater facilities, with 3 other facilities under construction and 1 in the planning stage. As of July 2019, BRF had supported the installation of 10,532 BAT septic systems, of which 6,582 upgrades were completed within Maryland's Critical Areas. In addition, 515 homes had been connected to public sewerage using BRF, and BRF had supported the planting of more than three million acres of cover crops.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 172 (Senator Hester) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Howard, Montgomery, St. Mary's, and Somerset counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Comptroller's Office; Maryland Department of the Environment; Department of Legislative Services

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