

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 932

(Senator Elfreth, *et al.*)

Education, Energy, and the Environment

Rules and Executive Nominations

Maryland Agricultural BMP Priority Environmental Stewardship Program -
Established

This bill establishes a Maryland Agricultural BMP Priority Environmental Stewardship Program for specified purposes, generally focused on a coordinated and targeted approach to funding and implementation of high-priority agricultural best management practices (BMPs) to achieve the greatest environmental, social, and health impacts. The bill also establishes a Maryland Agricultural BMP Priority Environmental Stewardship Account in the Maryland Department of Agriculture (MDA) to fund the program; the account is authorized to receive funding from specified existing funds/programs.

Fiscal Summary

State Effect: The bill is not expected to have a net effect on overall State finances but is expected to result in the hiring of additional personnel (covered by existing, reallocated funds), as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Purpose

The bill establishes a Maryland Agricultural BMP Priority Environmental Stewardship Program to:

- provide greater funding needed to provide producers with greater incentives to participate in the adoption of multiple high-priority agricultural BMPs within individual agricultural operations or across multiple operations in close proximity;
- prioritize the use of agricultural cost-share funding and other State funds to support the coordinated establishment of BMPs in locations most likely to have a short-term beneficial impact on water quality, living resources, or public health; and
- increase the cost-effectiveness and environmental, social, and health impacts of State-funded BMPs through greater coordination, planning, targeting, or use of high-priority practices that provide environmental, social, and resiliency benefits in addition to nutrient and sediment reduction.

“Best management practice” means a conservation or pollution control practice that (1) reduces soil or nutrient loss due to farming practices or (2) manages or mitigates the impact of pollutants, animal wastes, or agricultural chemicals on the waters of the State or the environment.

Program Funding

The bill establishes a Maryland Agricultural BMP Priority Environmental Stewardship Account in MDA that, for fiscal 2026 through 2030, consists of:

- up to \$2.0 million per year of the revenues transferred to MDA from the Bay Restoration Fund (BRF) to fund cover crop activities;
- up to \$3.0 million per year of the revenues transferred to MDA from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund) under authority established by the bill (discussed below);
- any agricultural cost-share funding provided to the program by MDA from the Maryland Agricultural Water Quality Cost-Share (MACS) Program; and
- up to \$3.0 million transferred to MDA from the Clean Water Commerce Account (CWCA) under authority established by the bill (discussed below).

At the end of each fiscal year, any unused funds remaining in the account may be returned to the source from which the funds were received.

The bill alters the 2010 Trust Fund statute to allow for up to \$3.0 million of the fund to be transferred to MDA annually to be used in accordance with the Maryland Agricultural BMP Priority Environmental Stewardship Program.

The bill also modifies a provision of the CWCA statute that specifies that any unencumbered funds not used to purchase environmental outcomes in accordance with specified percentage allocations (for environmental outcomes from certain types of

practices or projects) are (1) no longer subject to the percentage allocation requirements under the statute and (2) available for use consistent with the statute in subsequent fiscal years. The bill modifies that provision so that the unencumbered funds, in addition to being no longer subject to the percentage allocation requirements and available for use consistent with the statute in subsequent fiscal years, are also subject to transfer to MDA to be used in accordance with the Maryland Agricultural BMP Priority Environmental Stewardship Program.

Implementation

Subject to the discretion of the Secretary of Agriculture, MDA must:

- assign a program administrator and provide adequate administrative support;
- develop a list of high-priority BMPs, including (1) natural filters; (2) vegetated environmental buffers; (3) wildlife and pollinator habitats; (4) shallow water and aquatic organism habitats; (5) agricultural land transition practices; and (6) agricultural ditch management practices;
- develop criteria for evaluating applications including considerations of (1) proximity to waters of the State; (2) known environmental or hydrologic information, including groundwater transport rates, pollutant attenuation, pollutant delivery ratios, and soil types; (3) potentially reducing the pollution of the waters of the State sufficient enough to reach an ecological tipping point; (4) the location within the buffer of the Chesapeake and Atlantic Coastal Bays Critical Area or other area designated for regulation or special protection under a federal or State law; and (5) overburdened and underserved communities;
- develop a payment schedule; and
- develop a map, in consultation with the Maryland Department of the Environment (MDE) and the Department of Natural Resources (DNR), that prioritizes areas of the State for funding under the program in consideration of the most effective basins, impairment status under the federal Clean Water Act, and specifically designated watersheds.

An applicant for a grant must demonstrate that any agricultural operation on which BMPs are to be established are in compliance with any nutrient management plan or conservation plan required under the Agriculture Article. An applicant must include a plan for the implementation of:

- not less than three different types of BMPs, with priority consideration given to those on the list of high-priority BMPs developed by MDA (mentioned above), designed to function as part of a common plan to maximize impact and efficiency;
or

- for an operation located in an overburdened community or underserved community (as defined under existing provisions of the Environment Article), a vegetative environmental buffer, hedgerow, windbreak, or other BMP or combination of BMPs designed to reduce exposure to air emissions from regulated point sources of pollution.

Current Law:

Bay Restoration Fund

Chapter 428 of 2004 established BRF, which is administered by the Water Infrastructure Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants with enhanced nutrient removal technology; funds are also used for septic system upgrade grants, among other things, and MDA's 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 (until July 1, 2030). 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 MDA to provide financial assistance to farmers for planting cover crops.

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund

The 2010 Trust Fund was established in 2008 and is funded with a portion of revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. The trust fund is used primarily for nonpoint source pollution control projects to help meet Chesapeake Bay restoration goals and to improve the health of the Atlantic Coastal Bays and their tributaries.

Maryland Agricultural Water Quality Cost-Share Program

The MACS Program was established in 1982 to provide financial assistance to farmers for the installation of BMPs that control and reduce pollution caused by agricultural activities. Under this voluntary program, the State provides grants to farmers to cover up to 100% of the cost of installing BMPs on their farms to prevent soil erosion, manage nutrients, and safeguard water quality in streams, rivers, and the Chesapeake Bay.

Clean Water Commerce Account

Chapters 694 and 695 of 2021 created CWCA. MDE is required to transfer \$20.0 million each fiscal year from BRF into the account to be used to purchase environmental outcomes to help the State achieve water quality goals. Specified percentages of the funding must be used to procure environmental outcomes from specified types of practices or projects, and any unencumbered funds not used to purchase environmental outcomes according to the percentages are no longer subject to the percentage requirements and available for use consistent with the CWCA statute in subsequent fiscal years. Chapters 694 and 695 terminate June 30, 2030.

State Fiscal Effect:

No Net Effect on State Finances

The bill is not expected to have a net effect on overall State finances, since the Maryland Agricultural BMP Priority Environmental Stewardship Program is funded through authorized reallocations from existing funds or programs. The funds/programs that the funding is reallocated from, however, are affected by the reduction in funding resulting from any reallocation. It is assumed the funds reallocated under the bill are otherwise spent under existing programs in the absence of the bill.

Transfers from the Clean Water Commerce Account and the 2010 Trust Fund

The Department of Legislative Services notes the following with respect to any reallocation of funding from CWCA or the 2010 Trust Fund (pursuant to the bill's modifications of the CWCA and 2010 Trust Fund statutes):

- *Clean Water Commerce Account* – While the funds that are made subject to transfer to the Maryland Agricultural BMP Priority Environmental Stewardship Program from CWCA are funds that are not able to be encumbered in the account, this analysis assumes that any funds transferred to the Maryland Agricultural BMP Priority Environmental Stewardship Program (presumably at the end of a fiscal year, for use in the following fiscal year), are otherwise, in the absence of the bill, retained by CWCA and spent in the following year as a result of no longer being subject to the account's percentage allocation requirements that prevented their encumbrance in the prior fiscal year.
- *2010 Trust Fund* – While the bill expressly amends the 2010 Trust Fund to allow for up to \$3.0 million of the fund to be transferred to the Maryland Agricultural BMP Priority Environmental Stewardship Program, this analysis assumes that any amount transferred to the program from the fund pursuant to that authority is deducted from the funding DNR already transfers to MDA pursuant to its general

authority to use the fund for implementation of nonpoint source pollution control projects and is not in addition to the funding transferred to MDA in the absence of the bill.

Assumed Minimum Funding

If it is assumed that the program is at least funded with the full amount of the specific dollar amount authorizations for the Maryland Agricultural BMP Priority Environmental Stewardship Account for fiscal 2026 through 2030 (up to \$2.0 million from BRF, up to \$3.0 million from the 2010 Trust Fund, and up to \$3.0 million from CWCA), then the program is funded with at least \$8.0 million annually for fiscal 2026 through 2030.

While the bill does not explicitly indicate how the Maryland Agricultural BMP Priority Environmental Stewardship Account is funded after fiscal 2030, the authorization under the 2010 Trust Fund statute for the transfer of up to \$3.0 million annually from the 2010 Trust Fund to MDA to be used for the program continues beyond fiscal 2030. Therefore the 2010 Trust Fund presumably can continue to be used as a source of funding for the account beyond fiscal 2030. The bill, however, does not authorize use of BRF or MACS to fund the program beyond fiscal 2030, and CWCA terminates at the end of fiscal 2030 (although unencumbered funds remaining in CWCA near the end of fiscal 2030 may be able to be transferred to MDA, before CWCA terminates, and used for the program in fiscal 2031).

Additional Personnel

The bill requires MDA to assign a program administrator to the program, provide for adequate administrative support, and conduct the various other activities discussed above to carry out the purpose of the program. MDA indicates that existing personnel are not available to assign to the program and that two additional employees (one program administrator and one program specialist) must be hired to administer the program. As a result, \$184,576 of the existing funding reallocated to the program is devoted to new staff in fiscal 2026, and the remaining funding is available for grants and any other administrative costs of the program. This analysis assumes that (1) funding in the Maryland Agricultural BMP Priority Environmental Stewardship Account can be used for administrative costs and (2) administration of the program does not begin until fiscal 2026, when the authorization of funding sources and related maximum funding amounts for the Maryland Agricultural BMP Priority Environmental Stewardship Account begins. The personnel costs shown below assume a July 1, 2025, start date and include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$169,502
Personnel-related Operating Expenses	<u>15,074</u>
Total FY 2026 New Personnel Costs (Supported by Existing, Reallocated Funds)	\$184,576

Future year costs (supported by existing, reallocated funds), which total \$179,335 in fiscal 2027, increasing to \$195,402 by fiscal 2029, reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Existing Fiscal 2025 Budgeted Maryland Department of Agriculture Funding, for Context

For context regarding MDA’s existing BMP funding, the fiscal 2025 budget allocates \$35.6 million, 12 authorized positions, and 4 contractual positions, to MDA’s Conservation Grants Program, which administers the MACS, Cover Crop, and other programs. Of the \$35.6 million, which consists predominantly of funds from BRF and the 2010 Trust Fund, \$25.5 million is funding for the Cover Crop Program. The fiscal 2025 capital budget as introduced also contains \$8.0 million in general obligation bond funds for the MACS Program.

Small Business Effect: Small business farmers may be meaningfully affected by the reallocation of funding for agricultural BMPs if the reallocation of funding among programs changes the amount or type of funding available to a given small business.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1042 (Delegate Guzzone) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture, Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

Fiscal Note History:
rh/lgc

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