

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1438 (Delegate Fraser-Hidalgo, *et al.*)

Economic Matters and Environment and
Transportation

Responding to Emergency Needs From Extreme Weather (RENEW) Act of 2024

This bill establishes the Climate Change Adaptation and Mitigation Payment Program and the Climate Change Adaptation and Mitigation Fund within the Maryland Department of the Environment (MDE). The primary purpose of the program is to secure compensatory payments from fossil fuel businesses based on a standard of strict liability to provide a source of revenue for State efforts to (1) adapt to and mitigate the effects of climate change and (2) address the health impacts of climate change on vulnerable populations. The fund may be used for MDE administrative expenses and specified purposes and programs related to climate change, the environment, natural resources, energy, utilities, disaster recovery, transportation, economic development, social services, and health.

Fiscal Summary

State Effect: Special fund revenues from cost recovery payments ultimately total \$9.0 billion, but the timing of payments is unclear. Nevertheless, special fund revenues to the new fund increase *significantly* as early as FY 2027; special fund expenditures increase correspondingly. Special fund revenues and expenditures (multiple agencies) increase beginning in FY 2027 as funding is provided to support specified State programs. General fund revenues increase significantly from interest earnings on the new fund. MDE general/special fund expenditures increase significantly (almost certainly by more than \$1.0 million annually) beginning in FY 2025.

Local Effect: Potential significant impact on local government finances and operations beginning in FY 2027, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Climate Change Adaptation and Mitigation Payment Program

Key Definitions: A “responsible party” is an “entity” or a successor in interest to an entity that (1) during any part of the covered period, was engaged in the trade or business of extracting “fossil fuel” or refining “crude oil,” as defined and (2) is determined by MDE to be responsible for more than one billion tons of covered greenhouse gas (GHG) emissions. A responsible party does not include any person that lacks sufficient connection with Maryland to satisfy the nexus requirements under the U.S. Constitution. “Entity” means any individual, trustee, agent, partnership, association, corporation, company, municipal corporation, political subdivision, or other person, including a foreign nation, that holds or held an ownership interest in a fossil fuel business during the covered period.

“Covered GHG emissions” means the total quantity of GHGs released into the atmosphere during the covered period, as defined, expressed in metric tons of carbon dioxide (CO₂) equivalent, resulting from the use of fossil fuels or petroleum products extracted, produced, refined, or sold by an entity.

Program Purpose: The purpose of the Climate Change Adaptation and Mitigation Payment Program is to:

- secure compensatory payments from fossil fuel businesses based on a standard of strict liability in order to provide a source of revenue for State efforts to (1) adapt to and mitigate the effects of climate change, including climate change adaptive or mitigation infrastructure projects within the State and (2) address the health impacts of climate change on vulnerable populations;
- determine the proportional liability of responsible parties;
- impose cost recovery demands on responsible parties and issue notices of cost recovery demands;
- accept and collect cost recovery payments from responsible parties;
- identify climate change adaptive or mitigation infrastructure projects within the State;
- disburse funds in accordance with the bill’s provisions; and
- ensure that at least 40% of the qualified expenditures from the program go to climate change adaptive or mitigation infrastructure projects that directly benefit communities disproportionately affected by climate impacts.

Strict Liability and Cost Recovery Demands: A responsible party is strictly liable, without regard to fault, for a share of the costs of climate change adaptive mitigation infrastructure projects, including operating and maintenance costs, supported by the Climate Change Adaptation and Mitigation Fund. Entities in a controlled group must be treated as a single entity for the purpose of identifying responsible parties and are jointly and severally liable for payment of any cost recovery demand owed by any entity in the controlled group.

With respect to each responsible party, the cost recovery demand is equal to an amount that bears the same ratio to \$9.0 billion as the responsible party's applicable share of covered GHG emissions bears to the aggregate applicable shares of all responsible parties' covered GHG emissions. Generally, a responsible party's applicable share of GHG emissions is the amount by which covered GHG emissions attributable to the responsible party *exceeds* one billion metric tons. However, if a responsible party owns a minority interest of at least 10% in another entity, the responsible party is responsible for a percentage of the applicable share for the entity in an amount equal to the percentage of the minority interest held by the responsible party. The bill establishes CO₂ equivalency amounts for specific amounts of coal, crude oil, and fuel gases that MDE must use in determining the amount of GHG emissions attributable to an entity.

MDE is authorized to adjust the cost recovery demand amount of a responsible party that refines petroleum products or that is a successor in interest to an entity that refines petroleum products if the responsible party establishes to MDE's satisfaction that (1) a portion of the cost recovery demand amount was attributable to refining crude oil extracted by another entity and (2) the crude oil extracted by the other entity was accounted for when MDE determined the cost recovery demand amount for the other entity or its successor in interest.

A responsible party may request a hearing pursuant to the Administrative Procedure Act to contest a cost recovery demand made by MDE pursuant to the bill. Remedies described above are in addition to any other remedy provided by law. The above provisions may not be interpreted to prevent a person from pursuing a civil action or any other remedy provided by law.

Payment of Cost Recovery Demand: Unless a responsible party elects to pay the cost recovery demand in nine annual installments, as specified, payment is due in full by October 1, 2026. The bill establishes provisions regarding installment payments.

Cost recovery demand payments are deposited into the Climate Change Adaptation and Mitigation Fund (described in more detail below).

Regulations: MDE must adopt regulations necessary to carry out the program by October 1, 2025. The regulations must include (1) methodologies that use the best available

science to identify responsible parties and determine responsible parties' applicable shares of GHG emissions; (2) rules relating to registering responsible parties, issuing notices of cost recovery demands, and accepting payments from, pursuing collection efforts against, and negotiating settlement agreements with responsible parties; and (3) procedures for identifying climate change adaptive or mitigation infrastructure projects eligible to receive qualifying expenditures from the fund.

MDE may, by regulation, provide for climate change adaptive or mitigation infrastructure projects to be identified for funding through (1) legislative budget appropriations; (2) the issuance of requests for proposals from local governments, nonprofit organizations, or community groups; or (3) any other method deemed appropriate by MDE.

Climate Change Adaptation and Mitigation Fund

The stated purpose of the Climate Change Adaptation and Mitigation Fund is to provide funding for State efforts to adapt to and mitigate the effects of climate change. The fund, which is administered by MDE, consists of cost recovery payments distributed to the fund, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. Interest earnings must be credited to the general fund.

The fund may only be used (1) to pay qualified expenditures for climate change adaptive or mitigation infrastructure projects identified by MDE in accordance with regulations adopted pursuant to the bill; (2) to pay reasonable administrative costs of the program; (3) to provide grants to local jurisdictions under a program that MDE must establish under the bill to assist local efforts to adapt to and mitigate the effects of climate change; (4) for MDE's Comprehensive Flood Management Grant Program to implement specified capital projects and other related uses; and (5) to support existing initiatives by State entities related to climate change, the environment, natural resources, energy, utilities, disaster recovery, transportation, economic development, social services, and health. The bill makes conforming changes to various State funds to allow the funding from the Climate Change Adaptation and Mitigation Fund to be provided and establishes basic requirements for the local government grant program.

MDE must ensure that at least 40% of the qualified expenditures from the program go to climate change adaptive or mitigation infrastructure projects that directly benefit communities that are disproportionately affected by climate impacts.

Audits and Reporting Requirements

By October 1, 2027, and annually thereafter, MDE must report to the Governor and the General Assembly on (1) the cost recovery payments received and the funding disbursed

from the fund during the preceding fiscal year; (2) the status of funded climate change adaptive or mitigation infrastructure projects; (3) the percentage of qualified expenditures during the past year that funded climate change adaptive or mitigation infrastructure projects that directly benefited communities disproportionately affected by climate impacts; and (4) the effectiveness of the program in achieving the purposes of the bill.

The Legislative Auditor is authorized to conduct post audits of a fiscal and compliance nature of the fund and of the appropriations and expenditures made pursuant to the bill. The cost of the fiscal portion of an audit must be paid from the fund as an administrative cost.

Current Law:

The Maryland Department of the Environment's Climate Change Program

MDE's Climate Change Program leads the State's efforts to reduce GHG emissions, as required by the GHG Emissions Reduction Act and participation and oversight in other initiatives, including the Regional Greenhouse Gas Initiative (RGGI) and the U.S. Climate Alliance. The program also ensures State compliance with climate-related State and federal laws, such as the Climate Solutions Now Act (Chapter 38 of 2022), discussed below.

The U.S. Climate Alliance is a bipartisan coalition of governors, including the Governor of Maryland, committed to reducing GHG emissions consistent with the goals of the Paris Agreement. These goals include reducing collective net GHG emissions by at least 26% to 28% by 2025 and by 50% to 52% by 2030 (both below 2005 levels) and collectively achieving overall net-zero GHG emissions as soon as practicable, but no later than 2050.

Maryland also participates in the multi-state RGGI in order to reduce CO₂ emissions from the power sector. Each participating state limits CO₂ emissions from electric power plants, issues CO₂ allowances, and establishes participation in CO₂ allowance auctions. A single CO₂ allowance represents a limited authorization to emit one ton of CO₂.

Chapters 127 and 128 of 2008 created the Maryland Strategic Energy Investment Program and the implementing Strategic Energy Investment Fund (SEIF) to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy. SEIF is primarily funded through the proceeds from the auction of carbon allowances under RGGI.

Maryland Greenhouse Gas Emissions Reduction Targets and the Climate Solutions Now Act

The Climate Solutions Now Act made broad changes to the State's approach to reducing statewide GHG emissions and addressing climate change. Among other things, the Act accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045.

In December 2023, MDE published [Maryland's Climate Pollution Reduction Plan](#), which was developed to implement Chapter 38.

Maryland Department of Emergency Management

Chapters 287 and 288 of 2021 established the Maryland Department of Emergency Management (MDEM) as a principal department of the Executive Branch of State government and as the successor to the Maryland Emergency Management Agency. MDEM is responsible for coordinating the State response in any major emergency or disaster. This includes supporting local governments as needed or requested and coordinating assistance with the Federal Emergency Management Agency and other federal partners. MDEM manages many of the federal grants that fund a broad range of initiatives leading to enhanced protection from and responses to the full range of natural and man-made disasters that could threaten the State's citizens.

Political subdivisions of the State (*i.e.*, local governments) are required to (1) establish local organizations for emergency management in accordance with the State's emergency management plan and program and (2) participate in federal programs for emergency management.

State Fiscal Effect:

Cost Recovery Revenues, Associated Spending, and Interest Earnings

Under the cost recovery framework established under the bill, cost recovery payments total \$9.0 billion, with cost recovery payments beginning in fiscal 2027. Responsible parties must either pay in full by October 1, 2026, or pay in nine annual installments, with the first installment – which is equal to 20% of the total cost recovery demand amount – due by October 1, 2026. If responsible parties pay in full, special fund revenues increase by \$9.0 billion in fiscal 2027. If responsible parties elect to pay in installments, special fund revenues increase by \$1.8 billion in fiscal 2027 (20% of the total cost recovery demand amount) and by \$900.0 million annually from fiscal 2028 through 2035 (10% of the total

cost recovery demand amount in each of these years). A combination of full payments and installments from responsible parties is also possible.

However, the Department of Legislative Services (DLS) anticipates that, given the complexity of implementing the bill's cost recovery provisions, a likely delay in the adoption of implementing regulations (discussed below), and the high likelihood of litigation, it is unlikely that cost recovery payments are actually paid within the timeframe established by the bill. Ultimately, DLS cannot predict precisely when and how much is collected in any given year under the bill, but, given the scope of the target revenues, once money begins to be collected, special fund revenues to the Climate Change Adaptation and Mitigation Fund increase *significantly*.

Special fund expenditures increase correspondingly for authorized purposes (specified MDE programmatic and administrative expenditures, to provide grants to local governments, and to support existing initiatives by State entities related to climate change, the environment, natural resources, energy, utilities, disaster recovery, transportation, economic development, social services, and health).

Special fund revenues and expenditures for multiple State agencies increase correspondingly as funds are received and used for authorized purposes. Affected agencies include: MDEM; the Maryland Department of Health; the Department of Natural Resources; the Maryland Energy Administration; the Maryland Clean Energy Center; the Department of Human Services; the Department of Housing and Community Development; the Department of Commerce; the Maryland Department of Transportation; and the Public Service Commission. Individual impacts cannot be determined at this time, but likely include additional staff, coincident with any funding provided.

General fund revenues increase significantly as early as fiscal 2027 as interest earnings on the new fund must be credited to the general fund.

Maryland Department of the Environment Administrative Costs

MDE advises that administrative costs to implement the Climate Change Adaptation and Mitigation Payment Program are approximately \$2.0 million in fiscal 2025 and at least \$2.2 million annually thereafter, which reflects the need to hire 23 employees (3 assistant Attorneys General, 2 program managers, 5 natural resource planners, 5 regulatory and compliance engineers, 7 accountants, and 1 administrative specialist) plus \$150,000 in one-time programming costs.

Significant initial tasks include (1) developing regulations by October 1, 2025; (2) developing and identifying methodologies to identify responsible parties and their applicable shares of GHG emissions; (3) issuing notices of cost recovery demands;

(4) collecting and tracking cost recovery payments beginning October 1, 2026; (5) identifying climate change adaptive or mitigation infrastructure projects eligible for funding; (6) managing and distributing funding from the fund for eligible projects and various programs; and (7) compiling and submitting the annual report. MDE notes that the bill's October 1, 2025 deadline to develop the regulations is unlikely to be met even with substantial additional resources because the typical timeline to develop regulations of this scale is two years.

DLS concurs that the bill establishes substantial new responsibilities for MDE and that MDE incurs significant expenditures to hire staff beginning in fiscal 2025. However, without actual experience under the bill, a reliable estimate of the increase in staffing costs cannot be made at this time. DLS anticipates, however, that MDE's administrative expenditures increase significantly, almost certainly by more than \$1.0 million annually, beginning in fiscal 2025.

In *at least* fiscal 2025 and 2026, these costs must be covered with general funds, as special funds from cost recovery payments are not yet available. According to the timeframe established under the bill, responsible parties must begin paying cost recovery demand amounts by October 1, 2026. Therefore, in theory, because the Climate Change Adaptation and Mitigation Fund may be used to cover reasonable administrative costs for the program, special funds cover MDE's administrative costs beginning in fiscal 2027. However, as discussed above, the collection of cost recovery payments is likely delayed. Accordingly, general funds are needed until special funds are available.

Potential Impacts on Other State Agencies Outside of Direct Program Funding

The Office of Administrative Hearings (OAH) anticipates that the bill has, at a minimum, an operational impact because OAH needs to train its administrative law judges on the substantive areas of the bill. Actual impacts will ultimately depend on the number of additional hearings resulting from the bill.

The Judiciary advises that it does not anticipate a substantial fiscal or operational impact on the courts.

The Office of Legislative Audits advises that any audits conducted under the bill can be accomplished with existing personnel.

Local Fiscal Effect: Given the magnitude of the potential funding available under the bill, beginning as early as fiscal 2027, local governments may be meaningfully positively affected from additional funding for infrastructure projects to avoid, moderate, or repair damage caused by climate change and for other similar purposes. Local governments may receive funding under the bill directly for qualifying projects and programs and may also

benefit indirectly from enhanced statewide protection and mitigation against the effects of climate change.

Given the amount of GHG emissions that must be attributable to a responsible party before the responsible party must pay a cost recovery demand, it is unlikely that any local governments are considered responsible parties under the bill.

Small Business Effect: Small businesses in the State are meaningfully affected by the additional funding provided for climate change adaptive or mitigation infrastructure projects and other affected State programs. The bill may also indirectly benefit small businesses from the additional funding for infrastructure projects to avoid, moderate, or repair damage caused by climate change.

Given the amount of GHG emissions that must be attributable to a responsible party before the responsible party must pay a cost recovery demand, it is unlikely that any small businesses in the State are considered responsible parties under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 843 and HB 915 of 2023.

Designated Cross File: SB 958 (Senator Hester, *et al.*) - Education, Energy, and the Environment and Finance.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Public Service Commission; Maryland Energy Administration; Office of Administrative Hearings; Department of Commerce; Maryland Department of Emergency Management; Department of General Services; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland Department of Health; Maryland Environmental Service; Howard and Prince George's counties; Anne Arundel County Public Schools; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services.

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