Department of Legislative Services

Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1220 (Delegate McIntosh, *et al.*)
Environmental Matters Education, Health, and Environmental Affairs and Budget and Taxation

---

Chesapeake and Atlantic Coastal Bays Green Fund

This bill establishes a Chesapeake and Atlantic Coastal Bays Green Fund, effective July 1, 2008, to provide funding to various State agencies and the Chesapeake Bay Trust for specified bay restoration and growth management activities. The fund, administered by the Comptroller, would be financed by an impervious surface fee assessed on "new impervious surface" development. Local governments would retain a portion of fee collections for specified purposes. The bill also establishes a Chesapeake and Atlantic Coastal Bays Green Fund Oversight and Accountability Committee.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: Significant increase in special fund revenues beginning in FY 2009 from the impervious surface fee. Special fund expenditures would increase correspondingly.

Local Effect: Local expenditures could increase to collect impervious surface fees and associated data; such costs could be at least partially offset by the use of up to 8% of fee collections in FY 2009 and up to 5% annually thereafter for certain administrative costs. Local expenditures could also increase to implement offsets on local projects. Local revenues would increase from the retention of 30% of fee collections for specified activities. Local revenues could increase further from grant awards, but could be negatively affected to the extent the bill limits the ability of local governments to establish or increase local impact fees/excise taxes. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: "New impervious surface" includes new buildings, dwelling units, roads, parking lots, driveways, and any other impervious surfaces created as a result of residential, commercial, industrial, or other development. The term does not include (1) an addition or accessory structure to an existing single-family dwelling unit that does not exceed 20% of the impervious surface of the footprint of the dwelling unit or structure as it existed on or before July 1, 2007; (2) specified development associated with farms; (3) a storage, production, or processing facility associated with forestry or bioenergy operations; or (4) gravel surfaces.

Impervious Surface Fee

The impervious surface fee would be collected by local governments when they issue grading and building permits. Before the issuance of a *grading* permit, the impervious surface fee for residential development is $0.50 per square foot of new impervious surface. Before the issuance of a *building* permit, the impervious surface fee for residential development or redevelopment is a flat fee ranging from $100 per permit to $1,500 per permit depending on the amount of new impervious surface. Before the issuance of either a *grading* permit or a *building* permit, the fee for commercial and industrial development is $1 per square foot of new impervious surface.

The amount of an impervious surface fee may be reduced using offsets but may not be reduced by more than 75%. The impervious surface fee would not apply to (1) government-sponsored projects or activities; (2) the portion of a residential housing development that contains low-income or workforce housing, as determined by local governments; or (3) economic development projects in counties that meet specified unemployment and per capita personal income conditions. For redevelopment, the fee would only be assessed for the amount of impervious surface that exceeds the existing amount of impervious surface.

With the approval of the Department of Business and Economic Development (DBED), a local government is authorized to waive the fee for a job creation project, as defined in the bill. Local governments must submit the proposed waiver and information regarding the project to DBED. DBED must approve or disapprove the waiver within 30 days. DBED is required to submit an annual report regarding such waivers to the General Assembly.

Before the issuance of a grading or building permit, a person must provide to the local government the total area of new impervious surface proposed to be developed and any proposals for offsets of new impervious surface. Local governments must, on a quarterly basis, report and submit fees collected to the Comptroller for the benefit of the fund. The bill applies specified provisions relating to the sales and use tax to the administration, collection, and enforcement of the impervious surface fee. The Comptroller must adopt regulations necessary to administer the fund and collect and enforce the fee by June 30, 2008.

Local governments are authorized to distribute up to 8% of total fee collections in fiscal 2009 and up to 5% of total fee collections annually thereafter to an administrative cost account. Local governments are also authorized to retain 30% of total fee collections for the use of specified restoration, nutrient reduction, Tributary Strategy, water quality, and citizen education activities.

Chesapeake and Atlantic Coastal Bays Green Fund

The fund must provide financial assistance to local governments, State agencies, and nongovernmental organizations for the support of projects and activities related to the implementation of the State's Tributary Strategies and meeting the commitments under the Chesapeake 2000 agreement (C2K), the State's Smart Growth policies, and Chapter 381 of 2006. Except for the portion retained by local governments, the Comptroller is required to distribute the fund annually as follows:

- 45% to the Maryland Department of Agriculture (MDA) to be used as follows: (1) up to 2.5% each, not to exceed $2 million each, to the Soil Conservation Districts for staff and operating costs and the University of Maryland Cooperative Extension for the provision of technical assistance related to Tributary Strategies implementation; (2) for fiscal 2009 through 2012, up to $5 million annually for the Next Generation Farmland Acquisition Program within the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) and, beginning in fiscal 2013, up to $5 million annually for the Maryland Agricultural Land Preservation Foundation (MALPF); and (3) the remainder for the implementation of best management practices (BMPs) through the Maryland Agricultural Water Quality Cost Share Program (MACS), the Cover Crop Program, and any other cost-share programs for agricultural nutrient reduction;

- 20% to the Maryland Department of the Environment (MDE) for technical assistance and grants to local governments for the implementation of the State's Tributary Strategies and other practices and policies consistent with the Tributary Strategies; stormwater management; water and sewer planning; implementation of the requirements of Chapter 381 of 2006; and for fiscal 2009 through 2013, up to $1 million annually to conduct a Geographic Information Systems study;

- 15% to the Department of Natural Resources (DNR) for programs to preserve, restore, and manage public and private forestland and all living resources (0.5% for BayStat tracking, not to exceed $1 million, and the remainder for program delivery and incentives for buffer, forest, and wetland restoration; native oyster and aquatic habitat restoration activities; implementation of practices and policies consistent with the Tributary Strategies; promotion of forest stewardship; and costs associated with staffing the Chesapeake and Atlantic Coastal Bays Green Fund Oversight and Accountability Committee);

- 12% to the Maryland Department of Planning (MDP) to provide to local governments technical assistance and grants related to the implementation of Tributary Strategies activities and Smart Growth policies, including matching grants to local governments for implementation practices and policies consistent with the Tributary Strategies and implementation of the requirements of Chapter 381 of 2006; and

- 8% to the Chesapeake Bay Trust for (1) competitive grants and loans related to the implementation of best management practices consistent with the Tributary Strategies; (2) competitive grants to specified entities in order to advance technology or demonstrate innovative agricultural nutrient or stormwater management techniques; (3) competitive grants to local governments and nongovernmental organizations for environmental education programming; and (4) direct support, up to $1 million, to the Agro-Ecology Center for agricultural and land use research to enhance the effectiveness of conservation and agricultural BMPs and the National Center for Smart Growth Research and Education at the University of Maryland to establish a Smart Growth monitoring system and for specified research.

The entities receiving funds may use up to 5% of their allocations for administration. At the end of each fiscal year, any unspent or unencumbered balance in the fund must revert to the general fund.

Money expended from the fund is supplemental to and is not intended to take the place of funding levels authorized for affected programs.

Chesapeake and Atlantic Coastal Bays Green Fund Oversight and Accountability Committee

DNR must provide staff for the committee. The Harry R. Hughes Agro-Ecology Center for Agricultural and Land Use Research and the National Center for Smart Growth must assist the committee as needed. The bill establishes provisions regarding membership, the terms of the members, and the frequency of meetings. A member of the committee may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations. The committee must:

- establish performance benchmarks, review those benchmarks annually, and make changes as appropriate;

- monitor financial and other accountability measures used by fund recipients;

- provide an annual progress report to the Governor and the General Assembly by December 1 of each year; and

- review the distribution percentages of the fund at least once every three years and report in writing to the Governor and the General Assembly regarding any recommended modifications.

The bill requires fund recipients and local governments to provide information relating to the receipt and distribution of funds, estimates of nutrient reductions, accountability measures, and the impact of fund support on specified activities and programs to the committee by September 1 of each year. Fund recipients are also required to evaluate performance requirements and accountability measures and incorporate them into all grants. The bill also requires local governments to compile specified information and to submit an annual report to the committee.

Regulations

MDE, in consultation with MDP, DNR, and interested parties, must adopt regulations by June 30, 2008, that establish an offset program by which an impervious surface fee may be reduced; methods of calculating total impervious surfaces and proposed offsets for calculations of fees; procedures for approval and denial of offset proposals; minimum standards for implementation and monitoring of offset projects or activities; and provisions allowing for the review and approval of new offset proposals. The bill establishes provisions regarding those regulations.

Consideration of Statewide Fee on Existing Impervious Surfaces

The bill requires MDE and MDP, by December 31, 2007, to jointly consider and evaluate methods by which to assess a statewide fee on existing impervious surfaces and impervious surfaces for which a grading or building permit was issued before the effective date of the bill. MDE and MDP must report to the Governor and the General Assembly on the most equitable and practicable means by which to assess a statewide fee – including the amount and frequency of the fee.

Other Provisions

To the maximum extent practicable in its development projects and activities, a local government must implement offsets in accordance with the bill and its implementing regulations.

The bill applies prospectively and the provisions of the bill are severable.

Current Law/Background: While the Chesapeake Bay is America's largest and most productive estuary, its health 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, which specified restoration goals to improve the bay and remove it from the EPA's List of Impaired Waters. 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

Pollutant	1985 Loads	2004 Loads	2010 Goal
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 outlines basin-specific nutrient and sediment control actions necessary to reduce pollution from every source. In February 2006, the Governor's Chesapeake Bay Cabinet released a draft of Maryland's Chesapeake Bay Tributary Strategy Statewide Implementation Plan. Although a final implementation plan has not yet been released, numerous efforts are underway to help Maryland achieve the C2K goals:

- **Bay Restoration Fund:** The Bay Restoration Fund was created in 2004 (Chapter 428) to provide grants for Enhanced Nutrient Removal (ENR) upgrades at the State's 66 major publicly owned wastewater treatment plants (WWTPs). The fund is financed by a bay restoration fee on users of WWTPs, septic systems, and sewage holding tanks. While ENR grants are the fund's primary expenditure, funds are also being dedicated to sewer infrastructure grants, septic grants/loans, and MDA's Cover Crop Program.

- **Targeted Watersheds:** A new initiative to restore entire watersheds and remove them from EPA's List of Impaired Waters was initiated by Governor Robert L. Ehrlich in September 2005. The Corsica River Pilot Project in Queen Anne's County was selected as the first targeted watershed project; since 2005, DNR has targeted $2.7 million to the watershed.

- **Financial Incentives for Farmers:** A variety of efforts are underway to encourage farmers to use best management practices. For example, MDA administers several financial assistance programs to help farmers pay the cost of installing BMPs such as cover crops. Among other things, the Agricultural Stewardship Act of 2006 (Chapter 289) mandates and recommends increased funding for these programs.

- **Planning for Growth:** Chapter 759 of 1997 aims to manage growth by directing State funding to designated PFAs. A variety of programs across several State agencies work to implement the Smart Growth concept. Chapter 381 of 2006 made several changes to local government planning in an effort to plan for future growth. Among other things, Chapter 381 requires local governments to include a water resources element in their local comprehensive plans; the element must identify suitable receiving waters and land areas that support stormwater management and wastewater treatment and disposal needs of existing and future development.

While numerous efforts to restore the bay's water quality are underway, at this time Maryland is not well positioned to achieve its C2K commitments. According to a draft Tributary Strategy funding analysis, Maryland's existing funding sources will cover only

39% of the estimated $10 billion needed to implement the State's implementation plan through 2010. Also, several of the recent strategies described above may not have an impact for several years, and others could end up costing more than originally anticipated. Finally, a lack of funding to provide the technical assistance necessary to implement several of the strategies appears to be hindering bay restoration efforts.

Another significant challenge in meeting and maintaining the nutrient and sediment reductions is the anticipated increase in Maryland's population. By 2030, Maryland's population is expected to increase by over 1 million. Over the next few years, the Base Realignment and Closure recommendations are expected to bring an additional 40,000 to 60,000 defense-related personnel to the State. Maintaining nutrient reduction levels under the pressures of increasing population growth will be difficult.

State Fiscal Effect:

Fee Revenues and Distribution

Special fund revenues could increase significantly beginning in fiscal 2009 due to the establishment of the impervious surface fee. However, fee collections cannot be reliably quantified at this time.

Although statewide parcel data for residential development are available from MDP, it is difficult to reliably estimate the amount of impervious surface attributed at the grading and building permit levels for each parcel. *For illustrative purposes only*, based on a preliminary analysis conducted by MDP, the fee assessed *residential* development could generate an estimated $22 million annually in fee revenue. This estimate is based on residential parcel data for new development from 2000 to 2004 by lot size, but makes several assumptions regarding the amount of impervious surface attributed to each unit at the building permit level (assessed a flat fee per permit ranging from $100 to $1,500, depending on the amount of new impervious surface) as well as the amount of impervious surface attributed to each unit at the grading permit level (assessed a fee of $0.50 per square foot of new impervious surface). The analysis also makes assumptions regarding multi-unit structures. In addition, the analysis does not address redevelopment. Finally, the analysis does not account for any possible exemptions from or reductions in the fee as provided by the bill.

MDP advises that it does not have statewide parcel or permit data that would be needed to reliably estimate fee revenue from commercial and industrial development. Although historical land use classification data indicate that, from 1973 to 2002, an average of approximately 2,200 acres of land annually was converted to commercial or industrial use, MDP cautions against using these data to estimate the amount of land actually developed on an annual basis. *For illustrative purposes only*, if 2,200 acres of commercial and industrial land were developed each year, the $1 fee assessed new impervious surface of commercial and industrial development could generate an estimated $62 million annually, assuming certain percentages of impervious surface for commercial and industrial development. This does not reflect any possible exemptions, waivers, or reductions in the fee as provided by the bill.

The bill authorizes local governments to retain up to 8% of the total fees collected in fiscal 2009 and up to 5% annually thereafter for administrative costs. Local governments are also authorized to retain 30% of total fee collections for specified activities. The remaining fee revenues would be distributed according to the percentages shown in **Exhibit 2**. Exhibit 2 also shows the distribution of available funds for every $25 million in annual fee collections.

Exhibit 2
Distribution of Revenues from Fund for Every $25 Million in Annual Fee Collections

Agency/Organization (Purpose)	% of Total Available Funds for Distribution	Distribution for Every $25 Million FY 2009	Distribution for Every $25 Million FY 2010 On
MDA (BMPs/Cost Share, Soil Conservation Districts, University of Maryland Cooperative Extension, MARBIDCO, and MALPF)[1]	45.0%	$6,975,000	$7,312,500
MDE (Technical Assistance and Grants to Local Governments)	20.0%	$3,100,000	$3,250,000
DNR (Living Resources)[2]	15.0%	$2,325,000	$2,437,500
MDP (Technical Assistance and Grants to Local Governments)	12.0%	$1,860,000	$1,950,000
Chesapeake Bay Trust (Grants, Loans, Direct Support)	8.0%	$1,240,000	$1,300,000
Total[3]	**100.0%**	**$15,500,000**	**$16,250,000**

[1]Up to 2.5% each, not to exceed $2 million each, would be provided to the Soil Conservation Districts and the University of Maryland Cooperative Extension, as provided in the bill. For fiscal 2009 through 2012, up to $5 million annually would be provided to MARBIDCO's Next Generation Farmland Acquisition Program. Beginning in fiscal 2013, up to $5 million annually would be provided to MALPF. The remainder would be used for agricultural cost share programs.
[2]Of DNR's allocation, 0.5%, not to exceed $1 million, would be allocated to BayStat tracking.
[3]Dollar totals reflect retention of funds by local governments – 38% in fiscal 2009 and 35% thereafter.

In order to manage funds and administer and implement the grants, technical assistance, programs, and other activities outlined in the bill, affected agencies would need to hire additional staff. A reliable estimate of the number of staff that would be needed within each agency and associated costs cannot be made at this time, as it largely depends on the amount of funding each agency would receive under the bill. The bill authorizes fund recipients to use up to 5% of allocated funds for the administration of funded programs and activities. **Appendix 1** shows anticipated personnel needs and associated fiscal 2009 costs, as reported by the agencies, assuming three different levels of annual fee collections ($25 million, $50 million, and $100 million).

Any funds not used for personnel and administration would be used by the affected agencies for cost-share assistance, grants, contractual services, and other programmatic activities as outlined in the bill.

Other Impacts

State agencies could also be the recipients of some of the grants that would be provided under the bill. Any grant awards to State agencies cannot be reliably estimated at this time.

DBED could administer the bill's waiver and associated reporting provisions with existing budgeted resources, assuming local governments certify that proposed job creation projects have received meaningful State or local government assistance.

General Fund Reversion

The bill provides that at the end of each fiscal year, any unspent or unencumbered balance in the fund would revert to the general fund. However, once the Comptroller distributes funds to the agencies and the Chesapeake Bay Trust, as required by the bill, there would be no fund balance. Accordingly, general fund revenues would likely not be affected.

Impact on Funding for Recently Enacted Initiatives

The intent of the bill is to provide additional funds for affected activities; accordingly, the bill would not supplant any existing funds already provided for those purposes. However, by establishing a dedicated funding source that could generate a significant amount of funding each year, the bill could reduce the pressure on other funding sources to fund a variety of activities across several State agencies. Legislative Services notes that, while some of the programs already receive funding, some recently enacted initiatives have not yet been implemented due to a lack of funding. Absent the funding source provided in this bill, any additional funding for those activities would likely be supported with general funds or general obligation bonds. For example, the Agricultural Stewardship Act of 2006 established the intent of the General Assembly that funding for MACS be increased by $35 million over a five-year period; in the absence of any other funds dedicated for that purpose, it is assumed that the State would need to provide general obligation bonds if it were to provide additional funding for that program. Likewise, the Agricultural Stewardship Act of 2006 established the intent of the General Assembly that an additional $3 million in general funds be provided each year for MDA's Cover Crop Program until a total of $14 million annually is appropriated for the program. These are just two examples of how the establishment of a dedicated funding source for several existing programs could reduce the pressure on the State to appropriate additional general funds or authorize additional debt for such purposes.

Local Fiscal Effect:

Fee Collection and Other Administrative Costs

Local governments would incur additional administrative costs associated with the collection of impervious surface fees. This increase in costs could be at least partially offset by the bill's provision authorizing local governments to use up to 8% of fee collections in fiscal 2009 and up to 5% annually thereafter for administrative expenses related to fee collection. According to the Maryland Association of Counties (MACo), this may not fully offset the increase in costs for some counties. Additionally, counties would incur additional expenses related to data collection and reporting.

Harford County advises that, in order to handle fee collection, monitoring, oversight, and enforcement, it would need to hire several additional staff; purchase a vehicle, supplies, and computer systems; and provide additional office space. Harford County estimates total costs to exceed $1 million in the first year.

Montgomery County reports that costs would increase by $150,000 annually to implement the bill. Somerset County reports that costs would increase by about $38,000 annually to implement the bill. St. Mary's County reports that costs would increase by approximately $120,000 annually to hire two to three additional planning and enforcement staff.

Washington County reports that it would need to hire additional staff to handle fee collection; costs for one additional staff would total approximately $65,000 annually. In addition, Washington County reports that, in order to review submittals, change its tracking software system, and record data, costs would increase by approximately

$126,000 for additional permitting, planning, and engineering staff and $15,000 for software modifications.

Offsets

The bill requires a local government, to the maximum extent practicable, to implement offsets in its development projects and activities. Accordingly, costs would like increase to implement such offsets. MACo advises that these costs could be significant, as county projects tend to be for community-oriented facilities, which are often large and require a great deal of parking.

Local Government Retention of Funds, Grants, Technical Assistance, and Other Impacts

Local government revenues would increase as a result of the bill's provision authorizing them to retain 30% of fee collections for specified restoration, nutrient reduction, Tributary Strategy, water quality, and citizen education activities. For every $25 million in annual fee collections, local governments would collectively retain $7.5 million for those activities.

Local governments would also benefit directly from several of the grants provided under the bill and from the additional technical assistance that would be provided by various State agencies as a result of the bill. Some of the grants, however, would require additional county expenditures for matching funds. In addition, MACo reports that any increase in the amount of State aid could be offset by a decrease in economic development due to the impact of the impervious surface fee on the cost of development.

Finally, MACo reports that the bill would likely preclude the establishment of or an increase in local impact fees or excise taxes on development, resulting in foregone revenue for affected local governments.

Small Business Effect: Developers and other entities that create new impervious surfaces would be subject to the impervious surface fee established by the bill. It is assumed, however, that developers would simply pass on any additional costs to consumers, resulting in an increase in the price of new construction and redevelopment. Developers and others would be able to reduce their impervious surface fees by up to 75% by using offsets in accordance with regulations adopted pursuant to the bill.

Several small businesses – such as farmers, watermen, and others – would benefit from the grants provided under the bill. Small businesses in rural areas could benefit to the extent that the additional funding directed toward farmers helps sustain the agricultural infrastructure of a particular region. In addition, small businesses engaged in restoration work could benefit from an increase in the demand for their services.

Additional Comments: The bill allocates 8% of the funds available for distribution to the Chesapeake Bay Trust, a nonprofit organization. Currently, the trust does not have sufficient staffing to implement expanded and new initiatives; however, the trust advises that all of the internal accounting, grant performance tracking, and administrative frameworks are in place and a plan for expansion of the trust has been developed. The trust believes that it could undertake the additional work for no more than 4% administrative costs. In addition, the trust advises that the increase in funding provided by this bill would enable it to leverage additional federal, private, and other funds.

Additional Information

Prior Introductions: None.

Cross File: SB 901 (Senator Conway, *et al.*) – Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): Maryland Department of Agriculture, Maryland Department of Planning, Maryland Department of the Environment, Department of Natural Resources, Department of Housing and Community Development, University System of Maryland, Department of Business and Economic Development, Comptroller's Office, Department of General Services, Chesapeake Bay Trust, Maryland Association of Counties, Montgomery County, Harford County, St. Mary's County, Maryland Municipal League, Chesapeake Bay Foundation, Center for Watershed Protection, Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2007
mll/ljm Revised - House Third Reader - April 3, 2007

Analysis by: Lesley G. Cook

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix 1
Additional Positions and Associated Fiscal 2009 Costs Assuming Annual Fee Collections of $25 Million, $50 Million, and $100 Million

	$25 Million		$50 Million		$100 Million	
Agency	Positions	Associated FY 2009 Costs	Positions	Associated FY 2009 Costs	Positions	Associated FY 2009 Costs
MDA	11	$947,088	22	$1,836,016	41	$3,402,634
MDP	21	$1,837,785	27	$2,199,687	27	$2,199,687
MDE	19	$1,266,046	21	$1,398,995	24	$1,595,311
DNR	7	$470,320	8	$543,294	8	$543,294

Note: Fiscal 2009 costs reflect a July 1, 2008 implementation date. It is assumed that any increase in workload prior to that date could be handled with existing budgeted resources. For some agencies, the costs noted above may exceed the 5% limit established by the bill for "administration of funded programs and activities." Some of these costs relate to additional staff that would be directly implementing the programs funded by the bill, while other personnel would be more administrative in nature. Accordingly, despite the bill's provision limiting administrative costs to 5%, for purposes of this fiscal note, it is assumed that each agency's allocation from the special fund would cover all of its personnel and administrative costs.