SB 901

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 901 (Senator Conway, *et al.*)
Education, Health, and Environmental Affairs and Budget and Taxation

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Chesapeake Bay Green Fund

This bill establishes a Chesapeake Bay Green Fund, effective January 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 of $2 per square foot of "new impervious surface" development outside of existing priority funding areas (PFAs) and $0.25 per square foot of "new impervious surface" development inside existing PFAs. The bill also establishes a Chesapeake Bay Green Fund Oversight and Accountability Committee.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: Special fund revenues from the impervious surface fee could increase by $62.5 million in FY 2008 and $125.0 million annually thereafter. Special fund expenditures would increase correspondingly. Once regulations are implemented, State expenditures could increase to perform mitigation activities on State projects.

($ in millions)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
SF Revenue	$62.5	$125.0	$125.0	$125.0	$125.0
SF Expenditure	62.5	125.0	125.0	125.0	125.0
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	$0	$0	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

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 5% of fee collections for certain administrative costs. Local expenditures could also increase to perform mitigation activities on local projects. Local revenues could increase 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 imposes 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 an addition or accessory structure to an existing dwelling unit that does not exceed 20% of the impervious surface of the preexisting structure, a new poultry house, or any structure included in an approved nutrient management plan or soil and water conservation plan.

Impervious Surface Fee

The impervious surface fee would not apply to government-sponsored projects or activities. The creation of new impervious surfaces by a government-sponsored project or activity is required to meet mitigation requirements established by regulations.

The amount of an impervious surface fee may be reduced using offsets, but may not be reduced by more than 25%. The impervious surface fee would be collected by local governments when they issue building or grading permits. Local governments may use up to 5% of fee collections for costs associated with the administration of fee collection activities.

Before the issuance of a building or grading 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 December 31, 2007.

Chesapeake Bay 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 Comptroller is required to distribute the fund annually as follows:

- 35% to the Maryland Department of Agriculture (MDA) 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 farmers; in fiscal 2009, however, half of such funds – not to exceed $20 million – must be allocated to the Next Generation Farmland Acquisition Program within the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO);

- 15% to the Maryland Department of Planning (MDP) to assist with local government implementation of Tributary Strategies activities and Smart Growth policies, including grants for technical assistance to local governments for implementation of local ordinances, zoning, and programs to reduce development outside PFAs and to protect farmland, forests, and open spaces; 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;

- 15% to the Maryland Department of the Environment (MDE) for matching grants to local governments for the implementation of practices and policies consistent with the Tributary Strategies and for the implementation of the requirements of Chapter 381 of 2006;

- 10.5% to the Department of Natural Resources (DNR) for programs to preserve and restore living resources (0.5% for BayStat tracking, not to exceed $1 million, and the remainder for program delivery and incentives for buffer and wetland restoration and native oyster and aquatic habitat restoration activities);

- 10% to the Department of Housing and Community Development (DHCD) for incentives and grants to local governments to implement workforce housing in PFAs;

- 10% 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

- 4.5% to MDA for the Soil Conservation Districts, the University of Maryland Cooperative Extension (UMCE), and MDE, at a rate of 1.5% each – up to $2 million, for the provision of technical assistance related to the implementation of the Tributary Strategies.

The entities receiving funds may use up to 5% of their allocations for administration. Money in the fund may not revert or be transferred to the general fund. Any unspent monies must remain in the fund for future distribution.

Chesapeake Bay Green Fund Oversight and Accountability Committee

DNR must provide staff for the committee. The bill establishes provisions regarding membership, the terms of the members, and the frequency of meetings. 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 every three years and report in writing to the Governor and the General Assembly regarding any recommended modifications.

The bill requires fund recipients to provide information relating to the receipt and distribution of funds, estimates of nutrient reductions, and accountability measures 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 and DNR, must adopt regulations by December 31, 2007, 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; and mitigation requirements for government-sponsored projects or activities. The bill establishes provisions regarding those regulations.

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. Among other things, Chapter 160 of 2006 established a Workforce Housing Grant Program in DHCD to provide flexible capital funds to qualifying local governments for development costs of workforce housing located in PFAs. 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 by an estimated $62.46 million in fiscal 2008 and $124.9 million annually thereafter due to the establishment of the impervious surface fee; the fiscal 2008 estimate reflects the January 1, 2008 effective date of the fee. This estimate is based on information provided by MDP regarding residential development under 20 acres from 2000 through 2004. (Although the fee would apply to nonresidential development as well, MDP advises that the vast majority of development is residential.) The estimate assumes that new development inside PFAs is 25% impervious and that the new development outside PFAs is 10% impervious.

The estimate assumes that all new development is subject to the full impervious surface fee; to the extent any entities reduce impervious surfaces through the use of offsets, revenues would be lower. However, even if *all* entities subject to the fee were to reduce their fees by 25%, the maximum reduction allowed by the bill, special fund revenues would still total nearly $94 million annually.

Because no projections of future development inside and outside PFAs exist, the estimate assumes that future development will be consistent with the 2000-2004 average. To the extent actual development varies, revenues would vary accordingly. In addition, if the bill is successful in changing development patterns and redirecting development to PFAs, revenues would theoretically decrease over time.

Finally, the estimate is net of local administrative costs; the bill authorizes local governments to use up to 5% of fee collections to offset certain administrative costs. After local administrative costs are deducted, the remaining fee revenues would be distributed as shown in **Exhibit 2**. To the extent special fund revenues vary from the estimate, the allocations would vary correspondingly.

Exhibit 2
Distribution of Revenues from Fund

Agency/Organization (Purpose)	**% of Total Available Funds**	**FY 2008**	**Out-years**
MDA (BMPs/Cost Share)[1]	35.0%	$21,866,332	$43,732,663
MDP (Local Govt. Assistance – Tributary Strategies and Smart Growth Policies)	15.0%	9,371,285	18,742,570
MDE (Tributary Strategy Grants, Chapter 381 of 2006)	15.0%	9,371,285	18,742,570
DNR (Living Resources)[2]	10.5%	6,559,899	13,119,799
DHCD (Workforce Housing)	10.0%	6,247,524	12,495,047
Chesapeake Bay Trust (Grants, Loans, Direct Support)	10.0%	6,247,524	12,495,047
MDA, UMCE, and MDE (Technical Assistance)	4.5% (1.5% each – up to $2 million)	2,811,385	5,622,771
Total	**100.0%**	**$62,475,233**	**$124,950,466**

[1]In fiscal 2009, half of MDA's allocation, up to $20 million, would be provided to MARBIDCO's Next Generation Farmland Acquisition Program.
[2]Of DNR's allocation, 0.5%, not to exceed $1 million, would be allocated to BayStat tracking.

For purposes of this analysis, it is assumed that the entities receiving allocations under the bill would spend their full allocations each year; accordingly, special fund expenditures would increase correspondingly.

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. **Exhibit 3** shows the number of staff each agency reports would be needed to implement the bill and the associated costs.

Exhibit 3
Additional Positions and Associated Costs

Agency	Positions	Associated FY 2008 Costs	Associated FY 2009 Costs
MDA	47.0	$2,100,872	$3,286,821
MDP	27.0	$1,099,783	$2,157,974
MDE	13.0	$510,128	$911,039
DNR	8.0	$289,159	$515,276
DHCD	2.5	$159,074	$297,035
UMCE	0.0	N/A	N/A

Note: Fiscal 2008 costs reflect a January 1, 2008 implementation date. It is assumed that any increase in workload prior to January 1, 2008, could be handled with existing budgeted resources. Fiscal 2009 costs are annualized, adjusted for inflation, and reflect ongoing operating costs. 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 will be directly implementing the programs funded by the bill, while other personnel are 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.

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.

Once regulations are established mandating mitigation for government-sponsored projects, State agencies would likely incur costs in meeting those regulatory requirements. Any such impact cannot be reliably estimated at this time.

Impact on Funding for Recently Enacted Initiatives

If the intent of the bill is to provide additional funds for affected activities, 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 5% of fees collected 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 fiscal 2008.

Montgomery County reports that costs would increase by $75,000 in fiscal 2008 and $150,000 annually thereafter 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.

Mitigation Costs

Once regulations are established mandating mitigation for government-sponsored projects, local governments would also likely incur costs in meeting those regulatory requirements. 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.

Grants, Technical Assistance, and Other Impacts

Local governments would 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. Because the impervious surface fee for development outside PFAs is eight times as high as the fee for development inside PFAs, the bill could create a disincentive to locating new development outside PFAs. This could have a positive impact on small businesses located in PFAs and a negative impact on small businesses located outside PFAs.

Several small businesses – such as farmers, watermen, entities involved with the construction of workforce housing, 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 10% 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: HB 1220 (Delegate McIntosh, *et al.*) – Environmental Matters.

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, 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

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