

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 446

(The Speaker, *et al.*) (By Request - Administration)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Bay Restoration Fund - Fees and Uses

This Administration bill increases the bay restoration fee beginning July 1, 2012 for most users. The bill (1) increases the fee from \$2.50 to \$5 per month for those receiving an individual water or sewer bill from a billing authority; (2) increases the fee from \$30 to \$60 per year for each user of an on-site sewage disposal (septic) system or sewage holding tank that does not receive a water bill; and (3) increases the fee from \$2.50 to \$5 per month for each equivalent dwelling unit (EDU) up to 2,000 EDUs for multiunit residential users that do not receive an individual sewer bill and for nonresidential users. The bill makes several other changes including (1) requiring a local government to establish a financial hardship exemption program; (2) establishing an exemption from the fee for local career or volunteer fire departments; (3) establishing an exemption from the *fee increase* for septic systems and sewage holding tanks and properties served by wastewater treatment plants (WWTPs) that are not located in the Chesapeake Bay or Atlantic Coastal Bays watersheds, while also modifying the sliding scale applicable to these users; (4) prohibiting any change in the fee that would reduce the amount of funds available for repayment of outstanding bonds; (5) establishing additional uses of the Bay Restoration Fund (BRF) beginning in fiscal 2018; and (6) reducing the fee to current levels beginning July 1, 2030.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues increase by *at least* \$53.1 million in FY 2013 from the bill's increase in the bay restoration fee. Future year revenue increases generally reflect population growth. State expenditures (all funds) increase to pay the State's share of the bay restoration fee, as increased by the bill. The FY 2013 State budget assumes an additional \$64.0 million in fee revenue in FY 2013 due to this bill.

(\$ in millions)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$53.1	\$54.7	\$55.3	\$55.8	\$56.4
GF/SF Exp.	-	-	-	-	-
Net Effect	\$53.1	\$54.7	\$55.3	\$55.8	\$56.4

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

Local Effect: Local expenditures increase in FY 2013 to reprogram billing system software, handle additional questions and complaints, and otherwise implement the bill; however, it is assumed that any such increase is offset by the authority provided under current law to retain up to 5% of fees collected for administrative purposes. Although local revenues are not directly affected, local grant revenues increase by approximately \$258 million between FY 2013 and 2017 as a result of the increase in State funding for WWTP upgrades and septic system upgrades.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services disagrees with this assessment as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes additional authorized uses for BRF beginning in fiscal 2018 to include, after the payment of outstanding bonds and the allocation of funds to other required uses, the following uses in order of priority: (1) funding an upgrade of a wastewater facility with a design capacity of 500,000 gallons or more per day to enhanced nutrient removal (ENR); (2) funding for the most cost-effective ENR upgrades at wastewater facilities with a design capacity of less than 500,000 gallons per day; (3) costs associated with upgrading septic systems and sewage holding tanks; and (4) grants for local government stormwater control measures for jurisdictions that have implemented a specified system of charges under current authority.

Current Law: Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration (WQFA) within the Maryland Department of the Environment (MDE). The main goal of BRF is to provide grants to owners of WWTPs to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with ENR technology, and to support septic system upgrades and the planting of cover crops. 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, as follows:

- for each user of a septic system or a sewage holding tank that does not receive a water bill, the fee is \$30 annually;
- for each residential dwelling that receives an individual sewer bill and for each user of a septic system or sewage holding tank that receives a water bill, the fee is \$2.50 per month (\$30 annually); and
- for a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive individual sewer bills, or for a nonresidential user, the fee is based on a sliding scale for each EDU.

An EDU is generally equivalent to 250 gallons of wastewater effluent generated daily. For those properties subject to the sliding scale, the fee is \$2.50 per month (\$30 annually) for each EDU, up to 3,000 EDUs, and \$1.25 per month (\$15 annually) for each additional EDU. The fee is capped at \$120,000 annually, which affects properties with an equivalent of 5,000 or more EDUs.

Generally, the bay restoration fee must be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State. For users of septic systems and sewage holding tanks that receive a water bill, the fee is collected by the billing authority. For users of septic systems or sewage holding tanks that do not receive a water or sewer bill, the county must collect the fee, although the county may negotiate with a municipality to assume responsibility for collection within the municipal limits. With respect to users who receive a water or sewer bill, the fee is to be listed as a separate charge on the bill. Local government entities are generally not subject to the fee.

Fee revenues are required to be remitted by the billing authorities to the Comptroller who administers, collects, and enforces the fee. The revenue collected from WWTP users is used to provide grants to upgrade the State's major WWTPs with ENR technology. Of the revenue collected from users of septic systems and sewage holding tanks, 60% is distributed to MDE's Septics Account for the upgrade of septic systems and 40% is transferred to the Maryland Department of Agriculture (MDA) to provide assistance to farmers for planting cover crops.

Background: Upgrading the State's 67 major publicly owned WWTPs with ENR technology by 2017 is a key pollution-reduction strategy identified in the State's Phase II Watershed Implementation Plan (WIP), which is the State's roadmap to achieving the nutrient pollution limits required under the federally mandated Total Maximum Daily Load (TMDL), or "pollution diet" for the Chesapeake Bay watershed. Through February 29, 2012, a total of \$389.7 million has been collected from wastewater facility users and, after administrative costs, \$384.4 million has been deposited in MDE's Wastewater Account. As of April 2012, this revenue has supported ENR upgrades to

24 major facilities. Additionally, 22 other facilities are under construction, and 21 are in the planning or design stages.

While the estimated capital costs of upgrading the major WWTPs with ENR technology were originally \$750.0 million to \$1.0 billion, engineering estimates now indicate total costs of about \$1.38 billion. However, based on data provided by MDE, projected revenues available for grant awards (from the bay restoration fee and bond proceeds) total only about \$1.0 billion. Thus, a deficit of roughly \$380 million is expected for the program. Unless addressed in some way, the funding shortfall may jeopardize the State's ability to meet the pollution limits identified in the TMDL. In order to comply with federal permits, any WWTP not upgraded with State funding will likely be required to upgrade using local funding.

The Bay Restoration Fund Advisory Committee (BRFAC), which was established by Chapter 428 of 2004, is charged with making recommendations regarding any increase in the bay restoration fee deemed necessary to meet the financing needs of the fund. BRFAC has explored a number of options for addressing the anticipated deficit in the Wastewater Account, including (1) increasing the bay restoration fee; (2) reducing grants to WWTPs that are below 100% of eligible costs; (3) reprioritizing or strategically delaying some ENR upgrades for certain WWTPs; (4) spreading out debt service payments over 30 years, utilizing the longer repayment period authorized for local government bonds; and (5) redirecting \$5 million per year from operating grants to capital funding.

The committee's preferred solution, as reiterated in its January 2012 annual report, is to increase the fee by 100% (from \$30 to \$60 per year per EDU). Originally, it was thought that the additional revenue generated from such a fee increase could be used to leverage the issuance of additional BRF revenue bonds in order to eliminate the projected deficit. However, it is unlikely that MDE will now be able to leverage the amount of revenue bonds originally anticipated due to overall State debt capacity limitations. Therefore, a shortfall of at least \$75 million is estimated even with a 100% fee increase under the timeline of ENR upgrades required by the WIP and based on various data and assumptions provided by MDE.

The Task Force on Sustainable Growth and Wastewater Disposal, which was established by executive order in June 2011 and issued its final report in December 2011, has examined ways to fund many of the pollution-reduction strategies identified in the WIP. One recommendation of the task force was to expand the authorized uses of BRF to address stormwater management and other urban best management practices. However, the final report's recommendation to expand the uses of BRF was made in conjunction with another recommendation to increase the bay restoration fee to a much greater extent than is accomplished by this bill, beginning in fiscal 2015.

Upgrades of septic systems and the planting of cover crops are also strategies identified in the State's WIP. Through February 29, 2012, a total of \$90.6 million has been collected from users of septic systems and sewage holding tanks; after administrative costs, \$49.1 million has been deposited into MDE's Septics Account, and \$41.5 million has been transferred to MDA for the Cover Crop Program.

State Fiscal Effect: Special fund revenues increase by *at least* \$53.1 million in fiscal 2013 and by about \$56.4 million by fiscal 2017 due to the increase in the bay restoration fee. As shown in **Exhibit 1**, in fiscal 2013, at least an additional \$42.5 million is estimated to be collected from WWTP users and at least an additional \$10.6 million is estimated to be collected from users of septic systems and sewage holding tanks. These estimates are based on the following information and assumptions:

- existing fee collections from the current fee amount and structure are anticipated to generate \$69.6 million in fiscal 2013 and \$70.3 million in fiscal 2014 in the absence of the bill;
- the fee generally doubles under the bill;
- an additional 10% of users will be exempt from the fee due to the bill's requirement that billing authorities establish a hardship exemption program, as discussed below;
- users not located in the Chesapeake or the Atlantic Coastal Bays watersheds are exempt from the fee increase, and the sliding scale for these users is modified;
- local billing authorities retain 2% of fees collected in fiscal 2013 to offset additional administrative costs under the bill, but they retain about 0.5% of fees annually beginning in fiscal 2014, which reflects current levels; and
- no increase in administrative expenses for the Comptroller.

These estimates assume net revenue increases of 1% annually, which generally reflects population growth. However, the estimate does not reflect any additional investment earnings that could accrue to BRF, or any impact of the current cap on the amount of bay restoration fees that may be charged to nonresidential users, which will apply to additional users under the bill. Any foregone revenue from large nonresidential users that pay less than a 100% increase in fees due to application of the current \$120,000 annual fee cap is expected to be relatively minimal.

These estimates also assume that the bill's requirement for local billing authorities to establish financial hardship exemption programs, in conjunction with the increase in the fee, will result in an additional 10% of users being exempt from the fee. Finally, the estimates reflect about \$1.5 million annually in foregone revenues due to the exemption from the fee increase granted to users outside of the Chesapeake Bay and Atlantic Coastal Bays watersheds.

Exhibit 1
Net Fee Revenue Increase and Distribution
Fiscal 2013-2017
(\$ in Millions)

<u>Net Fee Revenues</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
From WWTP Users	\$42.5	\$43.8	\$44.2	\$44.7	\$45.1
From Septic Users	<u>10.6</u>	<u>11.0</u>	<u>11.1</u>	<u>11.2</u>	<u>11.3</u>
Total	\$53.1	\$54.7	\$55.3	\$55.8	\$56.4
<u>Distribution of Fee Revenues</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
MDE – WWTP Account	\$42.5	\$43.8	\$44.2	\$44.7	\$45.1
MDE – Septics Account	6.4	6.6	6.6	6.7	6.8
MDA – Cover Crops	<u>4.3</u>	<u>4.4</u>	<u>4.4</u>	<u>4.5</u>	<u>4.5</u>
Total	\$53.1	\$54.7	\$55.3	\$55.8	\$56.4

Note: Totals may not sum due to rounding.

Source: Maryland Department of the Environment; Department of Legislative Services

Data regarding the current number of hardship exemption claimants are not available. However, MDE has estimated the current hardship exemption rate at between 1% and 2% of total revenues. Currently, local billing authorities are authorized, but not required, to establish a hardship exemption. According to MDE, 27 billing authorities have received approval to administer a hardship exemption. While the number of users in these service territories that are currently eligible to receive a hardship exemption is unknown, those users likely represent a significant majority of users who might become eligible for the exemption in the State. However, while the additional *number* of users that may be eligible for a financial hardship exemption under the bill may represent a relatively small share of users in the State, the *rate* of hardship exemptions claimed by eligible users may increase due to the additional hardship caused by a doubling of the fee.

Overall, it is unlikely that the number of additional hardship exemptions granted to users will increase to an additional 10% of users; thus, the estimated increase in bay restoration fee revenues shown above is likely to be conservative and may understate the actual revenue increase, despite the bill's other exemptions.

The fiscal 2013 State budget assumes an increase in the fee for MDE's Wastewater and Septics accounts, but the operating budget does not reflect any additional fee revenue for MDA's Cover Crop Program. Specifically, the budget assumes \$64.0 million in fee revenue due to this bill, more than the estimate above (\$53.1 million), since it does not

reflect the establishment of financial hardship programs by all billing authorities as required by the bill or the bill's other changes. Finally, Legislative Services advises that the additional fee revenue recognized in the budget is not contingent upon the enactment of this bill.

MDE's Wastewater Account

As noted above, special fund revenues to MDE's Wastewater Account are anticipated to increase by at least \$42.5 million in fiscal 2013. The additional revenue generated by the bill for this account will help the State meet its commitment to upgrade all the 67 major publicly owned WWTPs with ENR by 2017, including three plants that are owned/operated by the State. **Appendix A** shows the forecasted budget of MDE's Wastewater Account under the bill, and the continuing shortfall that remains despite the bill's fee increase. A portion of the anticipated remaining shortfall has been addressed within the 2012 *Capital Improvement Program* through the planned issuance of an additional \$76.9 million in general obligation (GO) bonds between fiscal 2014 and 2017, as reflected in Appendix A. However, to fully account for the projected shortfall, additional GO bonds will be needed in fiscal 2015 through 2017, despite the fee increase under the bill. Based on information provided by MDE, approximately \$70.0 million in additional GO bonds will likely be needed under the bill.

To the extent fee revenue is higher than currently estimated – particularly if the level of additional hardship exemption claims is less than the projection assumed in the above estimate – or to the extent interest rates on revenue bonds already authorized to be issued under the program are less than the rates currently assumed, or other costs decrease, it is possible that fewer GO bonds will be needed, but that is unclear at this time. Alternatively, to the extent that revenues are less than currently estimated or program costs or hardship exemption claims are higher than currently projected, additional GO bonds may be needed to meet the requirement to upgrade the 67 WWTPs by 2017.

MDE's Septics Account

As shown in Exhibit 1 above, the increase in the bay restoration fee attributed to septic system and sewage holding tank users is estimated to result in an increase of about \$6.4 million for the Septics Account in fiscal 2013 and of about \$6.8 million by fiscal 2017. In total, the increase in Septics Account revenues is expected to support nearly 2,600 additional upgrades between fiscal 2013 and 2017, assuming an average cost of \$13,000 per system upgrade.

MDA's Cover Crop Program

The increase in the bay restoration fee transferred to MDA for its Cover Crop Program is estimated to be about \$4.3 million in fiscal 2013 and about \$4.5 million by fiscal 2017. This increase may support the planting of over 441,000 additional acres of cover crops through fiscal 2017, assuming a cost of \$50 per acre.

Agency Administrative Expenditures

MDE, MDA, and the Comptroller can likely implement the bill with existing budgeted resources.

State Also Subject to the Fee

As a user of wastewater facilities, septic systems, and sewage holding tanks, State government facilities are subject to the bill's fee increase. However, the State's average annual water usage is unknown, and the total cost to the State cannot be reliably estimated at this time. Nevertheless, the fees paid by the State will likely double, as expected for most nonresidential users; thus, the increase in State expenditures (all funds) may be significant.

Local Fiscal Effect: Several local governments advise that administrative workloads and expenditures increase to implement the bill. For example, Howard County advises that the external programming necessary to change the fee will cost about \$21,000 in fiscal 2013. In addition, both Howard County and the City of Bowie indicate that establishing a hardship program as mandated by the bill will likely result in additional expenditures as well as an operational burden.

However, Legislative Services advises that any expenditure increase associated with establishing a financial hardship program may be mitigated as a result of outreach conducted by MDE. MDE has established guidelines to assist jurisdictions in establishing voluntary hardship exemption programs under current law. As noted above, there are currently 27 billing authorities that implement a hardship program. For example, Frederick County administers a hardship exemption and advises that, while the initial establishment of the exemption required minimal costs, some of the expenditures were recovered through the currently authorized administrative cost recovery allowance. That county also indicates that its Department of Social Services has been able to manually process all exemption applications to date, although not without causing some strain on its resources.

Legislative Services further advises that billing authorities are authorized under current law to retain up to 5% of the total fees collected for reasonable administrative costs.

Currently, average annual cost recovery charges total about 0.55% of gross bay restoration fee revenues. It is likely that local expenditures will not exceed the 5% cost recovery offset allowance and that, after the first year, administrative costs decrease back to the current level. As noted above, Legislative Services assumes that administrative costs in the first year will, on average, total approximately 2% of fee revenues collected.

Although the bill does not directly affect local revenues, the increase in the bay restoration fee ultimately supports additional grant activity for local governments from BRF. As owners and operators of almost all of the 67 major publicly owned WWTPs, local grant revenues increase for ENR upgrades. Also, local governments administer the Septic System Upgrade Program supported by MDE's Septics Account; thus, local governments receive additional grant funds to distribute under that program as a result of the fee increase. Overall, approximately \$258 million in additional funding is estimated to be provided to local governments for these activities from fiscal 2013 through 2017.

Small Business Effect: The small business impact statement provided by the Administration states that the bill has a minimal impact on small businesses in Maryland (although that assessment does not reflect amendments to the bill). The statement specifies that small businesses providing goods or services related to BRF infrastructure projects may benefit, though all small businesses will also be subject to the increased fee.

Legislative Services advises that a doubling of the fee may represent a meaningful adverse impact on at least some small businesses. Generally, however, the bay restoration fee comprises only a portion of total water and sewer bills, which, in turn, may represent only a fraction of the costs incurred by most businesses. Thus, for most small businesses, the fee increase will likely have a minimal impact.

Legislative Services further advises that small business contractors involved in ENR upgrades of WWTPs or the upgrade of septic systems supported by BRF grants may realize a meaningful benefit under the bill. Additionally, small business farmers may benefit from an increase in funding for MDA's Cover Crop Program.

Additional Comments: It should be noted that because ENR upgrades, septic system upgrades, and the planting of cover crops are all components of the State's WIP, these activities (or others that result in nutrient reductions) will likely be required regardless of whether the bill's proposed fee increase is enacted. Thus, ultimately, significant costs are anticipated to filter down to individuals and businesses even in the absence of this bill.

Additional Information

Prior Introductions: None.

Cross File: SB 240 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Frederick, Garrett, and Harford counties; City of Bowie; Maryland Department of Agriculture; Maryland Environmental Service; Maryland Department of the Environment; Comptroller's Office; State Department of Assessments and Taxation; Department of General Services; Task Force on Sustainable Growth and Wastewater Disposal; Bay Restoration Fund Advisory Committee; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2012
mlm/lgc Revised - House Third Reader/Updated Information - April 3, 2012
Revised - Enrolled Bill - May 22, 2012

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Appendix A
BRF Wastewater Account Forecast Under the Bill with Supplemental GO Bonds
Fiscal 2005-2018
(\$ in Millions)

<u>Fiscal Year</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<i>Revenues</i>														
Fee Revenue	\$7.0	\$57.7	\$57.5	\$55.1	\$53.4	\$54.8	\$54.6	\$55.1	\$99.0	\$100.0	\$101.0	\$102.0	\$103.1	\$104.1
Net BRF Revenue Bond Sale Proceeds	-	-	-	51.6	-	-	-	-	138.6	178.2	158.4	-	-	-
State Bonds to BRF	-	-	-	-	-	-	-	-	-	18.0	7.9	43.0	8.0	-
GO Bonds (Repayment of BRFA Transfer)	-	-	-	-	-	125.0	146.8	18.2	-	-	-	-	-	-
Interest/Investment Earnings	0.0	1.0	4.0	6.0	5.8	4.2	1.9	2.0	2.0	2.0	2.0	-	-	-
Total Revenues	\$7.1	\$58.6	\$61.4	\$112.7	\$59.2	\$184.0	\$203.3	\$75.3	\$239.6	\$298.2	\$269.3	\$145.0	\$111.1	\$103.1
<i>Expenditures Planned</i>														
ENR Grant Payments	-	\$13.0	\$20.5	\$24.5	\$16.1	\$45.3	\$104.3	\$186.7	\$246.1	\$277.1	\$243.4	\$131.7	\$66.2	\$4.0
Cash Payment to General Fund (Per BRFA)	-	-	-	-	-	155.0	45.0	90.0	-	-	-	-	-	-
Debt Service – BRF Revenue Bonds	-	-	-	-	4.7	4.7	4.6	4.6	4.6	18.6	36.5	52.4	52.4	52.4
Sewer Infrastructure Grants	-	2.7	3.2	2.6	2.5	6.9	2.1	-	-	-	-	-	-	-
Other	-	0.1	0.5	0.7	0.8	1.1	1.0	0.8	2.6	4.2	4.2	5.3	6.3	6.4
Total Expenditures	-	\$15.8	\$24.2	\$27.8	\$24.1	\$213.0	\$157.1	\$282.3	\$253.3	\$299.8	\$284.1	\$189.4	\$124.9	\$62.8
Ending Balance	\$7.1	\$49.9	\$87.2	\$172.1	\$207.1	\$178.1	\$224.3	\$17.3	\$3.6	\$2.0	(\$12.7)	(\$57.1)	(\$71.0)	(\$29.7)

BRF: Bay Restoration Fund

BRFA: Budget Reconciliation and Financing Act

ENR: enhanced nutrient removal

GO: general obligation

Notes: This appendix includes GO bonds planned in the 2012 *Capital Improvement Program* in fiscal 2014 through 2017. Totals may not sum due to rounding. Fiscal 2013 revenues may be less than estimated due to local billing authority administrative costs.

Source: Maryland Department of the Environment; Department of Legislative Services

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of the Environment – **Bay Restoration Fund - Fee Increase**

BILL NUMBER: HB 446

PREPARED BY: Department of the Environment
(Dept./Agency)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Small businesses providing goods or services related to BRF infrastructure projects may benefit. It is estimated the ENR expenditures will support over 3,300 jobs annually for next several years.

Both residential and non-residential (businesses) pay the fee and will have to pay the increased fee.