

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 937

(Delegate Elliott, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

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Wastewater Treatment Facilities - Distribution of Financial Assistance

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This bill requires the Maryland Department of the Environment (MDE) to ensure the fair and equitable distribution of financial assistance among wastewater treatment facilities with a design capacity of less than 500,000 gallons per day and those with a capacity of 500,000 gallons per day or more. The bill applies to financial assistance provided under (1) the Water Quality Fund; (2) the Bay Restoration Fund (BRF); (3) the Biological Nutrient Removal (BNR) Program; and (4) the Supplemental Assistance Program.

The bill takes effect July 1, 2014.

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Fiscal Summary

**State Effect:** The bill does not directly impact State finances, as it affects the distribution, rather than the overall level, of financial assistance provided to wastewater treatment facilities.

**Local Effect:** Local government revenues may increase for several jurisdictions, but decrease correspondingly for other jurisdictions. Local expenditures are affected commensurately.

**Small Business Effect:** Potential meaningful.

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Analysis

**Current Law/Background:** The Water Quality Financing Administration (WQFA) within MDE administers several forms of financial assistance for wastewater treatment plants (WWTPs) in Maryland. According to WQFA, as of November 2013, about

\$1.53 billion in total financial assistance has been provided, of which more than 98% was provided through BRF to WWTPs of at least 500,000 gallons per day capacity (major WWTPs). Additionally, MDE indicates that the median per capita debt outstanding and per capita debt service payments are significantly greater for minor WWTPs (less than 500,000 gallons per day capacity).

### *Bay Restoration Fund*

Chapter 428 of 2004 established BRF, which is administered by WQFA. 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 enhanced nutrient removal (ENR) technology. 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.

MDE considers "major" WWTPs as those with a capacity of at least 500,000 gallons per day. Prior to the enactment of Chapter 428, MDE advised that, while there were several hundred WWTPs in Maryland, the 66 largest facilities were responsible for more than 95% of discharges to the Chesapeake Bay.

Funding for BRF is generated through a bay restoration fee on uses of wastewater facilities, septic systems, and sewage holding tanks. Through January 31, 2014, a total of \$577.1 million in bay restoration fees had been collected from wastewater facility users and, after administrative costs, \$572.4 million had been deposited in MDE's Wastewater Account. In addition, \$141.9 million had been collected from users of septic systems and sewage holding tanks and, after administrative costs, \$80.0 million had been deposited in MDE's Septics Account, and \$62.0 million had been provided to the Maryland Department of Agriculture to support the planting of cover crops. According to the 2014 *Bay Restoration Fund Advisory Committee Annual Report* (2014 Annual Report), as of December 2013, BRF revenues have supported ENR upgrades to 33 major wastewater facilities, with 21 other facilities under construction and 13 in the planning or design stages.

Chapter 150 of 2012 doubled the bay restoration fee for most users. According to the 2014 Annual Report, the doubling of the BRF fee has allowed MDE to begin planning for the upgrade of at least five minor WWTPs before 2017, consistent with the Maryland Phase II WIP for the bay TMDL. To date, two minor facilities have been upgraded with ENR technology, two are under construction, three are in design, and three are in planning.

*Other Assistance Provided by the Water Quality Financing Administration*

WQFA also oversees the administration of several other programs that provide financial assistance to WWTPs. For example, the Water Quality State Revolving Loan Fund is used to provide low-interest rate loans, and in some situations, loan forgiveness and grants, for WWTPs and other specified projects. The BNR Program provides grants to local governments for 50% of the eligible cost of an upgrade to BNR technology, which provides a lesser degree of nutrient removal than ENR technology. (WWTPs must be upgraded to BNR before they are eligible for ENR funding from BRF.) WQFA also administers the Supplemental Assistance Program, which provides grants of up to \$1.5 million to local governments for wastewater projects at publicly owned facilities, based on system size, compliance, and affordability. **Exhibit 1** shows the financial assistance provided under several WQFA programs for major and minor WWTPs between fiscal 2006 and 2013.

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**Exhibit 1**  
**WQFA Financial Assistance Provided**  
**Fiscal 2006-2013**  
**(\$ in Millions)**

	<b><u>BRF Grants for ENR</u></b>	<b><u>BNR Grants from GO Bonds</u></b>	<b><u>Supplemental Assistance Funds</u></b>	<b><u>Revolving Loan Funds</u></b>	<b><u>Total</u></b>
Majors	\$782.3	\$147.8	\$7.4	\$573.1	\$1,510.6
Minors	0	2.6	4.3	17.4	24.3
<b>Total</b>	<b>\$782.3</b>	<b>\$150.4</b>	<b>\$11.7</b>	<b>\$590.5</b>	<b>\$1,534.9</b>

GO: general obligation

Source: Maryland Department of the Environment

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**Local Revenues:** A reliable estimate of the bill's impact on the distribution of financial assistance provided to local governments under the affected programs cannot be made due to considerable uncertainty regarding how the term "fair and equitable" is to be interpreted and which jurisdictions may receive more, or less, funding under the bill. For example, with the exception of Garrett County, at least one major ENR project exists in each county and Baltimore City; at least two such projects exist in all but five counties (Baltimore, Calvert, Garrett, Kent, and Howard) and Baltimore City. The geographic distribution of minor wastewater treatment plants is uncertain, and it is unclear which jurisdictions experience an increase or decrease in State funding under the bill's changes.

**Small Business Effect:** Small businesses that own or operate wastewater treatment facilities that are considered minor facilities may realize a meaningful increase in

financial assistance from the State, while small businesses that own or operate wastewater treatment facilities that are considered major may incur a meaningful decrease in financial assistance. Small business engineering and construction firms that provide environmental services related to the upgrade of WWTPs may be meaningfully impacted by the bill to the extent that the bill prevents, or accelerates, funding for projects being serviced by such firms.

**Additional Comments:** The Department of Legislative Services advises that the bill does not amend any of the statutory provisions that govern the use or priority of assistance from the affected funds and programs. For example, the statute governing BRF (1) establishes a priority for the uses of BRF funds, including a higher priority for wastewater treatment facilities of 500,000 gallons or more per day, and (2) requires MDE to consider factors such as the cost-effectiveness of a project and its benefit to an impaired water body in determining the priority ranking of a project. Thus, it is unclear how MDE would implement the bill's requirements in light of existing statutory provisions that may conflict with the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Dorchester, and Garrett counties; city of Laurel; Maryland Department of the Environment; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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ncs/lgc

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