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FISCAL AND POLICY NOTE
Revised

Senate Bill 133

(Senator Edwards)

Education, Health, and Environmental Affairs

Environment and Transportation

Environment - Bay Restoration Fund - Use of Funds

This bill adds to the authorized uses of the Bay Restoration Fund (BRF), beginning in fiscal 2016, funding for up to 87.5% of the cost of projects, as approved by the Maryland Department of the Environment (MDE), relating to combined sewer overflows (CSO) abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations. (This funding authority previously existed between fiscal 2005 and 2009, capped at \$5 million annually). The bill also alters the priority of BRF funding beginning in fiscal 2018 by making grants for septic system upgrades, stormwater management, and CSO and sewer abatement projects of equal priority, with funding decisions made on a project-specific basis; the bill adds “public health benefits” to the factors that MDE must consider. Finally, the bill expands the scope of local stormwater management projects eligible for BRF grants by repealing the reference to a specific section of law.

Fiscal Summary

State Effect: Special fund expenditures from BRF may increase, although not likely until FY 2017 at the earliest, to the extent that any additional grants are made as a result of the bill. However, expenditures only increase in years in which the BRF Wastewater Account is not fully subscribed; otherwise, the bill does not affect the overall finances of the Wastewater Account, but merely alters the timing and distribution of grant funds. Revenues are not affected.

Local Effect: Local government revenues may increase for any jurisdictions that receive a grant for the costs of CSO abatement, sewer rehabilitation, stormwater management or another project authorized by the bill; however, revenues may decrease for other jurisdictions to the extent that the grants authorized by the bill replace funding that would

otherwise be made for other projects under current law. Local government expenditures from State grant revenues are commensurately affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration (WQFA) within MDE. The main goal of BRF is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology. The fund is also used 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, and Chapter 150 of 2012 doubled the fee for most users. The BRF statute enumerates several uses of fee revenues, including for ENR upgrades of WWTPs, upgrades of septic systems to the best available technology (BAT) for nitrogen removal, and funding for Maryland Department of Agriculture (MDA) cover crop activities. Between fiscal 2005 and 2009, the BRF statute authorized grants of up to \$5 million annually for a portion of the costs of projects relating to CSO abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations. MDE advises that 28 such projects were funded with grants of \$20 million under that authority.

The eligibility and priority ranking of a project supported by BRF must be determined by MDE regulations, which include consideration of several aspects of a project, including nutrient load reductions and cost-effectiveness of water quality benefits. The current statutory prioritization of uses of the Wastewater Account does not include grants for sewer projects, as that has not been an allowable use of BRF funds since June 30, 2009.

Beginning in fiscal 2018, the priority for project funding from the Wastewater Account is as follows: (1) ENR upgrades at major WWTPs (design capacity of at least 500,000 gallons per day) that discharge to the Chesapeake Bay; (2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gallons per day) that discharge to the Chesapeake Bay; (3) ENR upgrades at WWTPs that discharge into the Atlantic Coastal Bay or other waters of the State; (4) upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better; (5) nitrogen reduction of septic systems; and (6) stormwater projects by local governments who have implemented a system of charges *under section 4-204 of the Environment Article* (but not section 4-202.1 established by Chapter 151 of 2012).

When determining financial assistance and preparing a project priority list to rank individual projects, MDE must consider the following factors: (1) the nutrient loads currently discharged and the projected nutrient load reduction; (2) the cost-effectiveness in providing water quality benefits; (3) the relative effectiveness of water quality benefit to the Chesapeake Bay or other impaired body of water; (4) the existence of an administrative or civil compliance order or of a compliance schedule in a discharge permit; and (5) readiness to proceed to construction. MDE is not specifically required by statute or regulation to consider “public health benefits.”

Background:

BRF Funding and Progress

According to the Comptroller’s Office, through January 31, 2015, a total of \$681.9 million in bay restoration fees collected from wastewater facility users had been deposited in MDE’s Wastewater Account. In addition, of the fee revenues collected from users of septic systems and sewage holding tanks, \$97.3 million had been deposited in MDE’s Septics Account, and \$73.6 million had been provided to MDA to support the planting of cover crops. As of December 2014, BRF has supported the installation of nearly 7,100 BAT systems. According to the January 2015 *Bay Restoration Fund Advisory Committee Annual Report*, BRF has also supported ENR upgrades to 35 major wastewater facilities, with 20 other facilities under construction and 12 in the planning or design stages; another 5 minor facilities are expected to be upgraded with BRF funds by 2017.

According to MDE, the projected closing balance in the Wastewater Account for fiscal 2016 and 2017 is \$36.4 million and \$49.6 million, respectively. The closing balance for fiscal 2016 is projected to be the lowest balance on record for the Wastewater Account, due to record expenditures (\$259.2 million) projected from the account for ENR upgrades in fiscal 2016.

CSO Consent Decrees

Addressing the direct discharge of raw sewage from antiquated combined sewer systems is one of the U.S. Environmental Protection Agency’s (EPA) six top priorities identified in their National Enforcement Initiative. According to EPA, nationwide, there are 213 large (serving a population of more than 50,000) municipal combined sewer systems, of which 208 have been addressed as part of a state or federal enforcement action. This includes actions taken to address the combined sewer systems in the cities of Baltimore and Cumberland (and the surrounding areas served by the Cumberland wastewater treatment plant), as well as the Blue Plains facility in the District of Columbia, which also serves Maryland residents.

In 2002, Baltimore City entered into a consent decree with MDE and EPA, beginning a 14-year and \$1 billion capital project to eliminate sewer overflows and upgrade the sewer system infrastructure. To date, all parts of the project have been designed, and most overflow points have been addressed. Similarly, the City of Cumberland and surrounding areas have been subject to a consent decree with MDE and EPA since 2001 and are now working on implementing the actions required under the decree, which must be complete by October 1, 2023. The City of Cumberland is obligated to undertake the largest portion of the required project, which is estimated to cost an additional \$90 million, including \$30 million for a storage facility that, as of February 2015, is ready to proceed to construction.

According to MDE data, the City of Cumberland's wastewater facility has been associated with an estimated 3.0 billion gallons of sewer overflows in the 10 years since 2005, including 323.1 million in 2014, 188.1 million in 2013, and 132.1 million in 2012. In some years, the overflows from the city comprise a significant majority of all recorded sewer overflows in the State. It should be noted that a sewer overflow does not necessarily indicate that raw sewage has been discharged.

Other programs administered by WQFA support activities relating to CSO abatement or sewer rehabilitation, including the Water Quality Revolving Loan Fund (WQRLF) and the Supplemental Assistance Program. WQRLF is used to provide low-interest rate loans, and in some situations, loan forgiveness and grants, and the Supplemental Assistance Program provides grants of up to \$1.5 million to local governments for wastewater and sewer projects.

State Expenditures: The bill does not affect the overall finances of the BRF Wastewater Account, but rather alters the timing and location of funded projects. Nevertheless, special fund expenditures from BRF may increase beginning in fiscal 2016 or 2017 to the extent that a greater sum of grant funding is provided under the bill's authority, relative to the sum that would otherwise be provided under current law. However, it is unclear when any additional grants are made under the bill for two reasons. First, as noted above, the opening balance in the Wastewater Account for fiscal 2016 and 2017 is \$36.4 million and \$49.6 million, respectively, which are relatively small fund balances and which MDE advises are used as prudent reserves; according to MDE, the first year that sufficient funds would likely be available to support the additional projects under the bill is fiscal 2017. Second, while the bill *authorizes* grants for CSO and sewer projects, the funding for any project is subject to MDE approval. Finally, beginning in fiscal 2018, the bill may alter the types of projects funded, but not the overall amount of grant funding provided.

Local Fiscal Effect: Local government grant revenues increase for any jurisdiction that qualifies for additional BRF grants for projects authorized by the bill. However, as noted above, it is unclear whether or when such grants are made. Further, local revenues may

decrease by a corresponding amount for some jurisdictions as the bill only results in a reprioritization of projects and the diversion of funding from other projects that would otherwise be funded under current law. Local government expenditures are commensurately affected, as jurisdictions spend any BRF grant revenues received.

While the bill applies statewide, the most likely recipient of early funding authorized by the bill is the City of Cumberland, Allegany County, and other jurisdictions surrounding the City of Cumberland that are subject to the consent decree for CSO abatement activities. As noted above, the Cumberland WWTP is a major source of sewer overflows in the State and has designed a construction-ready CSO storage facility. Beginning in fiscal 2018, counties that have established stormwater remediation fees pursuant to Chapter 151 of 2012 also likely receive additional support under the bill.

Small Business Effect: Small businesses that specialize in providing work associated with CSO abatement, sewer rehabilitation, stormwater management, or other projects that may receive grant support under the bill may realize a meaningful increase in demand for their services. However, small businesses that provide engineering, construction, and other contractual services associated with other projects currently authorized to receive BRF grants (*e.g.*, ENR upgrades for minor WWTPs and septic system upgrades) may incur a meaningful reduction in the demand for their services; overall, it is unknown which types of projects may receive more or less support under the bill as compared to current law.

Additional Information

Prior Introductions: None.

Cross File: HB 156 (Allegany County Delegation, *et al.*) - Environment and Transportation.

Information Source(s): Allegany, Carroll, Harford, and Queen Anne's counties; Maryland Association of Counties; the cities of Baltimore and Cumberland; Maryland Department of the Environment; Maryland Department of Agriculture; Comptroller's Office; U.S. Environmental Protection Agency; Department of Legislative Services

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