

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1110 (Delegate Frush, *et al.*)

Environment and Transportation and  
Appropriations

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**Chesapeake and Atlantic Coastal Bays 2010 Trust Fund - Allocation of Funds**

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This bill establishes required minimum allocations of funding in the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund each year for specified purposes and changes specified terminology relating to use of the fund. The bill also establishes the intent of the General Assembly that money in the fund not be redirected or allocated to the general fund or any other special fund.

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**Fiscal Summary**

**State Effect:** General fund expenditures may increase annually, potentially significantly, to replace special funds shifted to other purposes under the bill's minimum allocations. **This bill establishes mandated special fund appropriations beginning in FY 2018.** Net special fund expenditures, however, are not affected. Revenues are also not affected.

**Local Effect:** Local government revenues and expenditures for nonpoint source pollution control projects may be affected to the extent the required minimum allocations increase or decrease competitive grant funding available to local governments, in comparison to funding available in the absence of the bill. In FY 2017, such funding likely decreases. Soil conservation districts may benefit from the bill's minimum allocation of funding.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Allocation of Funding*

Beginning in fiscal 2017, money in the fund must be allocated as follows:

- a minimum of \$5 million must be allocated to the Maryland Department of Agriculture (MDA) annually for distribution to soil conservation districts to assist farmers and counties with nonpoint source pollution control projects;
- after the above allocation is made, (1) a minimum of 45% of the money in the fund must be allocated to the BayStat Subcabinet agencies to administer a competitive grant program to provide funding for urban, suburban, and agricultural nonpoint source pollution control projects and (2) a minimum of 40% of the money in the fund must be allocated to MDA for agricultural nonpoint source pollution control projects to meet the State's agricultural watershed implementation goals;
- an amount up to 1.5% of the allocations to the BayStat Subcabinet agencies, which is necessary to administer grant programs, may be distributed by the BayStat Subcabinet agencies to an administrative cost account; and
- the BayStat Subcabinet must determine the use of any remaining money in the fund.

The minimum \$5 million allocated to MDA annually for distribution to soil conservation districts (1) must be distributed to a soil conservation district based on the workload of the district, as determined by MDA; (2) may be used by a soil conservation district to pay for specified staff, including certain positions funded jointly with a local government, who are required to support the implementation of nonpoint source best management practices; and (3) must be adjusted annually to provide salary adjustments commensurate with State employees.

#### *Changes in Terminology*

References to the "Chesapeake 2000 Agreement" are replaced with the "2014 Chesapeake Bay Watershed Agreement," and references to achieving the State's tributary strategy or strategies are replaced with references to implementing the State's watershed implementation plan. "Watershed implementation plan" is defined as a plan to achieve the nutrient and sediment limits required under the Chesapeake Bay Total Maximum Daily Load (TMDL).

**Current Law:** The Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund) may be used only for the implementation of nonpoint source pollution control

projects to achieve the State's tributary strategy developed in accordance with the Chesapeake 2000 Agreement and to improve the health of the Atlantic Coastal Bays and their tributaries. The BayStat Program administers the fund, overseen by the BayStat Subcabinet composed of the Secretaries of Natural Resources, the Environment, Planning, and Agriculture; the President of the University of Maryland Center for Environmental Science; the Dean of the College of Agriculture and Natural Resources at the University of Maryland, College Park; and the chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

The Baystat Subcabinet develops an annual work plan and annual expenditure plan for the fund for the next fiscal year, which are submitted to the General Assembly as part of the annual budget submission. The subcabinet then prepares a final work and expenditure plan based on the budget approved by the General Assembly. The BayStat Program is required to target funds, geographically and by practice, to proven, scientifically based projects that provide the most cost-effective and measurable water quality benefits to the Chesapeake and Atlantic Coastal Bays. To the maximum extent practicable, the program must distribute 2010 Trust Fund money on a competitive basis. The BayStat Program distributes funds from the 2010 Trust Fund to the subcabinet agencies to administer in accordance with the final work and expenditure plans. A BayStat Program Scientific Advisory Panel, including scientists and other technical experts, advises the BayStat Subcabinet on the use of funds of the 2010 Trust Fund.

The BayStat Subcabinet agencies may distribute an amount up to 1.5% of the allocations to the agencies, which is necessary to administer grant programs, to an administrative cost account.

## **Background:**

### *2010 Trust Fund Background*

The 2010 Trust Fund was established in 2008 and is funded with a portion of revenues from the motor fuel tax and the sales and use tax on short-term vehicle rentals. General obligation bond capital funding was also allocated to the fund in fiscal 2013 through 2015. The trust fund is used for nonpoint source pollution control projects to help meet Chesapeake Bay restoration goals and to improve the health of the Atlantic Coastal Bays and their tributaries. Examples of nonpoint source projects that can be funded with the trust fund include cover crops, natural filters, and local watershed restoration projects, including stormwater management projects.

When the fund was established, it was allocated 2.3% of motor fuel tax revenues and 55% of sales and use tax revenues from short-term vehicle rentals, after certain initial distributions in each case. To date, the trust fund has not received those full distributions,

with subsequent legislation temporarily diverting portions of the revenues to the general fund or, in some cases, transferring funding from the fund to the general fund. In fiscal 2017, however, there are no planned diversions or transfers. **Exhibit 1** shows the diverted or transferred amounts in recent years and corresponding remaining revenue available to spend for the purposes of the fund in those years.

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**Exhibit 1**  
**Diversions/Transfers and Remaining Available Revenue**  
**Fiscal 2011-2017**  
**(\$ in Millions)**

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>Est.</u> <u>2016</u>	<u>Est.</u> <u>2017</u>
Diverted/Transferred Funding	\$23.1	\$20.2	\$23.1	\$21.9	\$14.3	\$13.3	\$0.0
Available 2010 Trust Fund Revenue	25.9	24.9	27.4	30.9	38.6	40.3	53.8

Source: Department of Natural Resources; Department of Legislative Services

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*Chesapeake Bay Agreements*

The first Chesapeake Bay agreement was signed in 1983 by the Governors of Maryland, Virginia, and Pennsylvania; the Mayor of the District of Columbia; the Chair of the Chesapeake Bay Commission; and the Administrator of the U.S. Environmental Protection Agency (EPA). The 2014 Chesapeake Bay Watershed Agreement is the most recent agreement, and the Chesapeake 2000 Agreement was the most recent prior update. In addition to the original signatories, Delaware, New York, and West Virginia, as well as other federal agencies, are also parties to the 2014 Chesapeake Bay Watershed Agreement.

The 2014 Chesapeake Bay Watershed Agreement sets 10 overall goals relating to different aspects of restoration and protection of the bay. Some address clean water, while others address aspects such as climate resiliency, land conservation, and fish and wildlife habitats. The agreement's water quality goal is based on the Chesapeake Bay TMDL established by EPA. The TMDL sets forth specific pollution reduction requirements for Maryland and other jurisdictions within the bay watershed. Watershed implementation plans developed by the bay jurisdictions detail the strategies and specific actions that are being implemented to reduce pollution.

**State Fiscal Effect:** General fund expenditures may increase to cover costs that otherwise are covered by 2010 Trust Fund spending under work and expenditure plans developed by the BayStat Subcabinet, but which are not able to be funded at the same level under the allocations established by the bill. **Exhibit 2** shows, for fiscal 2017, the allocation of funds under the Governor's proposed fiscal 2017 budget and the minimum allocations of funds required by the bill. The bill's minimum allocations provide more funding for soil conservation districts and agricultural best management practices than the Governor's proposed fiscal 2017 budget; less funding is provided for competitive grants for nonpoint source pollution control projects (assuming the minimum allocation) and for other uses determined by the BayStat Subcabinet (remaining money).

Those other uses, under the Governor's proposed fiscal 2017 budget, include staff in the Department of Natural Resources and the Maryland Department of the Environment that provide technical assistance, monitoring, and other functions important to effective use of funding from the 2010 Trust Fund, support for the Innovative Technology Fund, and funding for the Natural Filters Program. The Innovative Technology Fund supports development of new technologies that can accelerate bay restoration, and the Natural Filters Program supports cost-effective best management practices for water quality on State and local lands.

Therefore, general fund expenditures increase, beginning in fiscal 2017, to the extent efforts for which funding is shifted elsewhere under the bill's minimum allocations require replacement funding in order to ensure the effective administration of the 2010 Trust Fund and/or ongoing progress toward the State's bay restoration goals. This assumes that 2010 Trust Fund money is allocated in accordance with the bill in fiscal 2017, though, pursuant to Article III, § 52 of the Maryland Constitution, the minimum allocations do not become mandatory until fiscal 2018.

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**Exhibit 2**  
**Fiscal 2017 Allocations**  
**Under the Governor’s Proposed Budget and Under the Bill**  
**(\$ in Millions)**

	<b>FY 2017</b>		
	<b><u>Prop. Budget</u></b>	<b><u>The Bill</u></b>	<b><u>Difference</u></b>
Total Spending	\$53.0	\$53.0	\$0.0
Soil Conservation Districts	3.3	5.0	1.7
Competitive Grants (Urban, Suburban, Agricultural)	23.3	21.6	(1.7)
MDA – Agricultural Best Management Practices	16.3	19.2	2.9
Administrative Cost Account	0.8	0.8	0.0
Remaining Money	9.4	6.4	(2.9)

Source: Department of Legislative Services

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**Local Fiscal Effect:** Local government revenues and expenditures for nonpoint source pollution control projects may be affected to the extent the bill’s required minimum allocations increase or decrease funding available for competitive grants for nonpoint source pollution control projects, in comparison to the amount otherwise available in the absence of the bill. As shown in Exhibit 2, competitive grant funding for urban, suburban, and agricultural nonpoint source projects for which local governments are eligible decreases in fiscal 2017 (assuming the minimum allocation) in comparison to the Governor’s proposed fiscal 2017 budget.

Soil conservation districts may be affected to the extent the bill’s required minimum allocations increase funding available for the districts in comparison to the amount otherwise available in the absence of the bill. As shown in Exhibit 2, soil conservation district funding increases by \$1.7 million in fiscal 2017 in comparison to the Governor’s proposed fiscal 2017 budget.

**Small Business Effect:** Small businesses benefit from existing 2010 Trust Fund spending by providing services for nonpoint source pollution control projects and receiving funding through the Innovative Technology Fund. The reallocation of funding may negatively impact certain small businesses while benefitting others.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 645 (Senator King, *et al.*) - Education, Health, and Environmental Affairs and Budget and Taxation.

**Information Source(s):** Department of Natural Resources, Maryland Department of Agriculture, Department of Budget and Management, Maryland Department of the Environment, Department of Legislative Services

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