

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 325 (Chair, Environment and Transportation Committee)(By Request  
- Departmental - Environment)

Environment and Transportation

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**Environment - Bay Restoration Fund - Use of Funds - Nutrient Credit Purchases**

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This departmental bill authorizes the Maryland Department of the Environment (MDE) to purchase cost-effective nitrogen and phosphorus nutrient credits in support of State efforts to restore the health of the Chesapeake Bay using money from the Bay Restoration Fund's (BRF) Wastewater Account. MDE must adopt implementing regulations in consultation with the secretaries of Agriculture and Natural Resources.

The bill takes effect July 1, 2016.

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**Fiscal Summary**

**State Effect:** Overall finances for the BRF Wastewater Account are not affected; the bill merely expands the authorized uses of the account. MDE can develop regulations with existing budgeted resources. The Maryland Department of Agriculture (MDA) can certify any nutrient credits using existing resources. Revenues are not directly affected.

**Local Effect:** Local grant revenues could be affected to the extent that BRF funding is provided for the purchase of nutrient credits instead of other authorized uses. Any such impact cannot be reliably estimated at this time. Expenditures are not directly affected.

**Small Business Effect:** MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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## Analysis

**Current Law:** Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration 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 MDA's cover crop activities, among other things.

Beginning in fiscal 2016, the Wastewater Account may be used for up to 87.5% of the total cost of projects relating to combined sewer overflows (CSO) abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations.

In fiscal 2018 and thereafter (after payment of outstanding bonds and the allocation of funds to other required uses), the Wastewater Account may be used for funding in the following order of priority:

- (1) ENR upgrades at major WWTPs (design capacity of at least 500,000 gallons per day);
- (2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gallons per day); and
- (3) as determined by MDE and based on water quality and public health benefits:
  - beginning in fiscal 2016, CSO abatement, rehabilitation of existing sewers and upgrading conveyance systems, including pumping stations;
  - nitrogen reduction from onsite sewage disposal and septic systems; and
  - the most cost-effective and efficient stormwater control measures by local governments who have implemented a system of charges to fully fund a stormwater management program.

The eligibility and priority ranking of a project supported by BRF must be determined by MDE based on criteria established in regulations. The criteria adopted by MDE must include, as appropriate, the following: (1) consideration of the cost-effectiveness in providing water quality benefit; (2) the water quality benefit to a body of water identified

by MDE as impaired; (3) the readiness of a WWTP to proceed to construction; and (4) the nitrogen and phosphorus loads discharged by a WWTP.

## **Background:**

### *Bay Restoration Fund*

According to the Comptroller's Office, through January 31, 2016, a total of \$808.9 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, \$114.6 million had been deposited in MDE's Septics Account, and \$85.1 million had been provided to MDA to support the planting of cover crops. As of December 2015, BRF has supported the installation of nearly 7,100 BAT systems, of which nearly 4,000 were completed within Maryland's Critical Area. BRF has also supported ENR upgrades to 41 major wastewater facilities, with 21 other facilities under construction and 5 in the planning or design stages; another 4 minor facilities are expected to be upgraded with BRF funds by 2017.

### *Chesapeake Bay Restoration and the Total Maximum Daily Load*

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. The State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%.

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop watershed implementation plans (WIPs) that identify the measures being put in place to reduce pollution and restore the bay. In 2010, bay jurisdictions submitted Phase I WIPs that detail how the jurisdictions plan to achieve their pollution reduction goals under the TMDL. The bay jurisdictions were required to submit Phase II WIPs in early 2012 that established more detailed strategies to achieve the TMDL on a geographically smaller scale. A Phase III WIP, which must be submitted to EPA in 2017, will ensure that all practices are in place by 2025 so that water quality standards can be met.

## *Nutrient Trading*

One way to finance bay restoration is through nutrient trading, which some argue is a more efficient and cost-effective process than government regulation. Nutrient trading is a market-based approach that involves the exchange (buying and selling) of nutrient reduction credits (*i.e.*, pollution allocations) between sources in order to protect and improve water quality. These credits have a monetary value that may be paid to the seller for installing best management practices to reduce nitrogen or phosphorus. As a result, compliance entities with low-cost pollution reduction options have an incentive to reduce nutrient loadings beyond what is required of them and to sell the excess credits to sources with higher control costs.

Chapter 447 of 2010 authorized MDA to certify nitrogen and phosphorus credits as part of a nutrient credit certification program. The program is a joint effort between MDA and MDE to address the need for growth offsets and the certification and verification of nutrients credits in the agricultural sector. Chapter 25 of 2012 added sediment trading to the program by authorizing MDA to establish requirements for the certification and registration of sediment credits on agricultural land. MDA recently proposed regulations to implement Chapter 447 of 2010 and Chapter 25 of 2012. Additionally, on October 23, 2015, the Administration released a nutrient trading policy statement, which promotes the use of nutrient trading as a viable option for achieving Chesapeake Bay restoration goals.

MDE advises that authorizing the purchase of nitrogen and phosphorus nutrient credits with BRF is necessary to provide the State and local jurisdictions with a financially feasible way to meet federally mandated nutrient load reductions by 2025. Specifically, MDE reports that the goals of the bill are to provide an incentive for the implementation of voluntary controls to reduce nutrients and to achieve a reduction in the total costs required to meet the WIP.

MDE reports that the bill's changes should promote a nutrient credit market by creating a modest, yet reliable, level of demand for the generation of credits. This, MDE advises, should reduce the long-term costs of compliance with nutrient load reduction requirements. The bill is also intended to help resolve the issue of achieving nutrient reductions from nonregulated urban sectors (such as septic systems) for which no permitting instrument exists to require reductions.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 9, 2016  
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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

TITLE OF BILL: Environment – Bay Restoration Fund – Use of Funds – Nutrient Credit Purchases

BILL NUMBER: HB 325

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**

There may be an economic benefit to farms that are considered “small businesses” from this legislation. One anticipated source of credits may be rural farmers as credit generators. The Department of Agriculture has done some analysis to indicate that credits could be available across the state. If farmers had an incentive to generate credits and were able to sell them to those that need to purchase credits, the exchange may be economically beneficial.