Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 417 (The Speaker, *et al.*) (By Request - Administration)
Environment and Transportation Education, Health, and Environmental Affairs

Clean Water Commerce Act of 2017

This Administration bill expands the authorized uses of the Bay Restoration Fund's (BRF) Wastewater Account to include (after funding other specified BRF priorities) the purchase of cost-effective nitrogen, phosphorus, or sediment load reductions in support of the State's efforts to restore the health of the Chesapeake Bay; the bill authorizes up to $4 million in fiscal 2018, $6 million in fiscal 2019, and $10 million per year in fiscal 2020 and 2021 from BRF for that purpose. The nitrogen, phosphorus, and sediment load reductions cannot be from the agricultural sector and must be created on or after July 1, 2017. The Maryland Department of the Environment (MDE) must adopt specified implementing regulations in consultation with the secretaries of Agriculture, Commerce, Natural Resources, and Transportation, and with public- and private-sector stakeholders. The bill establishes reporting requirements for MDE.

The bill takes effect July 1, 2017, and terminates June 30, 2021.

Fiscal Summary

State Effect: Overall finances of the BRF Wastewater Account are not affected; the bill merely expands the authorized uses of the account. MDE can develop the required regulations and submit the required reports with existing budgeted resources. It is assumed that the other affected State agencies can consult with MDE using existing resources. Revenues are not affected.

Local Effect: Local grant revenues and expenditures could be affected to the extent that BRF funding is provided for the purchase of load reductions instead of other authorized uses. Any such impact cannot be reliably estimated at this time. To the extent the bill enables local governments to purchase less costly load reductions to meet their Total

Maximum Daily Load (TMDL) goals, long-term local expenditures for bay restoration activities may decrease.

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

Analysis

Bill Summary: The required regulations must (1) be adopted before the purchase of any load reductions and (2) specify that any load reduction that is purchased should provide the lowest cost per pound in reduction and be purchased in accordance with a competitive process.

BRF can only be used to purchase nutrient or sediment load reductions after funding any eligible costs for (1) enhanced nutrient removal (ENR) upgrades at major wastewater treatment plants (WWTPs) (those with a design capacity of at least 500,000 gallons per day (gpd)) and (2) the most cost-effective ENR upgrades at minor WWTPs (those with a design capacity of less than 500,000 gpd). The nutrient load reductions purchased under the bill must be consistent with the Chesapeake Bay Program Partnership Accounting Procedures.

The bill authorizes MDE to enter into any contracts for the purchase of nutrient load reductions until June 30, 2021. However, any contract entered into by MDE under the bill's authorization may be funded for the expected life of the best management practice resulting from a nutrient load reduction.

MDE must report to the Bay Restoration Fund Advisory Committee on the implementation of the bill, beginning July 1, 2018, and annually thereafter. Additionally, by October 1, 2020, MDE must report to specified committees of the General Assembly on the implementation of the bill.

Current Law:

Bay Restoration Fund – Wastewater Account

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 WWTPs to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems from biological nutrient removal to ENR technology. BRF 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. Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account and used, among other specified uses, to provide grants for up to 100% of the eligible costs to upgrade WWTPs to ENR.

Pursuant to Chapters 124 and 153 of 2015, 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 gpd);
(2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gpd);
(3) as determined by MDE and based on water quality and public health benefits for the following:
    a. beginning in fiscal 2016, combined sewer overflow abatement, rehabilitation of existing sewers and upgrading conveyance systems, including pumping stations;
    b. nitrogen reduction from on-site sewage disposal (septic) systems;
    c. 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; and
    d. stormwater alternative compliance plans, as specified.

The eligibility and priority ranking of a WWTP project supported by BRF is determined by MDE regulations. When determining financial assistance and preparing a project priority list to rank individual projects, MDE must consider the following factors, as specified in regulation: (1) nutrient loads currently discharged and the projected nutrient load reduction; (2) cost-effectiveness in providing water quality or public health benefits; (3) 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; (5) sustainability benefits such as water reuse, asset management, full cost pricing, energy conservation, and smart growth; and (6) readiness to proceed to construction.

Bay Restoration Fund Advisory Committee

Chapter 428 also established the Bay Restoration Fund Advisory Committee to, among other things, analyze the cost of nutrient removal from WWTPs, identify additional sources of funding, make recommendations to improve the effectiveness of BRF in reducing nutrient loadings, and report annually to the Governor and the General Assembly on its findings and recommendations.

Background:

Bay Restoration Fund Funding and Progress

According to the Comptroller's Office, through December 31, 2016, a total of $895.4 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, $127.1 million had been deposited in MDE's Septics Account, and $93.5 million had been provided to MDA to support the planting of cover crops. As of August 2016, BRF has supported the installation of nearly 8,127 septic system upgrades, of which 4,842 upgrades were completed within Maryland's Critical Areas. Further, 214 homes were connected to public sewerage using BRF. BRF has also supported ENR upgrades to 49 major wastewater facilities, with 14 other facilities under construction and 4 in the planning or design stages.

Chesapeake Bay Restoration and the Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay 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. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide reasonable assurance that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs. In 2010, bay jurisdictions submitted Phase I WIPs that detail how the jurisdiction plans to achieve its pollution reduction goals under the bay TMDL. The bay jurisdictions were required to submit Phase II WIPs in early 2012 that established more detailed strategies to achieve the bay TMDL on a geographically smaller scale. A Phase III WIP, which must be submitted to EPA by August 2018, will ensure that all practices are in place by 2025 so that water quality standards can be met.

In its Interim Evaluation of Maryland's 2014-2015 and 2016-2017 Milestones, EPA's modeled results reflect that Maryland met its statewide phosphorus and sediment targets for the 2014-2015 milestone period, but missed its nitrogen target – only the wastewater

sector is on target. For the 2016-2017 milestone period, Maryland is on track to meet its nitrogen, phosphorus, and sediment targets and is on track to meet phosphorus and sediment targets for 2025. However, the State is not on track to meet any targets in the urban sector in 2017.

Additional Information

Prior Introductions: None.

Cross File: SB 314 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

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

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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: SB 314/HB 417

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.