

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1311 (Delegate Mautz, *et al.*)

Appropriations and Environment and
Transportation

Chesapeake Bay Restoration Fund - Authorized Uses (Chesapeake Bay
Restoration Fund Lockbox Act of 2022)

This bill restricts the uses of the Bay Restoration Fund (BRF) within the Maryland Department of the Environment (MDE) to purposes directly related to addressing pollution from wastewater treatment facilities, on-site sewage disposal systems (septic systems), sewer systems, and stormwater management systems. Among other things, the bill repeals mandated transfers of funding from BRF's Wastewater Account to (1) the Maryland Department of Agriculture (MDA) for the Conservation Reserve Enhancement Program (CREP); (2) the Chesapeake Bay Trust (CBT) for the Urban Trees Program; (3) the Department of Natural Resources (DNR) for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund); and (4) the Clean Water Commerce (CWC) Account within BRF. The bill also repeals the CWC Account and replaces it with a new special fund (the CWC Fund) that is separate from BRF. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Overall special fund finances are not affected. However, in FY 2023, \$15.0 million in existing special funds that would otherwise be transferred to DNR, MDA, and CBT remain in BRF and are expended for other purposes. In addition, \$20.0 million annually (from FY 2023 through 2030) remains in BRF's Wastewater Account instead of being transferred to the CWC Account. As a result of the redirection of funding, several programs are delayed (or eliminated), as discussed below.

Local Effect: The overall impact on local governments is unknown, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill repeals several mandated transfers from BRF's Wastewater Account, as follows:

- in fiscal 2023, a \$10.0 million transfer to CBT for the Urban Trees Program;
- in fiscal 2023, a \$2.5 million transfer to DNR's 2010 Trust Fund for tree planting on public and private land (and the associated statutory requirements related to the use and distribution of such funds);
- in fiscal 2023, a \$2.5 million transfer to MDA to fund tree plantings under CREP and other tree-planting programs on agricultural land; and
- annually through fiscal 2030, a \$20.0 million transfer to the CWC Account within BRF to purchase environmental outcomes in support of the State's efforts to achieve the Chesapeake Bay Total Maximum Daily Load (TMDL).

The bill also repeals the CWC Account from within BRF, and instead, creates a new special fund (the CWC Fund). The new special fund has the same purposes as the existing CWC Account, but it is not funded with a transfer of funds from BRF's Wastewater Account. (Under the bill, there is no dedicated funding source for the CWC Fund.) The bill also makes conforming changes to an annual reporting requirement relating to the existing account (by making MDE, rather than the Bay Restoration Fund Advisory Committee, responsible for the report) and modifies the required topics the report must address.

Current Law:

Bay Restoration Fund

Chapter 428 of 2004 established BRF. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants (WWTPs) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and the Cover Crop Program within MDA. 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 (until July 1, 2030). Chapters 694 and 695 of 2021 created the CWC Account within BRF. MDE is required to transfer \$20.0 million each fiscal year into the account to be used to purchase environmental outcomes to help the State achieve water quality goals.

Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account. The Wastewater Account may be used for the following:

- grants for projects relating to the planning, design, construction, and upgrade of a WWTP to achieve ENR (up to 100% of eligible costs for publicly owned WWTPs, and up to 50% of eligible costs for privately owned WWTPs);
- combined sewer overflow abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations (up to 87.5% of total project costs);
- grants to certain owners of WWTPs that are operating at or above ENR levels to partially offset the cost of operation and maintenance;
- the payment of principal and interest on bonds issued for and deposited into BRF;
- to earn interest on BRF accounts;
- reasonable operating expenses to administer the account (up to 1.5% of account funds);
- reasonable administrative costs incurred by certain local governments or billing authorities, not to exceed 5% of total restoration fees collected by the local government or billing authority;
- future upgrades of WWTPs to achieve additional nutrient removal or water quality improvement;
- costs associated with the issuance of bonds;
- nitrogen reduction of septic systems in accordance with MDE's regulations regarding septic systems;
- stormwater alternative compliance plans (up to 100% of project costs);
- from fiscal 2022 through 2030, transfers of \$20.0 million annually to the CWC Account to purchase environmental outcomes in support of the State's efforts to achieve the Chesapeake Bay TMDL; and
- in fiscal 2023 only, transfers to (1) CBT's Urban Trees Program (\$10.0 million); (2) DNR's 2010 Trust Fund (\$2.5 million); and (3) MDA for certain tree planting activities (\$2.5 million).

Urban Trees Program and Other Tree-Planting Programs

Chapter 645 of 2021 established an Urban Trees Program administered by CBT. The purpose of the program is to plant native tree species in underserved areas by making grants to qualified organizations for tree-planting projects in those areas beginning in fiscal 2023. In fiscal 2023, the program is funded by BRF's Wastewater Account from a mandated \$10.0 million transfer to CBT and with any additional funds that may be allocated to CBT through its annual budget process. In each fiscal year from 2024 through 2031, the Governor must include in the annual State budget an appropriation of \$10.0 million to CBT for the program. Chapter 645 also requires \$2.5 million to be transferred from BRF's Wastewater Account to DNR's 2010 Trust Fund in fiscal 2023 for tree-planting programs on public and private land.

Conservation Reserve Enhancement Program and Tree Planting on Agricultural Land

The U.S. Department of Agriculture and the State have partnered in implementing CREP, a voluntary program, to enroll up to 100,000 acres of agricultural land in the State. Participants remove cropland and marginal pastureland from agricultural production and convert the land to native grasses, trees, and other vegetation or restore wetlands. Eligible participants receive payments in return.

Chapter 645 established that in fiscal 2023 through 2031, inclusive, a landowner who enrolls land planted with a forested streamside buffer receives a one-time signing bonus of up to \$1,000 per acre of land enrolled in CREP. The signing bonuses are funded through money appropriated by the Governor in the annual State budget and the BRF Wastewater Account. More specifically, in fiscal 2023, \$2.5 million must be transferred from BRF's Wastewater Account to MDA to fund tree plantings under CREP and other tree-planting programs on agricultural land. In each fiscal year from 2024 through 2031, the Governor must include in the annual State budget an appropriation of \$2.5 million to MDA to fund tree plantings under CREP and other tree-planting programs on agricultural land.

State Fiscal Effect: Overall special fund finances are not affected. However, under the bill, in fiscal 2023, \$35.0 million in funding that otherwise would have been transferred for other purposes is retained in BRF's Wastewater Account and is available for the remaining authorized uses of that account. **Exhibit 1** shows the estimated effects of the redirection of funding in fiscal 2023, based on fiscal 2021 revenues to BRF's Wastewater Account. (The Governor's proposed fiscal 2023 budget reflects the mandated transfers that are repealed by the bill.) In future fiscal years, \$20.0 million annually (through fiscal 2030) is retained in BRF's Wastewater Account rather than being transferred to BRF's CWC Account.

This analysis does not reflect the potential impact the bill may have on general fund expenditures if the intent is to provide an alternative source of funding for the programs that no longer receive funding from the BRF Wastewater Account under the bill. Specifically, the analysis does not reflect:

- any additional funding that may be needed each year to capitalize the CWC Fund, since the bill repeals the annual transfer of \$20.0 million in BRF funding from the Wastewater Account to the CWC Account as it creates the new special fund; and
- any additional funding that may be needed in fiscal 2023 for the affected programs within DNR, MDA, and CBT that otherwise would have been funded through BRF. In the absence of additional funds, these programs are delayed by one year, or, in the case of DNR's tree planting programs, eliminated.

Exhibit 1
Estimated Funding Redirected under the Bill
Fiscal 2023

<u>Account</u>	<u>Current Law</u>	<u>Bill</u>	<u>Difference</u>
MDE's BRF Wastewater Account	\$63,087,149	\$98,087,149	\$35,000,000
MDE's CWC Account (in BRF)	20,000,000	0	(20,000,000)
Chesapeake Bay Trust	10,000,000	0	(10,000,000)
DNR's 2010 Trust Fund	2,500,000	0	(2,500,000)
MDA's CREP/Tree Planting	2,500,000	0	(2,500,000)

BRF: Bay Restoration Fund
CREP: Conservation Reserve Enhancement Program
CWC: Clean Water Commerce
DNR: Department of Natural Resources
MDA: Maryland Department of Agriculture
MDE: Maryland Department of the Environment

Note: This estimate is based on fiscal 2021 revenues distributed to BRF's Wastewater Account, the last full fiscal year for which data is available. The CWC Account within BRF is repealed by the bill and replaced with a new special fund that is separate from BRF.

Source: Comptroller's Office; Department of Legislative Services

MDE can implement the bill's changes with exiting staff.

Local Fiscal Effect: Since local governments are eligible to receive funding under the programs affected by the bill, the overall impact on local governments cannot be estimated at this time. As a result of the redirection of funding, some local governments may benefit, and others may receive less funding than they otherwise would have received.

Small Business Effect: The overall impact on small businesses is unclear. Small businesses may be eligible to receive funding under the bill and under many of the affected programs. The bill may also shift demand for certain related services.

Additional Comments: CBT is a nonprofit grant-making organization dedicated to improving the watersheds of the Chesapeake Bay, the Maryland Coastal Bays, and the Youghiogheny River. Created in 1985 by the General Assembly, CBT's goal is to increase stewardship through grant programs, special initiatives, and partnerships that support K-12 environmental education, on-the-ground watershed restoration, community engagement, and the underlying science of these three realms. Grantees include schools, local

governments, community groups, faith-based groups, watershed organizations, and other not-for-profit entities.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510