Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 135 (Senator Kramer)

Education, Health, and Environmental Affairs
and Budget and Taxation

Climate Crisis and Environmental Justice Act

This bill establishes the Climate Crisis Initiative in the Maryland Department of the Environment (MDE) and requires the State to reduce greenhouse gas (GHG) emissions to (1) 60% of 2006 levels by 2030; (2) 100% of 2006 levels by 2040; and (3) be net-negative thereafter. As a funding source, the bill establishes various pollution fees on fossil fuels. Revenues from the fees are deposited into two MDE special funds created by the bill and used for administrative expenses (5%) and other specified purposes. The bill also repeals the December 31, 2023 termination date of the GHG reduction goals (and related requirements) established by Chapter 11 of 2016. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Special fund revenues increase by $199.8 million in FY 2023, increasing to $1.0 billion by FY 2027, from GHG pollution fees; special fund expenditures increase correspondingly. General fund expenditures may increase in FY 2023 for initial implementation costs, likely repaid in FY 2024 (not reflected below). State expenditures (all funds) increase significantly due to higher energy and fuel prices beginning in FY 2023.

($ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	$199.8	$540.1	$715.5	$868.5	$1,021.5
SF Expenditure	$199.8	$540.1	$715.5	$868.5	$1,021.5
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures for energy and fuel increase significantly beginning in FY 2023; local revenues and expenditures may increase from funds received under the bill.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Greenhouse Gas Reduction Goals and Plan

The bill requires the State to increase the rate at which GHG emissions must be reduced from 2006 levels. By December 31, 2022, MDE must adopt a final plan that reduces statewide GHG emissions by 60% from 2006 levels by 2030. MDE must also monitor implementation of the plan and report to the Governor and the General Assembly by December 31, 2022 (and every three years thereafter) on the State's progress toward achieving the reductions in GHG emissions required and the GHG emissions reductions needed by 2050 to avoid dangerous climate changes, as specified.

Additionally, the Secretary of the Environment, in coordination with the Climate Crisis Council (established by the bill), must develop a plan to achieve the GHG emissions reduction targets established by the bill. The bill establishes provisions regarding the development of the plan and any amendments to the plan; among other things, prior to the submission of the plan, an independent and respected entity must verify through modeling that the plan will (1) meet the GHG reduction targets and (2) be equitable. The Secretary must submit the plan to the General Assembly by December 31, 2022.

Climate Crisis Initiative – Generally

The Climate Crisis Initiative provides for:

- the establishment of GHG reduction goals;
- the establishment of a Climate Crisis Council;
- the assessment of GHG pollution fees;
- benefits to households and employers in the State to mitigate the impact of fees under the initiative; and
- the funding of activities for GHG reduction and sequestration, improvements in resiliency, and the promotion of a just economic transition in the State.

The Secretary of the Environment must (1) administer the schedule of GHG pollution fees and (2) delegate the collection of the fees, the distribution of benefits, and any other appropriate functions to the Comptroller.

The bill establishes several other requirements for MDE, the Comptroller, the Public Service Commission (PSC), the Department of Human Services, the Department of Commerce, the Maryland Department of Labor, the Department of Housing and

Community Development, and the Commission on Environmental Justice and Sustainable Communities, including several reporting requirements, consultation on various aspects of the initiative, and the adoption of regulations.

Greenhouse Gas Pollution Fees

The bill establishes a fee on all fossil fuels brought into the State for combustion in the State. The fees are calculated based on relevant carbon dioxide- (CO_2) equivalent emissions, subject to related requirements, and with various exclusions and reductions, as specified.

GHG pollution fees begin July 31, 2022, for nontransportation fuels and July 31, 2023, for transportation fuels, as specified; the fees increase each year until 2032, at which point they stay level. For nontransportation fuels, the fee starts at $15 per ton of CO_2 equivalent and increases to $60 per ton of CO_2 equivalent in 2032 and each year thereafter. For transportation fuels, the fee starts at $10 per ton of CO_2 equivalent and increases to $37 per ton of CO_2 equivalent in 2032 and each year thereafter. The bill specifies that these fees may not be passed through as a direct cost to (1) an end user of a fossil fuel or (2) a customer of a gas company. However, that general prohibition does *not* prohibit a gas company from passing through such a fee on the commodity distributed to a customer to the extent that PSC approves the fee as a prudently incurred cost of distribution. The fees must be collected as the first point of sale of the fossil fuel in the State and paid by the entity transporting the fossil fuel into the State.

The collection of the fee must begin upon the adoption of all rules necessary for collection, but not later than January 1, 2024, for emissions occurring in the second half of 2023. If the fees take effect in a calendar year later than 2023, the Secretary of the Environment must delay the fee schedule described above, as specified.

Fee Revenue Distributions

Revenues from the fees are deposited into the Household and Employer Benefit Fund and the Climate Crisis Infrastructure Fund, as discussed further below. Each fund is administered by MDE, may be used for administrative costs, and must be used for specified purposes. MDE must consult with the Climate Crisis Council in administering the Infrastructure Fund. The Benefit Fund and the Infrastructure Fund each receive 50% of the total GHG pollution fee revenue.

Household and Employer Benefit Fund

The Household and Employer Benefit Fund, in addition to any other funds, consists of 50% of the total GHG pollution fee revenue. The stated purposes of the fund are to

(1) provide a high degree of protection for low- and moderate-income households in the State and (2) protect energy intensive trade-exposed employers in the State. Generally, the fund must be used to pay benefits, for which there are two separate accounts: (1) the Household Benefit Account, which consists of 80% of the money in the fund; and (2) the Employer Benefit Account, which consists of 20% of the money in the fund. Money must be distributed through the two benefit accounts to households and employers, subject to various requirements, exclusions, and potential timing changes, as specified. Leftover funds are transferred to the Infrastructure Fund.

Money distributed from the Household Benefit Account is not taxable income and, to the extent feasible, must be excluded from household income for the purposes of determining eligibility for, or the level of, any form of public assistance.

Climate Crisis Infrastructure Fund

The Climate Crisis Infrastructure Fund, in addition to any other funds, consists of (1) 50% of the total GHG pollution fee revenue and (2) any remaining unspent benefits received from the Benefit Fund. The stated purpose of the fund is to invest in initiatives that improve the health and welfare of the citizens of the State for specified purposes generally related to clean energy and resiliency. When feasible, investments must also be designed to create local economic development and employment in the State. At least 50% of the money must be invested in projects that are located within and provide meaningful benefits to environmental justice populations. Additionally, up to 50% of the money may be disbursed to qualified county and municipal governments for qualifying projects; the Climate Crisis Council, in consultation with the Commission on Environmental Justice and Sustainable Communities, must establish and publish the qualification criteria, as specified. Up to 5% of the money in the fund may also be used to provide technical assistance, capacity, and planning tools to local governments, as specified.

Current Law: A "carbon dioxide equivalent" is the measurement of a given weight of GHG that has the same global warming potential, measured over a specified period of time, as one metric ton of CO_2.

The Greenhouse Gas Emissions Reduction Act (GGRA), originally enacted in 2009 and made permanent and expanded in 2016, was enacted in light of Maryland's particular vulnerability to the impacts of climate change and is the State's primary statutory guide to addressing climate change. Under the Act, the State must develop plans, adopt regulations, and implement programs to reduce GHG emissions by 25% from 2006 levels by 2020 and must further reduce GHG emissions by 40% from 2006 levels by 2030; the 2030 reduction requirement terminates December 31, 2023.

Pursuant to GGRA, by October 1, 2022, MDE must report on the progress toward achieving the 2030 reductions as well as the reductions needed by 2050 to avoid the most dangerous impacts of climate change, as specified. MDE is also required to review and publish an updated statewide GHG emissions inventory every three years. MDE released its final 2030 GGRA Plan in February 2021.

The Healthy Air Act of 2006 established emission limits for nitrogen oxides, sulfur dioxide, and mercury from specified electric generating facilities in the State. The Act also addressed CO_2 emissions by requiring the Governor to include the State in the Regional Greenhouse Gas Initiative, a cap-and-trade program established in conjunction with other northeastern and mid-Atlantic states. Each state limits CO_2 emissions from electric power plants, issues CO_2 allowances, and establishes participation in CO_2 allowance auctions. A single CO_2 allowance represents a limited authorization to emit one ton of CO_2.

State Fiscal Effect:

Greenhouse Gas Pollution Fees and Associated Expenditures

Special fund revenues from the GHG pollution fees increase by an estimated $199.8 million in fiscal 2023, increasing to more than $1.0 billion by fiscal 2027, as shown in **Exhibit 1**. Revenues continue to increase in future years as fees increase, although revenues may eventually decrease once fees have leveled off. This estimate is based on the increasing GHG pollution fees established by the bill (beginning July 31, 2022, for nontransportation fuels and July 31, 2023, for transportation fuels). Adjustments are made for a calendar year to fiscal year conversion.

The estimate does not reflect any fee reductions for emissions compliance cost obligations for petroleum products under regional initiatives. The estimate also does not include any revenues from escaped/released methane. To the extent that the collection of fees is delayed, special fund revenues and expenditures are similarly delayed.

Exhibit 1
Revenue Generated by the Fees and the Allocation of Funds
Fiscal 2023-2027
($ in Millions)

		FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Total Fees Collected		**$199.8**	**$540.1**	**$715.5**	**$868.5**	**$1,021.5**
Benefits Fund		**$99.9**	**$270.0**	**$357.7**	**$434.2**	**$510.8**
Administrative Costs*	5%	5.0	13.5	17.9	21.7	25.5
Available for Programmatic Uses	95%	94.9	256.5	339.8	412.5	485.2
Infrastructure Fund		**$99.9**	**$270.0**	**$357.7**	**$434.2**	**$510.8**
Administrative Costs*	5%	5.0	13.5	17.9	21.7	25.5
Available for Programmatic Uses	95%	94.9	256.5	339.8	412.5	485.2

* Each fund is authorized to use *up to* 5% of revenues for administrative costs. To the extent that administrative costs are less, available programmatic funds increase. Revenues from all fees are split 50/50 between the Benefit Fund and the Infrastructure Fund. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services

For the purposes of this fiscal and policy note, it is assumed that all revenues collected from the GHG pollution fees are expended in the same year they are received. As a result, special fund expenditures increase correspondingly. It is further assumed that fees are collected beginning July 31, 2022. However, it is likely that both the collection of GHG fees and any corresponding increase in expenditures are delayed, at least initially as the initiative is fully established.

As noted earlier, up to 5% of the money in each fund may be used for administration. Due to many unknown factors, the total administrative costs to implement the initiative cannot be reliably estimated at this time, as discussed below. However, Exhibit 1 shows the amounts available for projects/benefits in each fund assuming the full 5% is used to cover administrative costs.

This analysis assumes that these expenditures are sufficient to meet the enhanced GHG emissions reduction requirements established under the bill. To the extent this is not the case, State expenditures further increase.

Administrative Costs for MDE and the Comptroller

The bill authorizes the use of special funds to cover administrative costs, and the intention is for fees to be collected beginning July 31, 2022. However, it is likely that that MDE and the Comptroller incur costs prior to collecting any fees. Thus, it is assumed that some general funds are needed to initially cover costs prior to special funds being made available for repayment in fiscal 2024. A reliable estimate of any general funds needed in fiscal 2023 cannot be made at this time.

MDE is broadly responsible for administering the schedule of fees but must delegate the collection of fees, the distribution of benefits, and any other appropriate functions to the Comptroller. The combined administrative costs as estimated by MDE and the Comptroller range from approximately $9.1 million to $11.6 million annually, reflecting information technology costs and the need for roughly 100 staff; however, both agencies have expressed significant difficulties in determining costs associated with administration. Costs are substantial due to the breadth of the affected entities, the complex system of fees and benefits established by the bill, and the overall amount of funds being administered. Due to these complexities, this analysis assumes that all 5% of available funding for administrative costs is used by MDE and the Comptroller. To the extent that less is spent on administrative costs, more funding is available each year for programmatic purposes.

Other Agencies

It is assumed that the various agencies identified in the bill that have administrative responsibilities not discussed above can handle the bill's requirements with existing budgeted resources. To the extent this is not the case, State expenditures further increase.

State Expenditures for Gas/Electricity and Fuel

As noted above, the bill specifies that, generally, GHG pollution fees may not be passed through as a direct cost to (1) an end user of a fossil fuel or (2) a customer of a gas company.

Despite this general prohibition, the bill still increases production costs in the energy sector, which will affect commodity output and/or prices as the affected companies seek to maximize revenues: output will likely fall, and prices will likely rise. Further, specific to natural gas, the bill does not prohibit the passing through of the GHG pollution fees to the extent that PSC approves the fee as a prudently incurred cost of distribution. Therefore, State expenditures (all funds) increase significantly beginning in fiscal 2023 due to higher energy and fuel prices.

To the extent any State agencies, as employers, receive any benefits from the Employer Benefit Account, or receive funds from the Infrastructure Fund, some portion of the anticipated increase in expenditures may be offset.

Local Fiscal Effect: Local government expenditures increase significantly beginning in fiscal 2023 due to higher energy fuel prices, for the reasons discussed above. To the extent any local governments, as employers, receive any benefits from the Employer Benefit Account, or receive funds from the Infrastructure Fund, some portion of the anticipated increase in expenditures may be offset. Local governments may also benefit from technical assistance, capacity, and planning tools provided under the Infrastructure Fund.

Small Business Effect: Small businesses throughout the State incur a significant increase in expenditures due to higher energy and fuel prices for the reasons discussed above. As employers, however, some small businesses are slated to receive benefits under the bill. In addition, small businesses that provide services and products related to reducing GHG emissions likely see a meaningful increase in the demand for their services as a result of the significant funding available for these types of projects under the bill.

Additional Information

Prior Introductions: SB 76 of 2021, a similar bill, received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 33, received an unfavorable report from the House Economic Matters Committee. SB 912 of 2020, a similar bill, received a hearing from the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 1543, received a hearing from the House Economic Matters Committee, but no further action was taken. Similar legislation was also introduced during the 2019 and 2018 legislative sessions.

Designated Cross File: HB 171 (Delegate Fraser-Hidalgo) - Economic Matters and Environment and Transportation.

Information Source(s): Baltimore City; Harford and Montgomery counties; City of College Park; Maryland Municipal League; Department of Commerce; Comptroller's Office; Judiciary (Administrative Office of the Courts); Public School Construction Program; Maryland Department of the Environment; Department of General Services; Department of Housing and Community Development; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Office of People's Counsel; Public Service Commission; U.S. Energy Information Administration; Department of Legislative Services

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