

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 366 (Senator Simonaire)

Education, Health, and Environmental Affairs
and Budget and Taxation

Chesapeake and Atlantic Coastal Bays 2010 Trust Fund - Use of Funds
(Chesapeake Bay Lockbox Protection Act of 2022)

This proposed constitutional amendment includes the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund) in the Maryland Constitution and places restrictions on transfers from the fund and uses of the fund for purposes not related to the Chesapeake and Atlantic Coastal Bays.

Fiscal Summary

State Effect: If adopted, the constitutional amendment lessens the likelihood of transfers from the 2010 Trust Fund to the general fund or a special fund beginning in FY 2023. Additionally, if the amendment is adopted, special fund revenues increase by more than \$100,000 annually (and potentially by more than \$1.0 million in some fiscal years), and general fund revenues decrease correspondingly, to the extent existing accrual of trust fund interest income to the general fund is considered a transfer and prohibited as a result of the bill.

Local Effect: If adopted, local governments benefit to the extent the constitutional amendment prevents transfers from the trust fund, making more funding available for competitive grants to local governments.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Consistent with current statutory language governing the use of the trust fund, the constitutional amendment requires that the trust fund only be used for the implementation of specified nonpoint source pollution control projects.

Money in the trust fund may not be transferred to the general fund or a special fund of the State or used for a purpose not related to the Chesapeake and Atlantic Coastal Bays unless (1) the Governor, by executive order, declares that a fiscal emergency exists and (2) the General Assembly passes legislation, by a three-fifths majority in each house, concurring with the use or transfer of the funds.

The constitutional restrictions do not apply to specified uses or transfers of funds in accordance with existing statutory law governing the fund.

Current Law: 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 (which, collectively, typically generate approximately \$50.0 million each year for the fund). 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.

Money in the trust fund is expended in accordance with work and expenditure plans developed each year, and the BayStat Program that directs the administration of the trust fund must implement nonpoint source pollution reduction measures to (1) support State and local watershed implementation plans (plans to achieve the nutrient and sediment limits required under the Chesapeake Bay total maximum daily load) by targeting limited financial resources on the most effective nonpoint source pollution control projects and (2) improve the health of the Atlantic Coastal Bays and their tributaries by targeting funds, geographically and by practice, to proven, scientifically based projects that provide the most cost-effective and measurable water quality benefits to the Atlantic Coastal Bays and their tributaries.

Chapter 645 of 2021 requires that in each of fiscal 2023 through 2031, \$1.25 million from the fund be used to fund a 5 Million Tree Program Coordinator position in the Maryland Department of the Environment (MDE) and 13 contractor positions in the Department of Natural Resources (DNR) Forest Service to provide technical assistance, planning, and coordination related to tree plantings, tree buffer management, and forest management. Chapter 645 also (1) requires, in each of fiscal 2024 through 2031, that the Governor include an appropriation of \$2.5 million to the fund in the annual State budget for tree plantings on public and private land and (2) adds DNR's Green Shores Program to the list

of uses, funds, and programs to which funds are distributed in accordance with the final work and expenditure plans.

State Fiscal Effect: Assuming approval of the amendment in the November 2022 general election, this bill makes less likely any future transfers from the trust fund to the general fund or another special fund beginning in fiscal 2023. From the time the fund was established through fiscal 2016, significant amounts of the motor fuel tax revenues and sales and use tax revenues that otherwise would have accrued to the fund were diverted to the general fund (*e.g.*, \$112.4 million total over the course of fiscal 2011 through 2016), and smaller amounts have been transferred from the fund to the general fund (*e.g.*, over the course of fiscal 2011 through 2016, \$1.0 million in fiscal 2011 and \$2.4 million in fiscal 2014). However, funding has not been diverted or transferred since fiscal 2016. It should be noted that this constitutional amendment does not affect the General Assembly's ability to divert motor fuel tax revenues and sales and use tax revenues from short-term vehicle rentals to the general fund, as it only restricts transfers of money *from* the trust fund.

Pursuant to State law that requires net interest earned on money in special funds or accounts to accrue to the general fund (subject to various exceptions for specific special funds), net interest earned on money in the 2010 Trust Fund accrues to the general fund. In past years, net interest earned on money in the fund has been more than \$100,000; based on information provided by the Comptroller, due in part to variation in interest rates, in at least one recent fiscal year, the amount has been more than \$1.0 million. To the extent that the accrual of trust fund interest income to the general fund is considered a *transfer* prohibited under the constitutional amendment (absent declaration of a fiscal emergency and concurrence of three-fifths of each house of the General Assembly), special fund revenues increase by more than \$100,000 annually and potentially by more than \$1.0 million in some fiscal years; general fund revenues decrease correspondingly.

It is assumed, for the purposes of this fiscal and policy note, that the requirements in Chapter 645 of 2021 for the use of \$1.25 million in the fund in each of fiscal 2013 through 2021 for positions in MDE and DNR related to tree planting and tree buffer and forest management are consistent with and not affected by the constitutional amendment.

Local Fiscal Effect: Assuming approval of the amendment in the November 2022 general election, local governments benefit to the extent the amendment prevents transfers from the trust fund that otherwise are made. DNR has indicated in the past that decreases in funding most directly affect competitive grants available to local governments and nongovernmental organizations. Examples of these grants can be seen in the fund's [latest annual report and expenditure plan](#) (toward the end of the report/plan).

Small Business Effect: Assuming approval of the amendment in the November 2022 general election, small businesses that work on projects supported by the fund may meaningfully benefit to the extent the amendment prevents transfers from the trust fund that otherwise would have been made.

Additional Information

Prior Introductions: SB 45 of 2016 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1346, received an unfavorable report from the House Environment and Transportation Committee. SB 28 of 2015 passed the Senate with amendments and received a hearing in the House Environment and Transportation Committee, but no further action was taken. Its cross file, HB 302, received a hearing in the House Environment and Transportation Committee, but no further action was taken. SB 1116 of 2014 was referred to the Senate Rules Committee, but no further action was taken.

Designated Cross File: HB 921 (Delegate Saab, *et al.*) - Environment and Transportation.

Information Source(s): Department of Budget and Management; Department of Natural Resources; State Board of Elections; Comptroller's Office; Department of Legislative Services

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Analysis by: Scott D. Kennedy

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