SB 843

Department of Legislative Services

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FISCAL AND POLICY NOTE
First Reader

Senate Bill 843 (Senator Kramer)

Education, Energy, and the Environment and Finance

Climate Change Adaptation and Mitigation Payment Program and Climate Impact Health Coverage Program – Establishment

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This bill establishes the Climate Change Adaptation and Mitigation Payment Program and the Climate Change Adaptation and Mitigation Fund within the Maryland Department of the Environment (MDE). The primary purpose of the program is to secure compensatory payments from fossil fuel businesses based on a standard of strict liability to fund climate change adaptive or mitigation infrastructure projects within the State and State efforts to address the health impacts of climate change on vulnerable populations. The bill also requires the Maryland Health Benefit Exchange (MHBE), in consultation with the Insurance Commissioner and as approved by the MHBE board, to (1) submit a federal State Innovation Wavier application by July 1, 2024, to allow individuals to enroll in qualified plans offered through MHBE regardless of immigration status and (2) establish and implement a Climate Impact Health Coverage Program.

Fiscal Summary

State Effect: Special fund revenues from cost recovery payments ultimately total $9.0 billion, but the timing of payments is unclear. Nevertheless, special fund revenues to the new fund increase *significantly* as early as FY 2026; special fund expenditures increase correspondingly. General fund revenues increase significantly from interest earnings on the new fund. MDE general/special fund expenditures increase significantly (potentially by more than $1.0 million annually) beginning in FY 2024. MHBE expenditures (special/federal funds) increase significantly in FY 2025 to implement the Climate Impact Health Coverage Program; receipt of federal pass-through funding increases accordingly. Special fund revenues to the MHBE Fund increase significantly as early as FY 2026 from disbursements from MDE; disbursements are anticipated to be sufficient to cover special fund expenditures for the program in FY 2026 and beyond, assuming cost recovery payments are made. Significant increase in special fund revenues and expenditures for the Maryland Department of Health (MDH) beginning as early as FY 2026.

Local Effect: Potential significant impact on local government finances and operations beginning in FY 2026, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Climate Change Adaptation and Mitigation Payment Program

Key Definitions: A "responsible party" is an "entity" or a successor in interest to an entity that (1) during any part of the covered period, was engaged in the trade or business of extracting "fossil fuel" or refining "crude oil," as defined, and (2) is determined by MDE to be responsible for more than one billion tons of covered greenhouse gas (GHG) emissions. A responsible party does not include any person that lacks sufficient connection with Maryland to satisfy the nexus requirements under the U.S. Constitution. "Entity" means any individual, trustee, agent, partnership, association, corporation, company, municipal corporation, political subdivision, or other person, including a foreign nation, that holds or held an ownership interest in a fossil fuel business during the covered period.

"Covered GHG emissions" means the total quantity of GHG released into the atmosphere during the covered period (January 1, 2000, through December 31, 2028, inclusive), expressed in metric tons of carbon dioxide (CO_2) equivalent, resulting from the use of fossil fuels or petroleum products extracted, produced, refined, or sold by an entity.

Program Purpose: The purpose of the Climate Change Adaptation and Mitigation Payment Program is to (1) secure compensatory payments from fossil fuel businesses based on a standard of strict liability in order to fund climate change adaptive or mitigation infrastructure projects within the State and State efforts to address the health impacts of climate change on vulnerable populations; (2) determine the proportional liability of responsible parties; (3) impose cost recovery demands on responsible parties and issue notices of cost recovery demands; (4) accept and collect cost recovery payments from responsible parties; (5) identify climate change adaptive or mitigation infrastructure projects within the State; (6) disburse funds in accordance with the bill's provisions; and (7) ensure that at least 40% of the qualified expenditures from the program go to climate change adaptive or mitigation infrastructure projects that directly benefit communities disproportionately affected by climate impacts.

Strict Liability and Cost Recovery Demands: A responsible party is strictly liable, without regard to fault, for a share of the costs of climate change adaptive mitigation projects, including operating and maintenance costs, supported by the Climate Change Adaptation and Mitigation Fund. Entities in a controlled group must be treated as a single entity for the purposes of identifying responsible parties and are jointly and severally liable for payment of any cost recovery demand owed by any entity in the controlled group.

With respect to each responsible party, the cost recovery demand is equal to an amount that bears the same ratio to $9.0 billion as the responsible party's applicable share of covered GHG emissions bears to the aggregate applicable shares of all responsible parties' covered GHG emissions. Generally, a responsible party's applicable share of GHG emissions is the amount by which covered GHG emissions attributable to the responsible party *exceeds* one billion metric tons. However, if a responsible party owns a minority interest of at least 10% in another entity, the responsible party is responsible for a percentage of the applicable share for the entity in an amount equal to the percentage of the minority interest held by the responsible party. The bill establishes CO_2 equivalency amounts for specific amounts of coal, crude oil, and fuel gases that MDE must use in determining the amount of GHG emissions attributable to an entity.

MDE is authorized to adjust the cost recovery demand amount of a responsible party that refines petroleum products or that is a successor in interest to an entity that refines petroleum products if the responsible party establishes to MDE's satisfaction that (1) a portion of the cost recovery demand amount was attributable to refining crude oil extracted by another entity and (2) the crude oil extracted by the other entity was accounted for when MDE determined the cost recovery demand amount for the other entity or its successor in interest.

A responsible party may request a hearing pursuant to the Administrative Procedure Act to contest a cost recovery demand made by MDE pursuant to the bill.

Payment of Cost Recovery Demand: Unless a responsible party elects to pay the cost recovery demand in nine annual installments, as specified, payment is due in full by October 1, 2025. The bill establishes provisions regarding installment payments.

Cost recovery demand payments are deposited into the Climate Change Adaptation and Mitigation Fund (described in more detail below).

Regulations: MDE must adopt regulations necessary to carry out the program by October 1, 2024. The regulations must include (1) methodologies that use the best available science to identify responsible parties and determine responsible parties' applicable shares of GHG emissions; (2) rules relating to registering responsible parties, issuing notices of cost recovery demands, and accepting payments from, pursuing collection efforts against, and negotiating settlement agreements with responsible parties; and (3) procedures for identifying climate change adaptive or mitigation infrastructure projects eligible to receive qualifying expenditures from the fund.

MDE may, by regulation, provide for climate change adaptive or mitigation infrastructure projects to be identified for funding through (1) legislative budget appropriations; (2) the issuance of requests for proposals from local governments, nonprofit organizations, or community groups; or (3) any other method deemed appropriate by MDE.

Climate Change Adaptation and Mitigation Fund

The stated purpose of the Climate Change Adaptation and Mitigation Fund is to provide funding for climate change adaptive or mitigation infrastructure projects in the State. The fund, which is administered by MDE, consists of cost recovery payments distributed to the fund, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. Interest earnings must be credited to the general fund.

The fund may only be used (1) to pay qualified expenditures for climate change adaptive or mitigation infrastructure projects identified by MDE in accordance with regulations adopted pursuant to the bill; (2) to pay reasonable administrative costs of the program; and (3) for disbursements to MDH and the MHBE Fund (as discussed below).

In each fiscal year, of the total revenues received by the fund, MDE is required to disburse (1) 5% to MDH's Office of Minority Health and Health Disparities (MHHD) to address the health impact of climate change on minority adults, children, and infants and (2) 20% to the MHBE Fund to provide health insurance State premium assistance and cost-sharing reductions to populations with high rates of uninsurance and individuals who are ineligible for federal financial assistance.

MDE must ensure that at least 40% of the qualified expenditures from the program go to climate change adaptive or mitigation infrastructure projects that directly benefit communities that are disproportionately affected by climate impacts.

Audits and Reporting Requirements

By October 1, 2026, and annually thereafter, MDE must report to the Governor and the General Assembly on (1) the cost recovery payments received and the funding disbursed from the fund during the preceding fiscal year; (2) the status of funded climate change adaptive or mitigation infrastructure projects; (3) the percentage of qualified expenditures during the past year that funded climate change adaptive or mitigation infrastructure projects that directly benefited communities disproportionately affected by climate impacts; and (4) the effectiveness of the program in achieving the purposes of the bill.

The Legislative Auditor is authorized to post audits of a fiscal and compliance nature of the fund and of the appropriations and expenditures made pursuant to the bill. The cost of the fiscal portion of an audit must be paid from the fund as an administrative cost.

Climate Impact Health Coverage Program

The purpose and allowed uses of the MHBE Fund are expanded to include providing funding for the establishment and operation of the Climate Impact Health Coverage Program. The MHBE Fund includes any funds received from the Climate Change Adaptation and Mitigation Fund in accordance with the bill. The MHBE board must maintain a separate account within the fund for the establishment and operation of the Climate Impact Health Coverage Program.

As discussed above, in each fiscal year, MDE must disburse at least 20% of the total revenues received by the Climate Change Adaptation and Mitigation Fund to MHBE to provide health insurance State premium assistance and cost-sharing reductions to populations with high rates of uninsurance and individuals who are ineligible for federal financial assistance.

Implementation of the program is contingent on approval of a waiver from the U.S. Secretary of Health and Human Services and the U.S. Secretary of the Treasury.

The program must (1) facilitate the enrollment of individuals in qualified plans and (2) based on the availability of funds, provide State premium assistance and cost-sharing reductions to individuals enrolled in qualified plans.

Beginning January 1, 2025, funding for the program may be made using any pass-through funds received from the federal government and funds received from the Climate Change Adaptation and Mitigation Fund.

Based on available funds, MHBE, in consultation with the Commissioner and as approved by the MHBE board, must establish program eligibility and payment parameters for calendar 2025 and thereafter. The parameters must, to the greatest extent possible, provide State premium assistance and cost-sharing reductions to populations with high rates of uninsurance and individuals who are ineligible for federal financial assistance.

By December 31, 2024, the Commissioner may waive any notification or other requirements that apply to a carrier under the Insurance Article in calendar 2024 due to the implementation of an approved waiver.

By January 1, 2025, MHBE must adopt regulations to carry out the program.

Current Law:

The Maryland Department of the Environment's Climate Change Program

MDE's Climate Change Program leads the State's efforts to reduce GHG emissions, as required by the GHG Emissions Reduction Act and participation and oversight in other initiatives, including the Regional Greenhouse Gas Initiative (RGGI) and the U.S. Climate Alliance. The program also ensures State compliance with climate-related State and federal laws, such as the Climate Solutions Now Act (Chapter 38 of 2022), discussed below.

The U.S. Climate Alliance is a bipartisan coalition of governors, including the Governor of Maryland, committed to reducing GHG emissions consistent with the goals of the Paris Agreement. These goals include reducing collective net GHG emissions by at least 26% to 28% by 2025 and by 50% to 52% by 2030 (both below 2005 levels) and collectively achieving overall net-zero GHG emissions as soon as practicable, but no later than 2050.

Maryland also participates in the multi-state RGGI in order to reduce CO_2 emissions from the power sector. Each participating 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.

Chapters 127 and 128 of 2008 created the Maryland Strategic Energy Investment Program and the implementing Strategic Energy Investment Fund (SEIF) to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy. SEIF is primarily funded through the proceeds from the auction of carbon allowances under RGGI.

Maryland Greenhouse Gas Emissions Reduction Targets and the Climate Solutions Now Act

The Climate Solutions Now Act made broad changes to the State's approach to reducing statewide GHG emissions and addressing climate change. Among other things, the Act accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045.

Maryland Health Benefit Exchange

MHBE was created during the 2011 session to provide a marketplace for individuals and small businesses to purchase affordable health coverage. Through the Maryland Health

Connection, Maryland residents can shop for health insurance plans, compare rates, and determine their eligibility for federal advanced premium tax credits (APTCs), cost-sharing reduction plans, and public assistance programs such as Medicaid.

MHBE submitted a report in response to the 2021 *Joint Chairmen's Report*, on costs, feasibility, and a review of activity in other states to serve individuals ineligible for Medicaid or qualified health plans (QHPs) without APTCs. The report noted that the largest population of nonincarcerated individuals ineligible for Medicaid or QHP coverage are undocumented immigrants.

Maryland Department of Health's Office of Minority Health and Health Disparities

MHHD was established within MDH in 2004. The purpose of the office is to address social determinants of health and eliminate health disparities by leveraging resources, providing health equity consultation, impacting external communications, guiding policy decisions, and influencing strategic direction on behalf of the Secretary of Health. The office provides grants and technical assistance to community-based organizations, collects data on race and ethnicity, and targets programs and initiatives to three health conditions that disproportionately impact minorities in Maryland: infant mortality, asthma, and diabetes/prediabetes. The office's Minority Outreach and Technical Assistance Program provides grant funding for activities such as coordination and navigation of health care services, access to community-based health education, linkage to health insurance enrollment and social services, and self-management support through home visiting. In 2006 and 2010, the office prepared a Maryland Plan to Eliminate Minority Health Disparities.

State Fiscal Effect:

Cost Recovery Revenues, Associated Spending, and Interest Earnings

Under the cost recovery framework established under the bill, cost recovery payments total \$9.0 billion, with cost recovery payments beginning in fiscal 2026. Responsible parties must either pay in full by October 1, 2025, or pay in nine annual installments, with the first installment – which is equal to 20% of the total cost recovery demand amount – due by October 1, 2025. If responsible parties pay in full, special fund revenues increase by \$9.0 billion in fiscal 2026. If responsible parties elect to pay in installments, special fund revenues increase by \$1.8 billion in fiscal 2026 (20% of the total cost recovery demand amount) and by \$900.0 million annually from fiscal 2027 through 2034 (10% of the total cost recovery demand amount in each of these years).

However, the Department of Legislative Services (DLS) anticipates that, given the complexity of implementing the bill's cost recovery provisions, a likely delay in the adoption of implementing regulations (discussed below), and the high likelihood of litigation, it is unlikely that cost recovery payments are actually paid within the timeframe established by the bill. Ultimately, DLS cannot predict precisely when and how much is collected in any given year under the bill, but, given the scope of the target revenues, once money begins to be collected, special fund revenues to the Climate Change Adaptation and Mitigation Fund increase *significantly*.

Special fund expenditures increase correspondingly for authorized purposes (qualified expenditures for climate change adaptive or mitigation infrastructure projects, reasonable administrative costs of the Climate Change Adaptation and Mitigation Payment Program (discussed below), and disbursements to MDH and the MHBE Fund (discussed below).

General fund revenues increase significantly as early as fiscal 2026 as interest earnings on the new fund must be credited to the general fund.

Maryland Department of the Environment Administrative Costs

MDE advises that administrative costs to implement the Climate Change Adaptation and Mitigation Payment Program increase by approximately $1.3 million in fiscal 2024 and by at least $1.6 million annually thereafter, to hire 17 employees (three assistant Attorneys General, three financial compliance auditors, two environmental health specialist managers, two regulatory economists, two building construction engineers, two budget analysts, one soil conservation engineer, one capital maintenance project engineer-architect, and one capital projects civil and geotechnical engineer) to (1) develop regulations by October 1, 2024; (2) develop and identify methodologies to identify responsible parties and their applicable shares of GHG emissions; (3) issue notices of cost recovery demands; (4) collect and track cost recovery payments beginning October 1, 2025; (5) identify climate change adaptive or mitigation infrastructure projects eligible for funding; (6) manage and distribute funding from the fund; and (7) compile and submit the annual report. MDE notes that the bill's October 1, 2024 deadline to develop the regulations is unlikely to be met even with substantial additional resources because the typical timeline to develop regulations of this scale is two years.

DLS concurs that the bill establishes substantial new responsibilities for MDE and that MDE incurs significant expenditures to hire staff beginning in fiscal 2024. However, without actual experience under the bill, a reliable estimate of the increase in staffing costs cannot be made at this time. DLS anticipates, however, that MDE's administrative expenditures increase significantly, potentially by more than $1.0 million annually, beginning in fiscal 2024. In both fiscal 2024 and 2025, these costs must be covered with general funds, as special funds from cost recovery payments are not yet available. According to the timeframe established under the bill, responsible parties must begin paying cost recovery demand amounts by October 1, 2025. Therefore, in theory, because the Climate Change Adaptation and Mitigation Fund may be used to cover reasonable administrative costs for the program, special funds cover MDE's administrative costs beginning in fiscal 2026. However, as discussed above, the collection of cost recovery payments is likely delayed. Accordingly, general funds are needed until special funds are available.

Climate Impact Health Coverage Program

Expenditures: Assuming a waiver is granted, and the program is operational for calendar 2025, MHBE special fund expenditures increase by at least $550,000 for initial implementation costs. This reflects one-time-only information technology costs of $300,000 and ongoing annual costs for the consumer assistance team of $250,000. MHBE expenditures (likely a combination of special and federal funds) increase by an additional indeterminate but significant amount in fiscal 2025 to provide State premium assistance and cost-sharing reductions to qualified residents under the program.

For illustrative purposes only, based on prior estimates from MHBE regarding the cost to provide a State subsidy that mirrors subsidies and cost-sharing provided by the federal government prior to the enhanced subsidies offered under the federal American Rescue Plan Act, the gross cost of the program is estimated to be $105.1 million in calendar 2025, increasing to $206.7 million for calendar 2028. This estimate is based on the following information and assumptions:

- An estimated 29,413 individuals enroll in the program in calendar 2025, increasing to 51,380 by calendar 2028.
- Federal pass-through funding of $14.8 million is received for calendar 2025, increasing to $30.5 million for calendar 2028.
- The net cost to the State for the program is $90.3 million for calendar 2025, increasing to $176.2 million for calendar 2028.

Should lower subsidies be provided, enrollment numbers and the cost to provide subsidies decrease. To the extent new, generally healthy individuals enter the individual market risk pool under the program, premiums in the individual market are reduced.

Beginning as early as fiscal 2026, special fund expenditures for the program are likely covered by special fund revenues disbursed to the MHBE Fund from the Climate Change Adaptation and Mitigation Fund, as discussed below. Otherwise, existing monies available to the MHBE Fund must continue to be used.

Revenues: The bill requires MDE to disburse at least 20% of the total revenues received by the Climate Change Adaptation and Mitigation Fund to the MHBE Fund each year. If responsible parties pay in full by October 1, 2025, this results in an increase in special fund revenues of $1.8 billion to the MHBE Fund in fiscal 2026. If responsible parties pay using the installment payment option, special fund revenues for the MHBE Fund increase by $360.0 million in fiscal 2026 and by $180.0 million annually in fiscal 2027 through 2034. As discussed above, however, DLS cannot predict when and how much is actually collected in cost recovery payments under the bill, but given the scope of the target revenues, once money begins to be collected, the special fund revenue increases for the MHBE Fund are *significant*. If payments are received as noted above, disbursements from the Climate Change Adaptation and Mitigation Fund to the MHBE Fund are anticipated to be sufficient (if not more than sufficient) to cover the estimated costs of providing State premium assistance and cost-sharing reductions to program enrollees.

Federal pass-through funds also increase in accordance with federal fund expenditures.

Maryland Department of Health's Office of Minority Health and Health Disparities

Special fund revenues and expenditures for MHHD increase *significantly*, potentially by tens of millions of dollars, beginning as early as fiscal 2026. Since MHHD is a small office (there are currently five staff members working in the office), it also likely needs to hire staff in fiscal 2026 to handle the influx of new revenues. The bill requires MDE to disburse at least 5% of the total revenues received from the Climate Change Adaptation and Mitigation Fund to MHHD each year to address the health impact of climate change on minority adults, children, and infants. If responsible parties pay in full by October 1, 2025, this results in an increase in special fund revenues of $450.0 million for MHHD in fiscal 2026. If responsible parties pay using the installment payment option, MHHD special revenues increase by $90.0 million in fiscal 2026 and by $45.0 million annually in fiscal 2027 through 2034. However, as discussed above, DLS cannot predict when and how much is actually collected in cost recovery payments under the bill, but given the scope of the target revenues, once money begins to be collected, the special fund revenue increases for MHHD are *significant*.

Potential Impacts on Other State Agencies

The Office of Administrative Hearings (OAH) anticipates that the bill has, at a minimum, an operational impact because OAH needs to train its administrative law judges on the substantive areas of the bill. Actual impacts will ultimately depend on the number of additional hearings resulting from the bill – both for MHBE and MDE.

The Office of Legislative Audits advises that any audits conducted under the bill can be accomplished with existing personnel.

Given the magnitude of the potential funding available under the bill for climate change adaptive and mitigation infrastructure projects, beginning as early as fiscal 2026, State agencies may be meaningfully affected from additional funding for infrastructure projects to avoid, moderate, or repair damage caused by climate change.

Local Fiscal Effect: Given the magnitude of the potential funding available under the bill for climate change adaptive and mitigation infrastructure projects, beginning as early as fiscal 2026, local governments may be meaningfully positively affected from additional funding for infrastructure projects to avoid, moderate, or repair damage caused by climate change. Local governments may receive funding under the bill directly for qualifying projects and may also benefit indirectly from enhanced statewide protection and mitigation against the effects of climate change.

Given the amount of GHG emissions that must be attributable to a responsible party before the responsible party must pay a cost recovery demand, it is unlikely that any local governments are considered responsible parties under the bill.

Small Business Effect: Small businesses in the State may be meaningfully affected by the additional funding for climate change adaptive or mitigation infrastructure projects under the bill. The bill spurs substantial new investment in climate change adaptive and mitigation infrastructure projects which likely affect a variety of small businesses, such as engineering firms, construction firms, electrical companies, and companies that install heat pumps or other clean energy technologies, among others. The bill may also indirectly benefit small businesses from the additional funding for infrastructure projects to avoid, moderate, or repair damage caused by climate change.

Given the amount of GHG emissions that must be attributable to a responsible party before the responsible party must pay a cost recovery demand, it is unlikely that any small businesses in the State are considered responsible parties under the bill.

Additional Comments: On December 9, 2022, the U.S. Department of Health and Human Services and the U.S. Department of the Treasury approved Washington's application for a State Innovation Waiver. Washington requested a waiver to expand access to QHPs, stand-alone qualified dental plans, and a state affordability program (Cascade Care Savings) to Washington residents regardless of immigration status. The waiver is effective January 1, 2024, through December 31, 2028.

California previously submitted a waiver application that would have permitted undocumented immigrants to purchase coverage through the state exchange without subsidies, but the application was withdrawn. California's Medicaid program now covers income-eligible individuals of all ages, regardless of immigration status.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 915 (Delegate Fraser-Hidalgo, *et al.*) - Economic Matters and Environment and Transportation.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of the Environment; Office of Administrative Hearings; Maryland Insurance Administration; Centers for Medicare and Medicaid Services; U.S. Climate Alliance; Department of Legislative Services

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km/lgc

Analysis by: Kathleen P. Kennedy

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