

Department of Legislative Services  
 Maryland General Assembly  
 2024 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1165

(Delegate Love, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

**Watershed Restoration - Chesapeake and Atlantic Coastal Bays Restoration and Funding (Whole Watershed Act)**

This bill establishes the Whole Watershed Restoration Partnership to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds. The partnership provides grants and technical assistance to eligible projects over a period of five years. The Whole Watershed Fund (WWF) is established in the Department of Natural Resources (DNR) to provide funding for approved projects and is generally authorized to receive funding from specified State agricultural and environmental special funds – although there is one mandated distribution from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund). **The bill takes effect July 1, 2024.**

**Fiscal Summary**

**State Effect:** The effect on overall State finances in any particular fiscal year due to authorized and required funding for WWF is unknown but largely dependent on the extent to which funds transferred to WWF are a reallocation of existing spending or are provided from fund balance, as discussed below. Transferred funds could easily exceed \$5.0 million annually. General fund expenditures for DNR increase beginning in FY 2025 for administrative expenses, including new permanent staff, as discussed below. Other potential effects are discussed below. **This bill establishes a mandated distribution from FY 2026 through 2030.**

**Local Effect:** Local governments are affected by any reallocation of funding that occurs due to the bill. The effect on any particular local government is unknown but could be significant.

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Whole Watershed Restoration Partnership*

The Whole Watershed Restoration Partnership is established to accelerate restoration of the Chesapeake and Atlantic Coastal Bays and their watersheds by equitably focusing assistance on actions and areas that are cost-effective, likely to demonstrate a rapid systemic response to restoration activity, and supported by the local government.

#### *State Management Team to Administer Partnership*

The Secretary of Natural Resources must establish a State Management Team to administer the partnership. The State Management Team must include:

- one representative each from DNR, the Maryland Department of the Environment (MDE), the Maryland Department of Agriculture (MDA), and the Maryland Department of Planning, designated by the relevant department secretary;
- one representative of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, designated by the chair of the commission; and
- the Chief Resilience Officer, or the Chief Resilience Officer's designee.

The DNR representative must chair the State Management Team. The State Management Team must coordinate with other entities as necessary to carry out its functions and duties. The partnership must employ staff in accordance with the State budget. State agencies may provide staff or other assistance to the partnership.

#### *Project Grants*

By October 1, 2024, and every five years thereafter, the State Management Team must issue a request for proposals for projects that meet specified criteria for location, benefits, and local government support. By March 1, 2025, and every five years thereafter, the State Management Team may approve up to five projects to receive assistance.

The State Management Team must evaluate a proposed project based on whether the proposed project meets a variety of specified criteria, such as whether the project:

- is located in a watershed in which habitat restoration and pollution reduction will (1) result in the greatest improvements to shallow water habitat and living resources;

- (2) achieve rapid de-listing of impaired streams identified under specified federal law; or (3) generate rapidly improving conditions in the local ecosystem;
- emphasizes actions that are expected to provide the greatest, most cost-effective, and measurable amount of pollution reduction; and
- supports land use policies, conservation programs, and restoration protocols at the local level that will sustain project actions and outcomes.

The State Management Team must work to ensure that the projects approved meet certain location requirements. The State Management Team may require siting, design, construction, maintenance, and operation principles and standards for a project that are in addition to those required by law or regulation if the team determines that those principles and standards are necessary to preserve the benefits of the project.

For a period of five years after approving a project, the State Management Team must:

- assist the project sponsor in developing an implementation and financing plan, including measurable outcomes, for the duration of the project;
- award implementation grants from WWF and other appropriate State funds and accounts for up to 50% of project costs, in accordance with the implementation and financing plan, and with consideration given to the progress of the project;
- award operations grants of \$20,000 to the project sponsor for project administration costs in accordance with the mandated distribution established by the bill under the 2010 Trust Fund;
- provide for coordinated and transparent State permitting to the extent allowed by State and federal law, including the use of the permit tracking dashboard established by the Secretary of Natural Resources under the bill;
- provide funding to the project sponsor to support water quality monitoring at the project site; and
- meet with the project sponsor and participating local governments at least six times each calendar year to review and facilitate progress on the project.

The bill establishes additional requirements for project sponsors related to water quality monitoring, community engagement, performance measurement, and progress reporting. By November 1, 2025, and each November 1 thereafter, the State Management Team must report to the General Assembly on the status of each approved project.

#### *Permit Tracking Dashboard*

The Secretary of Natural Resources must establish a permit tracking dashboard that provides publicly available information on the permit schedules and requirements for

actions that require a State permit. The permit tracking dashboard must be made available to the public on DNR's website.

### *Whole Watershed Fund*

WWF is established as a special, nonlapsing fund in DNR to fund the projects approved by the State Management Team under the bill and may only be used to support actions associated with an approved project, including (1) to satisfy match requirements of any federal source or (2) matching with county, municipal, or private funds or in-kind support for a project. Expenditures from WWF may be made only in accordance with the State budget. Any remaining funds must be available for use in subsequent fiscal years. The bill specifies requirements for related contracts and the treatment of funds when projects are partially financed with other State funds.

In addition to money appropriated in the State budget to the fund, interest earnings, and any other money from any other source accepted for the benefit of the fund, WWF consists of revenue distributed to the fund from:

- 2010 Trust Fund established under § 8-2A-02 of the Natural Resources Article;
- the Bay Restoration Fund (BRF) established under § 9-1605.2 of the Environment Article (specifically, the Wastewater Account, after funding eligible costs for wastewater treatment plants under the account each year);
- the Clean Water Commerce Account (CWCA) established under § 9-1605.4 of the Environment Article;
- the Maryland Agricultural Land Preservation Fund established under § 2-505 of the Agriculture Article;
- the Maryland Agricultural Water Quality Cost-Share (MACS) Program established under § 8-702 of the Agriculture Article; and
- the Waterway Improvement Fund (WIF) established under § 8-707 of the Natural Resources Article.

Related and conforming changes are made to the provisions establishing each of the funding sources listed above. Generally, the provisions incorporate a related purpose and authorize funding to be provided to WWF; however, the bill establishes one mandated distribution from 2010 Trust Fund. In each fiscal year from 2026 through 2030, inclusive, up to \$100,000 from the fund must be used to fund the operations grants for approved projects under the bill, at a rate of \$20,000 per project sponsor each fiscal year.

Generally, money transferred to WWF from one of the sources listed above must be subject to the conditions specified in the originating fund or account.

## **Current Law:**

### *Chesapeake and Atlantic Coastal Bays 2010 Trust Fund*

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. The trust fund is used primarily 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.

### *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 with enhanced nutrient removal 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. Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030). Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account, to be used for eligible uses, subject to specified funding priorities.

### *Clean Water Commerce Account*

Chapters 694 and 695 of 2021 created CWCA. MDE is required to transfer \$20.0 million each fiscal year from BRF into the account to be used to purchase environmental outcomes to help the State achieve water quality goals. Specified percentages of the funding must be used to procure environmental outcomes from specified types of practices or projects, and any unencumbered funds not used to purchase environmental outcomes according to the percentages are no longer subject to the percentage requirements and available for use consistent with the CWCA statute in subsequent fiscal years.

### *Maryland Agricultural Land Preservation Fund*

The Maryland Agricultural Land Preservation Foundation was established by the General Assembly to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. The foundation, with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities. In addition to funding from the State transfer tax, which has traditionally been allocated toward the capital costs of purchasing easements, the foundation receives funding from the agricultural land transfer tax and surcharge, which is

primarily used for the foundation's operating expenses. Funds accrue to a related special fund.

### *Maryland Agricultural Water Quality Cost-Share Program*

The MACS Program was established in 1982 to provide financial assistance to farmers for the installation of best management practices that control and reduce pollution caused by agricultural activities. Under this voluntary program, the State provides grants to farmers to cover up to 100% of the cost of installing best management practices on their farms to prevent soil erosion, manage nutrients, and safeguard water quality in streams, rivers, and the Chesapeake Bay.

### *Waterway Improvement Fund*

WIF finances projects and activities that promote, develop, and maintain Maryland's waterways for the benefit of the boating public. With certain exceptions, a local government and WIF must jointly finance projects to construct marine facilities beneficial to the boating public. The contribution of WIF must be limited to no more than 50% of the cost of each project. WIF may, however, finance completely any construction project beneficial to the boating public, which costs \$250,000 or less, regardless of its location.

Other types of projects that may be financed solely by WIF include projects for dredging and marking channels and harbors, construction of jetties and breakwaters, and clearing debris, aquatic vegetation, and obstructions in navigable waters, as well as construction of marine facilities located within lands owned by DNR and construction of pump-out stations for use by the general boating public at public and private marinas.

### *Wetlands and Waterways Program*

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways. Generally, a person must obtain a permit or license before working in wetlands in the State. Regulations define the criteria for evaluating tidal wetlands licenses and permits, as well as the property information that permit and license applicants must provide as part of the application process. The Board of Public Works (BPW) has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are issued by MDE. Application fees for wetlands and waterways authorizations are paid into the Wetlands and Waterways Program Fund.

## **State Fiscal Effect:**

### *Whole Watershed Restoration Partnership*

Provisions establishing and funding the Whole Watershed Restoration Partnership have an unknown effect on overall State finances in any particular fiscal year, largely dependent on the extent to which funds transferred to WWF from MDA, MDE, and DNR are a reallocation of existing spending or are provided from fund balance. Reallocated funding generally does not affect overall State expenditures in a particular year, it just alters the uses and recipients. Funding provided from accrued fund balance increases overall State expenditures in a particular year, but eventually leads to reduced spending in future years under the original programs.

The decision to use fund balance or to reallocate existing spending is also dependent upon the amount of required funding for projects under the partnership, which is also at this point unknown. At a minimum, the bill requires \$100,000 annually to be distributed from the 2010 Trust Fund from fiscal 2026 through 2030. Depending on the size of the projects, transferred funds could easily exceed \$5.0 million annually.

The Department of Legislative Services cannot advise on the extent to which the affected special funds have, or will have in the future, sufficient fund balance to fund any transfers, but notes that many of the affected special funds are linked through various ongoing transfers or provide funding for purposes [similar](#) to those of the partnership.

In either case, special fund revenues and expenditures for WWF increase correspondingly as transferred funds are received and used for authorized purposes, which does not appear to include DNR administrative expenses, as discussed below.

### *Administrative Expenses*

WWF does not appear to allow payment of the partnership's administrative expenses, such as those of the State Management Team, partnership staff, and costs to develop a permit tracking dashboard. The bill does not identify another funding source for such costs but does allow State agencies to provide staff or other assistance to the partnership. Accordingly, this estimate assumes general fund expenditures increase to the extent that assistance provided by other State agencies is insufficient. Based on information provided by DNR, administrative costs for the partnership are approximately \$200,000 annually beginning in fiscal 2025, independent of the bill's requirement to establish a permit tracking dashboard, although total costs cannot be determined at this time.

MDE advises that it can handle the bill's requirements with existing budgeted resources. Other agencies on the partnership may also have additional expenditures and/or operational

effects associated with their responsibilities, but the amount and extent is unknown at this time.

**Local Fiscal Effect:** Local governments are affected by any reallocation of funding that occurs due to the bill (which may alter local expenditures for matching funds); the funding sources for WWF are used to fund a variety of programs and projects that directly or indirectly benefit local governments. The effect on any particular local government is unknown but could be significant.

**Small Business Effect:** Small businesses may be affected by the funding of WWF, since many of the potential funding sources benefit small businesses. The effect on any particular small business is unknown but could be meaningful.

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### Additional Information

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

**Designated Cross File:** SB 969 (Senator Elfreth, *et al.*) - Education, Energy, and the Environment.

**Information Source(s):** Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Agriculture; Maryland Department of Labor; Maryland Department of Planning; Maryland Department of Emergency Management; Office of the Attorney General (Consumer Protection Division); Governor's Office; Office of Administrative Hearings; Carroll, Harford, and Queen Anne's counties; towns of Bel Air and Leonardtown; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services.

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