

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 265

(Chair, Education, Energy, and the Environment
Committee)(By Request - Departmental - Environment)

Education, Energy, and the Environment

Environment and Transportation

Environment - Reservoir Augmentation Permit - Establishment

This departmental bill establishes the Reservoir Augmentation Program in the Maryland Department of the Environment (MDE). A person may not perform “reservoir augmentation” without a permit issued by MDE. The bill establishes provisions governing permit applications and the issuance, modification, renewal, and terms of the permits. MDE must adopt regulations that, among other things, set a reasonable permit application fee. All revenues collected by MDE under the program must be distributed to a special fund to be used only for the operation and oversight of the program. The bill also extends the termination date for the Indirect Potable Reuse (IPR) Pilot Program from June 30, 2028, to June 30, 2030, and establishes new reporting requirements for MDE. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: General fund expenditures increase by \$97,300 in FY 2026; out-years reflect ongoing costs and termination of contractual staff at the end of FY 2028. Special fund revenues increase by \$75,000 from permit application fee revenues in FY 2030 only.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$0	\$0	\$0	\$0	\$75,000
GF Expenditure	\$97,300	\$85,800	\$89,500	\$0	\$0
Net Effect	(\$97,300)	(\$85,800)	(\$89,500)	\$0	\$75,000

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

Local Effect: Although voluntary, the bill establishes a potential novel source of drinking water for local governments. Local expenditures increase for any participating local governments, as discussed below. Local revenues are not materially affected.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: “Reservoir augmentation” means the planned placement of reclaimed water into a surface water reservoir used as a source for a drinking water treatment facility.

Permit Applications

A person must submit a written application and obtain a permit from MDE in order to perform reservoir augmentation. The application must include specified information, including a feasibility study showing the purpose and need for the project (unless the application is for a project that was previously approved by MDE under the IPR Pilot Program) and any additional information requested by MDE.

Required Regulations, Permit Application Fees, and Distribution of Program Revenues

MDE must adopt regulations that establish (1) the standards for reservoir augmentation; (2) the application, issuance, revocation, and modification of a reservoir augmentation permit; and (3) a reasonable application fee in an amount designed to cover the cost of issuing and administering a reservoir augmentation permit under the program.

All revenues collected by MDE under the program, including application fees, permit fees, renewal fees, or any administrative penalty, civil penalty, or fine imposed by a court for violations of the provisions governing the program must be distributed to a special fund to be used only for the operation and oversight of the program.

Permit Issuance, Terms, Modification, and Renewal

Title 1, Subtitle 6 of the Environment Article, which governs public participation in the permitting process, governs the issuance of reservoir augmentation permits.

MDE may issue, modify, or renew a reservoir augmentation permit if it finds that (1) the treatment process will meet or surpass MDE standards before water enters the reservoir and the distribution system and (2) the applicant gives MDE the right of entry on the permit site (at any reasonable time) to inspect or investigate any existing or potential violations of the reservoir augmentation permit.

MDE may include in a reservoir augmentation permit any term, condition, or requirement that it deems appropriate to protect public health or the environment. MDE may not issue a permit for a term longer than five years.

Permit Denial and Revocation

MDE may refuse to issue a reservoir augmentation permit if certain conditions are met, including that (1) the source of the reclaimed water fails to comply with any State or federal law, regulation, or permit; (2) MDE finds that issuing the permit would violate any State or federal law or regulation; or (3) the applicant fails or refuses to pay the permit application fee.

MDE is also authorized to revoke a permit under specified circumstances, including if it finds that (1) the application included false or inaccurate information; (2) the conditions or requirements of the permit have been or are about to be violated; (3) there is noncompliance with a discharge permit or MDE pretreatment regulation that may affect the reclaimed water; (4) any requirement established under specified federal and State laws has been or is threatened to be violated; or (5) the reclaimed water may threaten public health, safety, comfort, or the environment.

Reporting Requirements

MDE must report to the Governor and the General Assembly on the implementation of (1) the IPR Pilot Program by December 31, 2029, and (2) the Reservoir Augmentation Program by December 31, 2035, and every five years thereafter.

Current Law:

Indirect Potable Reuse Pilot Program

The IPR Pilot Program was established pursuant to Chapters 122 and 123 of 2023 to authorize the regulated use of reclaimed water as a source for drinking water treatment facilities. Under the program, MDE may review, permit, and regulate a process to use reclaimed water as a source for a drinking water treatment facility through a potable reuse permit under certain circumstances. Permittees must also authorize MDE to inspect or investigate the site to check for existing or potential violations of the potable reuse permit.

MDE was required to accept applications for potable reuse permits between July 1, 2023, and June 30, 2024. A potable reuse permit is effective for five years. Before a permit expires, MDE may renew a permit after administrative review in accordance with regulations that MDE adopts and in accordance with Title 1 Subtitle 6 of the Environment Article.

Except as otherwise provided statute, a public water system operating under a potable reuse permit is subject to requirements for public water systems that use surface water under the Code of Maryland Regulations (COMAR) 26.04.01, which, broadly speaking, governs the quality of drinking water in the State and is discussed in more detail below.

All of the provisions described above relating to the IPR Pilot Program terminate June 30, 2028. However, there are permit renewal terms that do not terminate. More specifically, beginning July 1, 2028, MDE is authorized to renew a potable reuse permit if (1) the renewal occurs before the previous permit expires and (2) the original potable reuse permit was issued by June 30, 2028. If MDE renews a permit in accordance with this provision, MDE must renew the permit (1) after administrative review in accordance with regulations adopted by MDE and (2) in accordance with Title 1, Subtitle 6 of the Environment Article.

Public Water Systems and the Maryland Water Supply Program

Federal and State laws and regulations govern the activities of MDE's Water Supply Program, water utilities, and water users. The Safe Drinking Water Act (SDWA), originally passed in 1974 (40 Code of Federal Regulations §§ 141 and 143), is the main federal law that ensures the quality of drinking water in the United States. Under SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and oversees the states, localities, and water suppliers who implement those standards. SDWA was amended in 1986 and 1996 and requires several actions to protect drinking water and its sources (rivers, lakes, reservoirs, springs, and ground water wells). These standards generally do not apply to private drinking water wells. Rather, private well owners are responsible for the safety of their own wells after initial construction and certification is completed. MDE is responsible for primary enforcement of SDWA in the State.

Specific requirements for public water systems are included under COMAR 26.04.01. Among other things, before constructing a new public water system, or increasing the capacity or significantly modifying an existing public water system, a construction permit must be obtained from the approving authority. There are also several treatment requirements and maximum contaminant level standards.

Public water systems are systems that provide the public water for human consumption through pipes or other constructed conveyances and have at least 15 service connections or regularly serve at least 25 individuals.

Federal Clean Water Act and the National Pollutant Discharge Elimination System

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, EPA delegates authority to issue NPDES permits to MDE. MDE issues discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits.

Reclaimed Water

It is the policy of the State to promote and encourage the use of "reclaimed water" in order to conserve water supplies and to meet other stated goals. MDE is statutorily required to encourage the use of reclaimed water for irrigation. "Reclaimed water" is defined as sewage that has been treated to a high quality suitable for various reuses and meets water quality standards for certain contaminants. Reclaimed water is authorized for irrigation of farmland, golf courses, athletic fields, turf, landscaping, and any other use that MDE considers appropriate.

Public Notice for Certain Permit Applications

Title 1, Subtitle 6 of the Environment Article establishes the general public participation requirements for a number of permits issued by MDE, including permits to discharge pollutants into waters of the State and potable refuse permits.

Relevant Enforcement Provisions

The provisions of §§ 9-334 through 9-341 of the Environment Article, which are established under provisions relating to Title 9, Subtitle 3 of the Environment Article (Water Pollution Control), establish enforcement procedures that govern (1) the ability of MDE to issue complaints, conduct hearings, issue corrective orders, and obtain injunctive relief and (2) judicial review of final decisions. (Because the bill's provisions are codified under Subtitle 3 of Title 9 of the Environment Article, these enforcement provisions are applicable.)

Under § 9-343 of the Environment Article, a person who violates any provision of or fails to perform any duty imposed by Title 9, Subtitle 3 of the Environment Article, or who violates any provision or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under that subtitle, is guilty of a misdemeanor and on conviction

is subject to a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. The person may also be enjoined from continuing the violation. Each day on which a violation occurs is a separate violation.

In addition, a person is guilty of misdemeanor and on conviction is subject to a maximum fine of \$50,000 and/or imprisonment for up to two years if the person (1) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the subtitle or (2) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle.

Pursuant to § 9-344 of the Environment Article, the Attorney General is in charge of prosecuting and defending cases that arise on behalf of the State.

Background: MDE received one application for a potable reuse permit under the IPR Pilot Program from the City of Westminster, which was approved. According to MDE, that IPR project has been successful and MDE wishes to permanently extend the program throughout the State through the Reservoir Augmentation Program established by the bill.

According to MDE's 2024 IPR Report, potable reuse is the use of reclaimed water as a municipal drinking water source. The two types of potable reuse are IPR and direct potable reuse. Surface water augmentation is an IPR method that involves discharging reclaimed water into a surface water environmental buffer, such as a reservoir, river, stream, lake or similar water body above ground. The water is then directed to the water treatment plant, where it goes through additional processing before being distributed as drinking water. The program under the bill establishes a permanent program specifically for this type of IPR.

State Revenues: Special fund revenues for MDE increase by an estimated \$75,000 in fiscal 2030. This estimate is based on the following information and assumptions:

- MDE plans to set the application fee for a reservoir augmentation permit at \$75,000; and
- MDE receives one permit application at the end of fiscal 2030 when the permit for the one project that is active under the IPR Pilot Program expires (concurrent with the termination date of the pilot program as extended by the bill).

Any permit renewals would likely occur outside the five-year period covered by this fiscal and policy note.

The application of existing monetary penalty provisions to violations of the bill is not anticipated to have a material impact on State revenues.

State Expenditures: Although revenues from permit application fees collected by MDE under the bill are contemplated to be used to operate and oversee the Reservoir Augmentation Program, because MDE does not anticipate collecting any fees until fiscal 2030, as discussed above, general funds are needed to implement the bill.

Therefore, general fund expenditures increase by \$97,293 in fiscal 2026, which accounts for the bill's July 1, 2025 effective date. This estimate reflects the cost of hiring one contractual natural resources planner to (1) establish the Reservoir Augmentation Program, including developing regulations, permitting requirements, permit documents, and permit applications; (2) conducting any work related to converting existing permits under the IPR Pilot Program; and (3) evaluating initial permit application(s). It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$88,398
Operating Expenses	<u>8,895</u>
Total FY 2026 State Expenditures	\$97,293

Future year expenditures reflect (1) a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses and (2) termination of the contractual employee at the end of fiscal 2028 once the program is established. MDE advises that existing staff can implement the program at that point – including submitting the required reports.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

The application of existing incarceration penalty provisions to violations of the bill is not anticipated to have a material impact on State expenditures.

Local Fiscal Effect: Although any participation in the pilot program is voluntary, local governments may benefit from the flexibility to use reservoir augmentation as a potential source for drinking water. However, to the extent that a local government applies for a reservoir augmentation permit, local expenditures increase, potentially significantly, to pay permit fees and to adequately treat reclaimed water and fulfill permitting responsibilities under the bill.

The bill is anticipated to benefit the City of Westminster, which MDE expects to continue with its IPR project program under the new, permanent, Reservoir Augmentation Program. Although local expenditures for the City of Westminster continue (including an anticipated \$75,000 in costs to pay the reservoir augmentation permit application fee in fiscal 2030), the city benefits from the stability of a permanent program under which to continue its efforts to engage in potable reuse.

The application of existing penalty provisions is not anticipated to have a material impact on local finances.

Additional Information

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

Designated Cross File: HB 25 (Chair, Environment and Transportation Committee)(By Request - Departmental - Environment) - Environment and Transportation.

Information Source(s): Maryland Association of County Health Officers; Maryland Environmental Service; Baltimore City; Harford County; Maryland Association of Counties; City of Frostburg; Maryland Municipal League; Washington Suburban Sanitary Commission; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - January 24, 2025
km/lgc Third Reader - March 13, 2025
Revised - Amendment(s) - March 13, 2025

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment - Reservoir Augmentation Permit – Establishment

BILL NUMBER: SB 265

PREPARED BY: MDE

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Many small public water systems including mobile home parks are privately owned. Participation is voluntary however this would give these small businesses an additional tool when looking for a new potable water source when working on increasing climate resiliency, specifically the increasing frequency of droughts. There will also be potential financial benefits to small businesses in construction-related businesses as these treatment systems are developed and constructed.