

Department of Legislative Services
 Maryland General Assembly
 2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1065 (Delegate Lehman, *et al.*)
 Environment and Transportation

Coal Combustion By-Product Materials - Grant Program and Procurement Preference

This bill establishes the Coal Combustion By-Product (CCB) Materials Grant Program in the Maryland Department of the Environment (MDE). The purpose of the grant program is to award grants to eligible manufacturers of cement, concrete, or construction materials in the State. The bill establishes eligibility requirements for grant awards, and requires, among other things, that grant awardees accept State-sourced CCBs as feedstock for certain manufactured products. Units of State government must, to the extent practicable and for eligible projects, give preference to bids that use State-sourced CCBs to produce specified materials and demonstrate certain reductions in greenhouse gas (GHG) emissions. Related reporting requirements are established, and MDE must adopt implementing regulations.

Fiscal Summary

State Effect: *Under one set of assumptions*, general fund expenditures increase by \$696,700 and special fund expenditures increase by \$51,900 in FY 2027 for administrative costs and grant awards; future years reflect annualization, ongoing costs, inflation, and escalating grant awards. Although not reflected in the table below, to the extent other (non-State) sources of funding for the grant program are secured, State revenues increase and the need for general funds decreases. The bill may jeopardize federal transportation funding, as discussed below. No effect on total capital spending, as discussed below.

(in dollars)	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	696,700	1,224,700	1,735,100	1,745,600	1,701,900
SF Expenditure	51,900	58,300	61,200	64,000	66,900
Net Effect	(\$748,600)	(\$1,283,000)	(\$1,796,200)	(\$1,809,600)	(\$1,768,800)

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

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: It is the General Assembly's intent that the bill be interpreted consistent with Chapters 201 and 202 of 2023, the Buy Clean Maryland Act, which, among other things, required the Department of General Services (DGS) to establish a maximum acceptable global warming potential (GWP) for each category of cement or concrete mixture used in the construction of an eligible project in consultation with the Maryland Department of Transportation (MDOT) (as discussed below).

Coal Combustion By-Product Materials Grant Program

MDE must (1) administer the grant program; (2) identify and apply for funding for the grant program; and (3) audit and certify grants awarded under the grant program in coordination with the Maryland Energy Administration (MEA).

Eligible manufacturers of cement, concrete, or construction materials must, to MDE's satisfaction:

- accept State-sourced CCBs as feedstock for the cement, concrete, or construction materials and process CCBs appropriately;
- produce the finished cement, concrete, or construction materials using the State-sourced feedstock;
- for projects in and near communities impacted by the generation of CCBs, (1) create jobs in and near these impacted communities that meet prevailing wage standards or standards set by an applicable community benefits agreement or workforce participation plan and (2) prioritize employment of local residents and the use of internships, apprenticeships, and training programs in construction and CCB reuse; and
- demonstrate measurable GHG emissions reduction benefits through the use of the State-sourced feedstock compared to conventional feedstock.

Notwithstanding specified statutory provisions that address GHG emissions reductions for manufacturers, an eligible manufacturer of cement, concrete, or construction materials may be eligible for GHG emissions relief or credit recognition for emissions levels below levels for that manufacturer in 2023.

MDE must adopt implementing regulations that include the method by which a grant amount is determined based on the tonnage of State-sourced CCBs used by an eligible manufacturer, as specified. Additionally, the regulations must establish criteria for State-sourced CCBs that (1) include environmental review of sources and transportation methods that ensure no increase in risk to groundwater or air emissions; (2) ensure that reused CCBs meet environmental safety standards with respect to certain environmental concerns and traceability; and (3) account for monitoring and reporting of applicable contaminants in the reuse of CCBs.

Grant awardees must report to MDE by October 1, 2027, and each October 1 thereafter on (1) tonnage of CCBs used; (2) jobs created and locations of the jobs, as specified; and (3) GHG emissions reductions achieved.

By December 1, 2027, and each December 1 thereafter, MDE must report to the Governor and the General Assembly specified information about the implementation of the grant program. By December 1, 2031, MDE must report to the Governor and the General Assembly with an (1) evaluation of the grant program, including total jobs created and environmental outcomes and (2) recommended adjustments to the grant program.

Procurement Preference

To the extent practicable and for eligible projects, each unit of State government must give preference to bids that (1) use certified State-sourced CCBs to produce cement, concrete, or construction materials, as specified and (2) demonstrate a quantified reduction in embodied GHG emissions below a baseline cement mix, evidenced by an environmental product declaration or life-cycle assessment.

“Eligible project” means a project that receives more than 50% of its project costs from the State.

Current Law:

State Greenhouse Gas Emissions Reduction Goals and Plans

The Climate Solutions Now Act (CSNA) (Chapter 38 of 2022) made broad changes to the State’s approach to reducing statewide GHG emissions and addressing climate change. Among other things, CSNA accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act (GGRA) 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.

Treatment of Manufacturers under the Greenhouse Gas Emissions Reduction Act as Altered by Chapter 500 of 2024

Under GGRA, as modified by Chapter 500, for persons who engaged in manufacturing in 2023, unless required by federal law or regulations or existing State law, regulations adopted by State agencies to implement a final GHG reduction plan may not:

- require any manufacturer to reduce GHG emissions below the emissions levels for that manufacturer in 2023;
- cause an increase in costs to a manufacturer that are significantly beyond the costs that were incurred by that manufacturer in 2023; or
- require any manufacturer that is engaged in the creation of renewable energy components or technology aimed at GHG emissions reductions to reduce GHG emissions.

However, the above requirements may not be construed to exempt GHG emissions sources in the State's manufacturing sector from the obligation to comply with (1) GHG emissions monitoring, recordkeeping, and reporting requirements or (2) GHG emissions reductions required of the manufacturing sector as a result of the State's implementation of the Regional Greenhouse Gas Initiative.

“Manufacturing” means the process of substantially transforming, or a substantial step in the process of substantially transforming, tangible personal property into a new and different article of tangible personal property by the use of labor or machinery. When performed by companies primarily engaged in the activities described above, manufacturing includes (1) the operation of saw mills, grain mills, or feed mills; (2) the operation of machinery and equipment used to extract and process minerals, metals, or earthen materials or by-products that result from the extracting or processing; and (3) research and development activities.

“Manufacturing” does not include (1) activities that are primarily a service; (2) activities that are intellectual, artistic, or clerical in nature; (3) public utility services, including gas, electric, water, and steam production services; (4) the production of cement; or (5) any other activity that would not commonly be considered as manufacturing.

Chapters 201 and 202 of 2023 – Buy Clean Maryland Act

In addition to requiring DGS to establish a maximum acceptable GWP for each category of cement or concrete mixture used in the construction of an eligible project, as mentioned above, Chapters 201 and 202 required producers of those materials to submit specified environmental product declarations (EPDs) to DGS for analysis by December 31, 2024.

Beginning July 1, 2026, State agencies must specify in each solicitation for a construction project the cement or concrete mixture that will be used in the project and the reasonable minimum usage thresholds below which the bill's requirements do not apply; contractors may not install any cement or concrete mixture before they submit EPDs. The Acts also established an Environmental Product Declaration Assistance Fund, administered by the Department of Commerce, to award grants to producers of eligible materials to support the development, standardization, and transparency of EPDs.

Environmentally Preferable Purchasing

“Environmentally preferable product or service” means a product or service that throughout the full cycle of the product or service (1) is energy efficient, water efficient, biobased, nonozone depleting, made with recycled content or nontoxic or (2) has other attributes recognized as environmentally preferable by the Maryland Green Purchasing Committee (MGPC).

To encourage the maximum purchase of environmentally preferable products and services, MGPC must establish environmentally preferable specifications to be adopted by all State agencies.

Coal Combustion By-Products in General

“Coal combustion by-products,” as defined in § 9-289 of the Environment Article, means the residue generated by, or resulting from, the burning of coal. CCBs are produced primarily from the burning of coal in coal-fired power plants. CCBs include fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal-burning furnaces and boilers. CCBs, which are also referred to as coal ash and coal combustion residuals, are regulated at both the State and federal level.

State Management and Tracking of Coal Combustion By-products

At the State level, the Code of Maryland Regulations (COMAR 26.04.10) governs the management of CCBs broadly. There are also regulations that specifically address the utilization of CCBs in surface coal mining and reclamation operations in abandoned coal mines (COMAR 26.20.24) and noncoal surface mine reclamation (COMAR 26.21.04).

Chapter 480 of 2009 established a CCB Management Fund comprising fees collected by MDE from CCB generators; broadly, the fee is based on each ton of CCBs generated and the volume of CCBs stored in the State. The money generated from the fee must be used to administer and implement programs to control the disposal, use, beneficial use,

recycling, processing, handling, storage, transport, or other requirements related to CCB management.

State Fiscal Effect:

Funding for the Grant Program and Related Administrative Costs

Although the bill requires MDE to identify and apply for funding for the grant program, in the absence of an identified funding source for the program, this analysis assumes that general funds are needed. To the extent MDE is successful in identifying, applying for, and receiving funding from other (non-State) sources (such as federal funds), State revenues increase correspondingly and the need for general funds to support the program decreases. Because it is unclear what other sources of funding may be available to support the grant program, any such funding is not reflected in this analysis.

Maryland Department of the Environment: MDE has determined that three regular full-time positions are needed to implement the bill. MDE notes that its Solid Waste Program plans to implement the bill, and that the program does not have experience with administering grants. Further, MDE advises that the additional workload is specialized, recurring, and time-sensitive, making reassignment of existing staff impractical without reducing current program performance. The Department of Legislative Services (DLS) concurs that there are substantial initial responsibilities to develop the grant program, and that there are certain ongoing responsibilities that require permanent staff, but advises that some of the responsibilities incurred by this legislation are not permanent and, thus, may be performed by contractual staff – particularly since MEA plans to hire staff to assist with ongoing audits and certification of grants (as discussed below).

Therefore, MDE general fund expenditures increase by \$696,724 in fiscal 2027, which accounts for the bill's October 1, 2026 effective date. This estimate reflects the cost of hiring two regular full-time positions (one administrator and one environmental engineer), and one contractual full-time environmental specialist to (1) develop and implement the CCB grant program, including conducting oversight and compliance checks for grant awardees; (2) provide technical review of grant applications and awards and coordinate with MEA to audit and certify grant awards; (3) conduct environmental risk evaluations, which include analysis of leaching potential, groundwater impact risks, and reviews of contaminant characterization data, site hydrogeology, and exposure pathways; (4) evaluate environmental performance of CCB reuse projects and ensure regulatory decisions are scientifically sound; (5) conduct materials characterization reviews (which includes evaluating the chemical composition of CCBs), reviewing laboratory data, and verifying that all materials meet statutory eligibility thresholds; and (6) provide environmental monitoring oversight. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and \$500,000 in grant awards.

Regular Positions	2.0
Contractual Position	1.0
Salaries and Fringe Benefits	\$169,302
Grant Awards	500,000
Other Operating Expenses	<u>27,422</u>
Total FY 2027 MDE Expenditures	\$696,724

This analysis assumes that for the grant program to be viable, grant awards in the following amounts must be made each year – \$500,000 in fiscal 2027, \$1.0 million in fiscal 2028, and \$1.5 million in fiscal 2029 and annually thereafter – these funding levels allow for a ramping up of the grant program to full capacity by fiscal 2029.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, and ongoing grant awards as discussed above (\$1.0 million in fiscal 2028 and \$1.5 million annually thereafter). This estimate also reflects the termination of the contractual employee after the first quarter of fiscal 2031.

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.

Maryland Energy Administration: MEA has determined that one regular full-time position is needed to coordinate with MDE to audit and certify grants awarded under the grant program. Since MDE is also hiring staff to coordinate with MEA to audit and certify grant awards, and since it is assumed that MDE is going to lead those efforts, DLS disagrees that the additional responsibilities under the bill alone justify the need for a full-time position.

Therefore, DLS advises that MEA special fund expenditures increase by \$51,857 in fiscal 2027, which accounts for the bill’s October 1, 2026 effective date. This estimate reflects the cost of hiring one regular part-time (50%) program manager to coordinate with MDE to audit and certify grants awarded under the program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Position	0.5
Salary and Fringe Benefits	\$43,758
Operating Expenses	<u>8,099</u>
Total FY 2027 MEA Expenditures	\$51,857

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State Capital Construction Costs

The bill requires units of State government, to the extent practicable for eligible projects, to give preference to bids that use certified State-sourced CCBs to produce cement, concrete, or construction materials and that demonstrate a quantified reduction in embodied GHG emissions below a baseline cement mix. Depending on availability and cost of qualifying products, this may mean costs increase for eligible State construction projects.

However, this has no overall effect on the capital budget or MDOT's Consolidated Transportation Program, which are established annually in accordance with their respective capital affordability guidelines or debt capacity. To the extent that individual construction projects are more expensive, some projects may be delayed or canceled.

Federal Transportation Revenues

The State Highway Administration's Office of Materials Technology notes that the Federal Highway Administration is likely to consider the bill's procurement preference requirement as too limiting (local preferences are barred on transportation contracts that receive federal funding), which could jeopardize Maryland's eligibility to receive federal funding for eligible projects. However, DLS is unable to independently verify this information; therefore, any such reduction in federal funding for State projects is not reflected in the fiscal impacts estimated in this analysis.

Small Business Effect: Any small business manufacturers in the State that are eligible for grant funding under the bill may benefit meaningfully. However, it is unknown if any eligible manufacturers in the State are small businesses.

For any small business construction companies or construction material supply businesses that work with or supply materials that qualify for preferential bid treatment by units of State government, the bill may result in a meaningful increase in the demand for their services and products. On the other hand, any small businesses that do not offer qualifying services or products may see a decrease in demand.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Interagency Commission on School Construction; Maryland Department of the Environment; Department of General Services; Maryland Department of Labor; Department of Natural Resources; Board of Public Works; Maryland Department of Transportation; Maryland Energy Administration; Department of Legislative Services

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