

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 384

(Delegate Adams, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

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Bay Restoration Fund - Eligible Costs - Expansion

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This bill expands the authorized uses of the Bay Restoration Fund (BRF) by altering the definition of “eligible costs.” Currently, only costs related to upgrading a facility *from* biological nutrient removal (BNR) *to* enhanced nutrient removal (ENR) are eligible for BRF funding; costs related to BNR upgrades are not. By changing the definition of eligible costs, the Maryland Department of the Environment (MDE) is authorized to use BRF for BNR upgrades.

The bill takes effect July 1, 2017.

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Fiscal Summary

**State Effect:** The bill is consistent with the FY 2018 capital budget and the *Capital Improvement Program* (CIP) and does not affect the overall finances of BRF. However, the bill relieves pressure on the use of general obligation (GO) bonds for the BNR Program in future years. Revenues are not affected.

**Local Effect:** Overall, the total amount of State grants provided to local governments from BRF is not materially affected. Local grant revenues may increase in some jurisdictions that receive additional funds for BNR upgrades as a result of the bill. Likewise, grant revenues may decrease for other jurisdictions to the extent that any grants for BNR provided under the bill replace funding that otherwise would have been provided to local governments for other authorized purposes. Local grant expenditures are commensurately affected.

**Small Business Effect:** Potential meaningful.

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## Analysis

### **Current Law/Background:**

#### *Biological Nutrient Removal Program*

MDE is authorized to use the Water Pollution Control Fund to provide grants to local governments for the removal of nutrients from the discharges of wastewater treatment plants (WWTPs). Historically, the BNR Program has been funded with GO bonds in the State's capital budget.

MDE advises that the BNR Program's funding priority, as established by policy rather than by statute or regulation, is upgrading publicly owned, major WWTPs that are designed to treat 500,000 gallons per day (gpd) or more of sewage by installing BNR, the first level of nutrient removal. The goal of the BNR process is to remove total nitrogen from about 18 milligrams per liter (mg/l) to an average level of 8 mg/l. The State provides 50% of the funding for BNR upgrades to major WWTPs and 75% of the funding to minor facilities (those designed to treat less than 500,000 gpd).

#### *Bay Restoration Fund – Enhanced Nutrient Removal*

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration (WQFA) within MDE. The main goal of BRF is to provide grants to owners of WWTPs to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems *from BNR to ENR technology*. (ENR technology reduces total nitrogen to 3 mg/l and total phosphorus to 0.3 mg/l.) BRF is also used to support septic system upgrades and the planting of cover crops.

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, and Chapter 150 of 2012 doubled the fee for most users. Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account and used, among other things, to provide grants for up to 100% of the eligible costs to upgrade WWTPs to ENR. "Eligible costs" is defined as the additional costs that would be attributable to upgrading a wastewater facility from BNR to ENR, as determined by MDE.

Fee revenue in the Wastewater Account may also be used to support the issuance of revenue bonds issued by WQFA; MDE has existing authority to issue up to \$530 million of revenue bonds from BRF.

The eligibility and priority ranking of a WWTP project supported by BRF is determined by MDE regulations. Pursuant to Chapters 124 and 153 of 2015, beginning in fiscal 2018, the priority for project funding from the Wastewater Account is as follows:

- (1) ENR upgrades at major WWTPs (design capacity of at least 500,000 gallons per day (gpd));
- (2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gpd);
- (3) as determined by MDE and based on water quality and public health benefits for the following:
  - a. beginning in fiscal 2016, combined sewer overflow abatement, rehabilitation of existing sewers and upgrading conveyance systems, including pumping stations;
  - b. nitrogen reduction from on-site sewage disposal (septic) systems;
  - c. the most cost-effective and efficient stormwater control measures by local governments who have implemented a system of charges to fully fund a stormwater management program; and
  - d. stormwater alternative compliance plans, as specified.

When determining financial assistance and preparing a project priority list to rank individual projects, MDE must consider the following factors, as specified in regulation: (1) nutrient loads currently discharged and the projected nutrient load reduction; (2) cost-effectiveness in providing water quality or public health benefits; (3) relative effectiveness of water quality benefit to the Chesapeake Bay or other impaired body of water; (4) the existence of an administrative or civil compliance order or of a compliance schedule in a discharge permit; (5) sustainability benefits such as water reuse, asset management, full cost pricing, energy conservation, and smart growth; and (6) readiness to proceed to construction.

#### *The Fiscal 2018 Capital Budget and the Capital Improvement Program*

As noted above, to date, MDE's BNR Program has historically been funded with GO bonds. However, the fiscal 2018 capital budget does not include any GO bonds for the BNR Program. Rather, it includes approximately \$49.1 million in revenue bonds from BRF to fund nine BNR projects; the majority of this funding is slated for a BNR upgrade to the Back River WWTP. In addition, the CIP includes \$10 million annually from fiscal 2019 through 2022 in pay-as-you-go special funds from BRF for BNR upgrades to minor WWTPs. The out-year funding assumes that MDE will fund four BNR projects each year at a cost of approximately \$2.5 million each.

As noted above, under current law, BRF is not authorized to fund BNR upgrades. However, the Budget Reconciliation and Financing Act (BRFA) of 2017 (Chapter 23)

authorizes MDE, for fiscal 2017 and 2018 combined, to use \$60.0 million of revenue bond proceeds and funds in BRF for BNR upgrades. This funding is intended to replace GO bond authorizations of \$11.0 million made in the fiscal 2017 capital budget and another \$49.1 million that otherwise would have been authorized in the fiscal 2018 capital budget to fund the cash-flow needs of current BNR projects. This bill is consistent with the capital budget.

#### *Bay Restoration Fund Progress to Date*

According to the Comptroller's Office, through December 31, 2016, a total of \$895.4 million in bay restoration fees collected from wastewater facility users had been deposited in MDE's Wastewater Account. MDE advises that BRF has supported ENR upgrades to 49 major WWTPs, with 14 other facilities under construction and 4 in the planning or design stages. Further, 214 homes have been connected to public sewers using BRF.

MDE advises that it has a goal to complete the upgrade of at least five minor WWTPs to ENR by 2017, consistent with Maryland's Watershed Implementation Plan. Four ENR upgrades to minor facilities have been completed, and another four are under construction and may be completed by 2017.

**State Expenditures:** The bill is consistent with the fiscal 2018 capital budget and the CIP. Because neither the fiscal 2018 budget nor the CIP includes any GO bonds for the BNR Program, the bill does not reduce overall GO bond expenditures. However, the bill relieves pressure on the future use of GO bonds for the program by authorizing the continued use of BRF for BNR beyond fiscal 2018, when the authorization included in the BRFA terminates.

The overall finances of BRF are not affected; it is assumed that any funding provided for BNR projects as a result of the bill would have been provided for other authorized uses in the absence of the bill.

The Department of Legislative Services notes that some WWTPs are owned/operated by State entities. The bill's future impact on these facilities is unknown and is, therefore, not accounted for in this fiscal and policy note.

**Local Fiscal Effect:** Local government grant revenues may increase for some jurisdictions and may decrease for others. Any jurisdiction that qualifies for BRF grants for BNR under the bill may benefit from receiving a larger State share than it otherwise would. Currently, the State provides grants of 50% of the costs for BNR upgrades to major WWTPs and 75% of the costs for BNR upgrades to minor WWTPs. Under BRF, however, MDE is authorized to fund up to 100% of eligible costs. Because overall funding to local

governments is not materially affected, any increase in grants to local jurisdictions for BNR upgrades results in a decrease in grants to other projects that would have been funded in the absence of the bill. Local government expenditures are commensurately affected.

**Small Business Effect:** Small businesses that specialize in providing engineering, construction, and other contractual services associated with projects that receive BRF grants for BNR upgrades, particularly to minor WWTPs, may benefit from the bill's changes. However, small businesses that provide services for other projects currently authorized to receive BRF grants (*e.g.*, combined sewer overflow abatement, sewer rehabilitation, stormwater management, etc.) may be negatively affected.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 343 (Senator Eckardt, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Department of the Environment; Caroline and Prince George's counties; City of Bowie; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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