

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 737

(Senator Rosapepe, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation and  
Appropriations

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Comprehensive Conservation Finance Act

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This bill makes changes to a broad variety of existing programs related to environmental conservation and natural resources management and expands opportunities for agencies to obtain private investment and financing for State environmental projects, including conservation efforts, restoration projects, and the installation and repair of green and blue infrastructure. The bill also alters existing and establishes new State policies for several related programs and establishes a new workgroup, commission, and task force. The primary agencies that are affected are the Maryland Department of Agriculture (MDA), the Maryland Department of the Environment (MDE), and the Department of Natural Resources (DNR), but there are changes to procurement and contracting opportunities for additional agencies. **The bill takes effect July 1, 2021. Provisions related to a new task force terminate June 30, 2023, and provisions related to a new commission terminate June 30, 2024.**

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Fiscal Summary

**State Effect:** Near term impacts are primarily operational and are not necessarily expected to have a significant fiscal impact. Some of these operational impacts are discussed below. Overall, since most of the bill's financing changes are permissive, the bill is not expected to have a direct fiscal impact on State agencies. Any indirect impacts, for example, the effects on overall State project costs, cannot be predicted. However, the bill may encourage additional private investment in affected projects.

**Local Effect:** Overall, a reliable estimate of the bill's impact on local finances cannot be made at this time. However, local governments could benefit from the expansion of funding opportunities for certain local projects, as discussed below.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Maryland Department of Agriculture*

MDA may not limit or prohibit, through any cost-share agreement, a participant in MDA's Maryland Agricultural Water Quality Cost-Share Program (MACS) from participating in and receiving compensation from greenhouse gas (GHG) markets, carbon credits, or soil carbon programs, if the purpose of the compensation is to achieve additional conservation benefits that are consistent with the State's Chesapeake Bay conservation goals.

MDA is authorized to enter into partnerships (through formal contracts or memoranda of understanding (MOUs)) with private sector organizations that have experience in carbon offset markets or other programs to (1) create statewide or regional partnerships to minimize the costs and maximize the benefits of voluntary enrollment of farmland into carbon offset markets and (2) assist private landowners with the aggregation of projects to make the projects more saleable in carbon offset market programs.

#### *Maryland Department of the Environment*

##### *Commission on Environmental Justice and Sustainable Communities*

The bill requires the Commission on Environmental Justice and Sustainable Communities (CEJSC) to recommend options to the Secretary of the Environment for ensuring that MDE is making progress in advancing the human right to safe, clean, affordable, and accessible water for consumption, cooking, sanitation, health, and recreation purposes.

##### *Water Infrastructure Assets*

The bill authorizes MDE, upon an investigation or examination of a water infrastructure asset pursuant to current law, if MDE determines that (1) the water infrastructure asset is unsafe, needs repair, or should be removed because it is unsafe and not repairable and (2) the water infrastructure asset is a priority for removal to improve fish passage or is a priority for small hydroelectric power plant installation, to take actions to repair, remove, or retrofit the asset consistent with MDE's objectives, as specified. More specifically, MDE is authorized to (1) partner with the asset owner and an organization that provides resources and expertise to plan, design, or finance changes to further MDE's objectives, as specified, or (2) prioritize the use of "environmental outcomes" arising from the repair, removal, or retrofit of the water infrastructure asset in any environmental mitigation program identified by MDE.

MDE must provide notice to the Maryland Industrial Development Financing Authority (MIDFA), for the purpose of securing specified financial assistance, of any water infrastructure asset identified as a priority for small hydroelectric power plant installation pursuant to the bill and the intended repair, retrofit, or removal measures identified.

### *Maryland Water Quality Financing Administration*

The bill renames MDE's Maryland Water Quality Financing Administration to be the Maryland Water *Infrastructure* Financing Administration. The bill also defines several terms, including "blue infrastructure," "environmental outcome," and "green infrastructure." "Blue infrastructure" is a water-based natural element or engineered element, and "green infrastructure" is a land-based natural element or engineered element, that is designed to mimic or enhance the function of a natural element that (1) absorbs and filters pollutants; (2) protects communities from flooding or storm surge; (3) reduces erosion; or (4) sequesters carbon. An "environmental outcome" is a commodity that is modeled or directly measured as a single, quantifiable, and certified unit of improvement to the environment, including a nutrient or carbon benefit.

The bill establishes that it is the policy of the State that the maintenance and repair of source watersheds, including the conservation and restoration of forests and the installation and maintenance of blue or green infrastructure that contributes to improved water quality, is eligible for the same forms of financial assistance as other water collection and treatment infrastructure.

*Maryland Water Quality Revolving Loan Fund:* The bill expands the authorized uses of the guarantee authority under the Maryland Water Quality Revolving Loan Fund (WQRLF) by (1) repealing the restriction that WQRLF may guarantee only local government financing *for all or a portion of the cost of a wastewater facility* and (2) authorizing WQRLF to be used to provide loan guarantees for similar revolving loan funds established by municipal corporations and intermunicipal agencies without restriction. The bill specifies that the current authorization to use WQRLF funding to establish a linked deposit program to promote loans for controlling nonpoint sources of pollution and protecting the quality of the water of the State includes loans for forest restoration or the conservation of forest land by fee or easement. The bill also authorizes WQRLF funding to be used:

- to provide loans for the protection of source water areas or Chesapeake and Atlantic Coastal Bay watersheds through property acquisitions or easements;
- to establish a sponsorship program that allows a local government to serve as the primary borrower and receive a loan for a publicly owned treatment works project at a reduced interest rate if the loan also includes financing for a sponsored nonpoint source project managed by an organization;

- to serve as a guarantee for long-term pay-for-success contracts, green bonds, or environmental impact bonds by any public, private, or nonprofit entity for the purchase of certain environmental outcomes;
- to support long-term or permanent green infrastructure projects carried out in the Susquehanna River Watershed by an organization agreed to by the management committee of the Chesapeake Bay Program Partnership;
- to establish master lease purchase agreements with State agencies to support projects that enhance water quality on State lands; and
- to support multi-year initiatives authorized under Title 8, Subtitle 2A of the Natural Resources Article (which governs the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund (2010 Trust Fund)) that also involve funding from the 2010 Trust Fund.

*Maryland Drinking Water Revolving Loan Fund:* The bill also makes changes to the statute governing the Maryland Drinking Water Revolving Loan Fund (DWRLF). The bill specifies that, for loans made at or below market rates from DWRLF, loan terms may not exceed 30 years after project completion, or, with respect to disadvantaged communities, 40 years after project completion; under current law, the maximum loan term is generally 20 years. The bill also specifies that all loans will be fully amortized on the expiration of the term of the loan; under current law, all loans are fully amortized within 20 years after project completion.

The bill specifies that the current authority to use DWRLF funding to establish a linked deposit program in accordance with State law and the federal Safe Drinking Water Act (SDWA) includes loans for (1) controlling nonpoint sources of pollution and protecting the quality of State waters; (2) protecting or acquiring forests or wetlands by fee or easement; or (3) restoring forests. The bill also authorizes DWRLF funding to be used:

- to establish a sponsorship program that allows a local government to serve as the primary borrower and receive a loan for a publicly owned water supply system at a reduced interest rate if the loan also includes financing for a sponsored nonpoint source project managed by an organization;
- with respect to any federal funds deposited in DWRLF, to prioritize support for local governments, community water systems, and other eligible partners, as specified;
- to support multi-year initiatives authorized under Title 8, Subtitle 2A of the Natural Resources Article that also involve funding from the 2010 Trust Fund; and
- to provide financial assistance to disadvantaged communities (as defined in SDWA) in the form of planning or design phase grants.

The bill also clarifies the authorized uses of funds in DWRLF to include uses authorized or required by relevant provisions of SDWA.

Finally, the bill requires the Water Infrastructure Financing Administration, in creating an intended use plan for DWRLF, to prioritize opportunities to provide assistance to disadvantaged or environmental justice communities and to support innovative financing partnerships to address environmental justice issues, as defined. This includes through investment in (1) water infrastructure loans designed to ensure fairer and more just opportunities to improve community health through better water service; (2) specified municipal consolidation efforts; (3) toxic lead service line replacement; and (4) green infrastructure that meets certain standards.

#### *New Green and Blue Infrastructure Policy Advisory Commission*

The bill establishes the Green and Blue Infrastructure Policy Advisory Commission to advise the Secretary of the Environment, the Bay Cabinet, and local government officials on ways to facilitate and accelerate the scale and pace of implementation of green and blue infrastructure projects in the State, including a number of listed projects. The Secretary of the Environment must ensure that, to the extent practicable, the commission's membership reflects the geographic, racial, gender, and cultural diversity of the State. Commission members may not receive compensation but are entitled to reimbursement for expenses.

The commission must meet at least three times a year and study and make recommendations on a number of action items related to green and blue infrastructure projects, including (1) ways to prioritize green and blue infrastructure projects through State permitting processes; (2) changes to local development policies and regulations that would facilitate the timely review and approval of such projects; (3) ways to phase-in life cycle costing requirements for long-term monitoring and repair of State and local government-funded green and blue infrastructure projects; (4) strategies and policies to prioritize these projects that meet certain goals, as specified; (5) policies to allow State and local governments to attract sources of private capital investment and to maximize public sector funding for these projects; (6) circumstances in which volunteer-based green and blue infrastructure projects should be prioritized because of cost-saving benefits; (7) best practices for streamlining the procurement and financing process for environmental credit buyers at the local level; and (8) other policies to achieve an increased scope and scale of ecological restoration. The commission must report its findings and recommendations to the Secretary of the Environment, the Governor, and the General Assembly by January 1 annually. The commission terminates June 30, 2024.

#### *New Task Force on State and Local Government Accounting for Natural Capital*

The bill establishes a Task Force on State and Local Government Accounting for Natural Capital to assist State and local governments to take full advantage of Government Accounting Standards Board accounting standards to obtain necessary financing to scale up the installation and maintenance of blue and green infrastructure and other conservation

and restoration projects capable of contributing to a net reduction in the use of public funding while improving community health and resilience. MDE and the University of Maryland Environmental Finance Center must provide staff for the task force. Task force members are not entitled to compensation but are entitled to reimbursement for expenses.

The task force must (1) document the extent to which specified accounting standards have been adopted in the State, identify any barriers to the adoption of the standards, and make recommendations regarding the increased adoption of the standards; (2) compile an inventory of institutions that support natural capital and make specified related recommendations; (3) make recommendations regarding public accounting and auditing practices that could help State and local governments to better quantify and value natural capital alongside traditional asset accounting; (4) develop a communications plan that describes natural resources as natural capital assets, as specified; and (5) study and make recommendations on any other matter the task force considers to be relevant and timely. The task force must report its findings and recommendations to the Governor and the General Assembly by September 30, 2022. The task force terminates June 30, 2023.

#### *Department of Natural Resources*

DNR is authorized to enter into partnerships (through formal contracts or MOUs), with private sector organizations that have experience in carbon offset markets or other programs to (1) create statewide or regional partnerships to minimize the costs and maximize the benefits of enrolling private and public lands into carbon offset markets and (2) assist private landowners with the aggregation of projects to make the projects more saleable in carbon offset market programs.

The Secretary of Natural Resources is authorized to purchase environmental outcomes through intergovernmental agreements with other states from long-term or permanent projects located in the portion of the Susquehanna River Basin that lies within other states if the purchase meets certain requirements.

DNR may not prohibit or limit, through any contract, easement, or agreement, a participant in a program administered by DNR from participating in and receiving compensation from GHG markets, carbon credits, or soil carbon programs, if the purpose of the compensation is to achieve additional environmental outcomes that are consistent with the State's Chesapeake Bay conservation goals.

#### *Ecosystem Services and Specified Easement Requirements*

The bill establishes that "ecosystem services" includes (1) climate resilience; (2) carbon sequestration; (3) the provision of wildlife habitat; (4) contributions to forest health; and (5) the protection or restoration of wetlands.

*Maryland Environmental Trust:* An easement approved by the Maryland Environmental Trust (MET) may allow for the potential of economic return from the protection, management, maintenance, or improvement of ecosystem services provided by the property, so long as MET determines those uses do not impair or interfere with the conservation values and purposes of the easement and are otherwise consistent with MET's policies related to ecosystem services.

*Rural Legacy Program:* An easement that is acquired under DNR's Rural Legacy Program may allow for the potential of economic return from the protection, management, maintenance or improvement of ecosystem services provided by the property, so long as DNR determines (1) those uses affirmatively increase the conservation attributes of the property beyond the requirements of the easement and (2) any credits that are created, as specified, are used only to mitigate offsite environmental damage in a priority funding area or in a manner the DNR determines to be consistent with the applicable local comprehensive plan and State and local objectives for land protection.

#### *Forest Conservation and Carbon Sequestration*

*New Workgroup:* In support of the State's sustainable forestry goals, DNR must convene a workgroup to (1) make recommendations regarding the creation of a statewide initiative to implement forest carbon sequestration offset projects on public and private forest lands; (2) facilitate the enrollment of forest lands in carbon sequestration markets; (3) assist participants in the Woodland Incentives Program to participate in carbon sequestration markets; and (4) recommend methodologies to allow groups of landowners to jointly develop and enroll carbon offset projects. By July 1, 2024, DNR must begin implementation of at least one carbon offset project on State land.

*Forest Conservation Act:* The bill requires (rather than authorizes, as provided under current law) that mandatory off-site afforestation or reforestation, for the purposes of the Forest Conservation Act (FCA), prioritize the use of qualifying forest mitigation banks.

The bill also repeals obsolete language related to payment of fees-in-lieu to the State Forest Conservation Fund and establishes that current standards related to the rate of the payment of fees-in-lieu, within and outside of a priority funding area, apply on or before September 30, 2021. After September 30, 2021, the rate for a project inside a priority funding area must be the rate identified in DNR regulations. For a project outside a priority funding area, the rate is 20% higher than the rate for a project inside a priority funding area. By September 30, 2021, and every three years thereafter, DNR must set by regulation the contribution rate for projects inside priority funding areas in each county. The contribution rate must be at least 10% higher than the average cost of credits purchased during the immediately preceding three years from (1) mitigation banks located in the county or (2) if

no credits were purchased from mitigation banks in the county, mitigation banks located throughout the State.

The bill repeals a requirement that money deposited into the State Forest Conservation Fund that remains in the fund for a period of two years or three growing seasons and is unused to meet afforestation or reforestation requirements be returned to the person who provided the money to be used for documented tree planting in the same county or watershed, as specified. Instead, the money must be used to purchase forest mitigation bank credits in the same county or watershed. The bill also authorizes money deposited into the State and local forest conservation funds to be used to purchase forest mitigation bank credits (in addition to reforestation and afforestation efforts, as authorized under current law).

*BayStat Program, the New Bay Cabinet, and the 2010 Trust Fund*

The bill makes several changes to the current BayStat Program, including to replace references to the “BayStat Subcabinet” and the “BayStat Program” with “Bay Cabinet.” The membership of the Bay Cabinet is the same as the membership of the existing BayStat Subcabinet. The bill defines several new related terms, including “aggregator,” “environmental outcome,” “evaluator,” and “quantification plan.” DNR, instead of the BayStat Subcabinet, must prepare the required final work and expenditure plan based on the budget approved by the General Assembly. Further, beginning with the plan prepared for fiscal 2023, the plan must be informed by an analysis carried out by the Trust Fund Program Scientific and Financial Advisory Panel (described below).

The bill makes a number of changes related to the distribution of funding from the 2010 Trust Fund. Among other things, in evaluating trust fund applications, the Bay Cabinet must consider (1) projects that, in addition to providing cost-effective and measurable nonpoint source pollution reductions, provide co-benefits, as specified, and (2) multi-year agreements where an aggregator proposes to combine funding from various sources and use the combined sources to fund and administer the implementation of multiple projects or pay for environmental outcomes from multiple completed projects. Funds from the trust fund may not be used to procure environmental outcomes achieved before January 1, 2020. The bill authorizes payment under a pay-for-success contract (described in more detail below) if the outcomes are certified, as specified. Current law restrictions related to a grant agreement regarding funds from the trust fund are expanded to include a contract agreement and an existing reporting requirement is extended to pay-for-success contract recipients. Finally, the Bay Cabinet agencies may maintain up to 2% of the total in competitive grants and contracts administered by the Bay Cabinet agencies for the purpose of meeting additional project needs, as specified.

The current BayStat Program Scientific Advisory Panel is renamed the Trust Fund Program Scientific and Financial Advisory Panel. The bill expands the duties of the panel to include contracts, as specified. Additionally, by January 31, 2022, the panel must (1) analyze and compare the fund distributions through the competitive program and by each Bay Cabinet agency for fiscal 2012 through 2022 and the strategies supported by those distributions; (2) quantify the relative effectiveness of each distribution and strategy per dollar of State funding; and (3) report to the Bay Cabinet, the Governor, and the General Assembly on the results of the required analysis.

### *Changes to State Finance and Procurement Law*

The bill includes blue and green infrastructure in the definition of “public infrastructure assets” under the State’s public-private partnership (P3) statute, making them eligible for P3 projects to develop or strengthen those assets.

The bill establishes a framework for “pay-for-success contracting,” which is defined as a performance-based procurement method through which an agency contracts with an organization to deliver services or commodities in exchange for payment based on the achievement of outcomes. It establishes pay-for-success contracting as an allowable procurement method in State law and authorizes MDA, MDE, DNR, the Maryland Department of Transportation (MDOT), the Maryland Environmental Service, and the Department of General Services to enter into a pay-for-success contract for (1) delivery of an environmental outcomes project or (2) already certified environmental outcomes. Other State agencies may participate in a pay-for-success contract in accordance with an intergovernmental cooperative purchasing agreement. The authorization to enter into pay-for-success contracting does not apply to the purchase of nitrogen load reductions with funds from the Clean Water Commerce Account of the Bay Restoration Fund (BRF).

A pay-for-success contract entered into by an authorized State agency must include:

- a quantification plan approved by the agency;
- a statement of the environmental outcomes to be procured and how defined performance measures will demonstrate progress in achieving the outcomes;
- requirements regarding the content and frequency of progress reports;
- a methodology for calculating the amount and timing of payments when the designated evaluator determines that performance measures have been achieved;
- a statement that the basis of payment is the determination of achievement of environmental outcomes by the evaluator; and
- terms addressing the application of specified State laws and related contract requirements.

A pay-for-success contract may also include (1) long-term maintenance and monitoring of environmental services; (2) a requirement that a State agency hold contract funds in a reserve account for payments; (3) for agricultural services, payment for achievement of baseline water quality requirements; or (4) termination prior to the first payment.

### **Current Law:**

#### *Maryland Department of Agriculture – Affected Programs*

MACS, which is administered by MDA, was established by the General Assembly in 1982 as one of several initiatives to improve water quality and achieve State water quality goals. MACS provides financial assistance to farmers to implement best management practices (BMPs) to improve water quality. Grassed waterways, streamside buffers, and animal waste storage systems are among more than 30 BMPs eligible for funding under the program.

The Maryland Agricultural Land Preservation Foundation (MALPF) 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. MALPF, 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.

#### *Commission on Environmental Justice and Sustainable Communities*

CEJSC within MDE was established by executive order in 2001 and codified in 2003. CEJSC is tasked with examining issues of “environmental justice” and sustainable communities for all Marylanders. To this end, CEJSC reviews and analyzes the environmental justice implications of current State policy, laws, and regulations; assesses the adequacy of State and local laws to address the issue of environmental justice and sustainable communities; coordinates with the Children’s Environmental Health and Protection Advisory Council on recommendations to further environmental justice and sustainable communities; develops criteria to assess whether communities may be experiencing environmental justice issues; and recommends options to the Governor for addressing issues, concerns, or problems related to environmental justice. “Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

#### *Water Infrastructure Assets*

MDE’s Dam Safety Program is responsible for regulating the design, construction, operation, and maintenance of dams in Maryland to prevent dam failures and the

consequences of failure. MDE conducts inspections based on hazard classes of dams; issues permits for construction, repairs, and modifications; conducts construction inspections; and works with dam owners and emergency management professionals to develop and exercise an emergency action plan in the event of a dam failure.

MDE may take emergency actions necessary to protect life, property, or the environment if (1) MDE determines that a water infrastructure asset (defined as a reservoir, dam, or any other water way construction) is in imminent danger of failure, MDE has issued specified notice to the asset owner, and the owner has not completed the work within the time prescribed in the notice or (2) MDE determines that a water infrastructure asset is failing and the asset owner is not taking adequate actions to protect life, property, or the environment. Authorized emergency actions include (1) taking control of the water infrastructure asset; (2) lowering the level of water or completely releasing all water impounded by the water infrastructure asset, as specified; (3) performing any necessary remedial or protective work onsite; and (4) taking any other steps MDE deems necessary to safeguard life, property, or the environment.

#### *Maryland Water Quality Financing Administration*

The mission of MDE's Maryland Water Quality Financing Administration is to provide financial assistance in the form of low-interest rate loans and/or grant funding for, among other things, clean water and drinking water capital projects across the State. The administration administers DWRLF, WQRLF, and BRF.

*Drinking Water Revolving Loan Fund:* DWRLF was created in 1993 to provide below-market-rate loans for drinking water projects. The revolving loan fund provides financial assistance for a wide variety of projects to facilitate compliance with national primary drinking water standards that protect or improve the quality of the State's drinking water resources. DWRLF receives federal capitalization grants and other funding from the U.S. Environmental Protection Agency (EPA).

Under current law, all loans must be fully amortized within 20 years of the completion of any drinking water facility (except as specified), and annual and interest payments must begin within one year of completion of the facility. For loan subsidies for disadvantaged communities, which can include loan forgiveness, the loan subsidy amount cannot exceed 30% of the administration's annual federal capitalization grant. To qualify as a disadvantaged community, a community must meet one of the following criteria: (1) have a median household income that is less than 70% of Maryland's median household income; (2) have county unemployment in the upper 1/3 percentile; (3) have population decline since the last census; or (4) identify a project that is located in, or that benefits, an MDE environmental benefits district.

*Water Quality Revolving Loan Fund:* WQRLF was created in 1988 to provide low-interest loans to public entities for wastewater and other water quality capital projects. Other assistance is provided through purchasing, guaranteeing, or refinancing debt. Authorized uses of the fund include grants, negative interest loans, forgiveness of principal, subsidized interest rates, and other forms of assistance as authorized or required by specified federal statute. WQRLF also receives federal funding from EPA.

*Bay Restoration Fund and the Clean Water Commerce Act:* 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 Maryland Department of Agriculture's Cover Crop Program. 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 (until July 1 2030). The Clean Water Commerce Act of 2017 (Chapters 366 and 367 of 2017) expanded the authorized uses of BRF's Wastewater Account to include (after funding other specified BRF priorities) the purchase of cost-effective nitrogen, phosphorus, or sediment load reductions in support of the State's efforts to restore the health of the Chesapeake Bay.

#### *Forest Conservation Act*

*In General:* The Forest Service within DNR administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. FCA applies to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet (0.9 acres) or greater, subject to certain exceptions.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken.

*Afforestation and Reforestation Requirements and Priorities:* FCA establishes requirements and priorities for on-site or off-site afforestation or reforestation and allows for off-site afforestation or reforestation to include the use of forest mitigation banks that have been designated in advance by the State or a local forest conservation program. "Forest mitigation banking" means the intentional restoration or creation of forests

undertaken expressly for the purpose of providing credits for afforestation or reforestation requirements with enhanced environmental benefits from future activities.

*State and Local Forest Conservation Funds:* If afforestation or reforestation requirements cannot be reasonably accomplished on site or off site and appropriate credits generated by a forest mitigation bank in the same county or watershed are not available, payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, maintenance of existing forest, and achieving urban canopy goals. A State Forest Conservation Fund holds funds associated with projects reviewed by the State, and local forest conservation funds are associated with local forest conservation programs.

Payment of fees-in-lieu, to the State Forest Conservation Fund, are made at rates adjusted for inflation as determined by DNR annually by regulation. The rate for a project outside a priority funding area must be 20% higher than the rate for a project inside a priority funding area. The current rates identified in DNR regulations are \$0.305 per square foot for a project inside a priority funding area and \$0.366 per square foot for a project outside a priority funding area. Fee-in-lieu rates for local forest conservation funds must be at least the same as the rates for the State Forest Conservation Fund.

Fees-in-lieu deposited in the State Forest Conservation Fund must be used by DNR to meet afforestation or reforestation requirements within two years or three growing seasons; otherwise, the money is returned to the person who provided it to be used for documented tree planting in the same county or watershed.

#### *Other Miscellaneous Conservation and Management Measures*

*Maryland Environmental Trust:* MET was established by statute in 1967 “to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including, but not limited to land, water, air, wildlife, scenic qualities, [and] open spaces.” The trust was created as a quasi-public entity and is both a unit of DNR and governed by a private board of trustees.

MET has the statutory authority and responsibility to acquire and hold real and personal property, or any interest therein, of aesthetic, scenic, or cultural significance, or of significance to the health and welfare of the public, by lease, gift, purchase, devise, bequest, or by any other means, and conserve, improve, administer, invest, and dispose of the properties for the purposes of the trust. MET’s primary method for protecting land is through soliciting donations of conservation easements from private landowners who may be eligible for both federal and State tax benefits that are available for such donations.

*Retention and Sustainable Management of Forest Lands:* A State policy to encourage the retention and sustainable management of forest lands is established in statute, specifying various means of achieving the policy, including developing financial incentives to encourage landowners to retain and manage their forests sustainably and in a manner that is consistent with a forest stewardship plan.

*Woodland Incentives Program:* The Woodland Incentives Program assists eligible private landowners in conducting a program of woodland management. The program provides cost-share assistance for long-range timber growing and improvement, including planting, seeding, timber stand improvement, prescribed burning, site preparation, and other forest resource development practices.

*Rural Legacy Program:* The Rural Legacy Program provides funding for local governments and conservation organizations (such as land trusts) to purchase property and conservation easements within designated rural legacy areas. Local governments and land trusts apply annually to the Rural Legacy Board, which makes recommendations for designating rural legacy areas and granting funds to preserve land in the rural legacy areas that are then reviewed and approved by the Board of Public Works.

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

*Sources and Uses of Funding:* 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 (which, collectively, generate approximately \$50.0 million each year for the fund). The trust fund is used 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. Examples of nonpoint source projects that can be funded with the trust fund include cover crops, natural filters, and local watershed restoration projects, including stormwater management projects.

*BayStat Program and Subcabinet:* The BayStat Program is responsible for (1) measuring and evaluating efforts to restore the Chesapeake and Atlantic Coastal Bays and (2) administering the 2010 Trust Fund. The BayStat Subcabinet – consisting of the Secretaries of Natural Resources, the Environment, Planning, and Agriculture; the President of the University of Maryland Center for Environmental Science; the Dean of the College of Agriculture and Natural Resources at the University of Maryland, College Park Campus; and the chair of the Critical Area Commission – oversees the administration of the BayStat Program.

The BayStat Subcabinet develops an annual work and expenditure plan for the 2010 Trust Fund for the next fiscal year, which is submitted to the General Assembly as part of the SB 737/ Page 14

annual budget submission. The subcabinet then prepares a final work and expenditure plan based on the budget approved by the General Assembly. The BayStat Program is required to target funds in a specified cost-effective manner and, to the maximum extent practicable, distribute funding on a competitive basis. The BayStat Program distributes funds from the 2010 Trust Fund to the subcabinet agencies to administer in accordance with the final work and expenditure plans. A BayStat Program Scientific Advisory Panel, including scientists and other technical experts, advises the BayStat Subcabinet on the use of funds of the 2010 Trust Fund.

The BayStat Subcabinet agencies may distribute an amount up to 1.5% of the allocations to the agencies, which is necessary to administer grant programs, to an administrative cost account.

### *Relevant State Procurement Law Procurement Methods*

State law authorizes, at the discretion of procurement officials, the use of multiple procurement methods, including competitive sealed bidding, competitive sealed proposals, noncompetitive negotiations, auction bids, and more. Pay-for-success contracting is not explicitly authorized.

### *Public-private Partnerships*

Chapter 5 of 2013 established a new framework for the approval and oversight of P3s. Chapter 5 defined a P3 as a method for delivering public infrastructure assets using a long-term, performance-based agreement between specified State “reporting” agencies and a private entity where appropriate risks and benefits can be allocated in a cost-effective manner between the contract partners, in which:

- a private entity performs functions normally undertaken by the government, but the reporting agency remains ultimately accountable for the public infrastructure asset and its public function; and
- the State may retain ownership of the public infrastructure asset and the private entity may be given additional decision making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.

A “public infrastructure asset” is a capital facility or structure, including systems and equipment related to the facility or structure intended for public use.

Chapter 5 establishes the public policy of the State to utilize P3s, if appropriate, for (1) developing and strengthening the State’s public infrastructure assets; (2) apportioning between the public sector and the private sector the risks involved in the development and

strengthening of public infrastructure assets; (3) fostering the creation of new jobs; and (4) promoting the State's socioeconomic development and competitiveness.

### *Maryland Industrial Development Financing Authority*

MIDFA encourages private sector investments with insurance and the issuance of tax-exempt and taxable revenue bonds. All projects must be in a priority funding area. While the transaction size is generally not limited, the credit enhancement is subject to the applicable program limits. MIDFA can be used for land acquisition, building acquisition, construction costs, machinery and equipment, furniture and fixtures, leasehold improvements, certain eligible "soft costs," energy-related projects, and working capital.

**State Fiscal Effect:** As noted above, near term impacts from the bill are primarily anticipated to be operational. Most of these operational impacts are not expected to have a significant fiscal impact on State agencies. Further, since most of the bill's financing changes are permissive, the changes are not expected to have a direct fiscal impact on State agencies. The bill's changes to the revolving loan funds in MDE, for instance, expand the authorized uses of the funds but do not otherwise affect revenues to or expenditures from the funds.

Any expense reimbursements for members of the new task force and the new commission are assumed to be minimal and absorbable within existing budgeted resources. It is assumed that affected agencies can participate in the commission and the task force, and that MDE and the University of Maryland Environmental Finance Center can staff the task force, with existing budgeted resources. It is also assumed that DNR can convene the required workgroup with existing budgeted resources.

All of the affected agencies that responded to requests for information regarding the potential effects of the bill, other than MDOT, indicate that the bill's changes to existing programs can likely be implemented with existing budgeted resources. However, most of the agencies also indicate that there are many unknown factors in terms of the bill's implementation. Thus, depending on actual experience under the bill, there could be costs for affected agencies to implement some of the changes, particularly where the bill requires additional review or for specific projects to meet new standards and requirements.

For example, the bill requires easements approved or acquired by MET and DNR to allow for economic return from ecosystem services, which necessitates additional review when evaluating the purchase of easements. DNR also notes several operational impacts, the ultimate effects of which are unknown. For example, DNR does not currently have access to information on the average cost of forest mitigation bank credits. This is considered confidential information and is known only to a mitigation bank credit holder and buyer. It

is unclear whether DNR is able to definitively determine that rate, as required under the bill.

MDOT advises that project costs could increase to meet new procurement standards under the bill. MDOT also anticipates that there could be increased costs for capital projects to meet the new FCA mitigation requirements. Finally, MDOT advises that since the State Highway Administration has a significant number of infrastructure assets statewide, the bill's expanded authorization for MDE to identify water infrastructure assets as a priority for removal to improve fish passage or for installation of a small hydroelectric power plant could increase capital costs. Currently, MDE can identify a water infrastructure asset as a priority for removal if it is unsafe and not repairable. However, MDOT is unable to quantify any such impact without knowing the extent to which MDE will exercise its expanded authority. It is also unknown who would ultimately be responsible for any additional capital costs associated with these projects. The Department of Legislative Services advises that, without actual experience under the bill, any effect on MDOT is speculative.

As noted above, the overall fiscal effect on future State projects cannot be reliably determined. However, the bill may encourage additional private investment in affected projects.

**Local Fiscal Effect:** To the extent that a local government takes advantage of expanded funding options under WQRLF or DWRLF (*i.e.*, loan guarantee or sponsorship), local governments could benefit, and both local expenditures and revenues increase. However, overall funding for WQRLF and DWRLF is unchanged. Local governments may also benefit from additional options to repair or remove water infrastructure assets. Some water infrastructure assets are locally owned. Other impacts on local governments resulting from the bill are unknown at this time.

**Small Business Effect:** The bill could significantly expand opportunities for private investment in State environmental projects. Any small businesses that work in environmental finance, environmental outcome markets, or pay-for-success contracting may see a significant increase in business opportunities. Similarly, small businesses that provide direct work for affected environmental projects could benefit from an increase in the demand for their services. However, any actual impact primarily depends on the extent to which State agencies take advantage of the new financial opportunities under the bill.

Any small business that holds or provides brokerage services for forest mitigation bank credits could see an increase in revenues and business opportunities under the bill. Conversely, costs could increase for a small business that needs to buy forest mitigation bank credits, particularly outside of a priority funding area. Other impacts on small businesses are unknown at this time.

## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Montgomery and Prince George's counties; City of Bowie; Department of Commerce; Maryland Environmental Service; Maryland Municipal League; Maryland State Treasurer's Office; University System of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Maryland Department of Planning; Board of Public Works; Maryland Department of Transportation; Public Service Commission; Department of Legislative Services

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