

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 119 (Senators Guzzone and Elfreth)
 Education, Health, and Environmental Affairs and Budget and Taxation Environment and Transportation and Appropriations

Clean Water Commerce Act of 2021

This bill reauthorizes and modifies the Clean Water Commerce Act (CWCA) through June 30, 2030, and requires the Maryland Department of the Environment (MDE) to transfer \$20.0 million annually from the Bay Restoration Fund (BRF) Wastewater Account to the Clean Water Commerce Account (CWC Account), a new account within BRF established by the bill. The CWC Account must be used to purchase “environmental outcomes” to help the State achieve the Chesapeake Bay Total Maximum Daily Load (TMDL). The bill establishes requirements for the provision and verification of environmental outcomes, among other things. MDE may adopt implementing regulations. **The bill takes effect June 1, 2021, and terminates June 30, 2030.**

Fiscal Summary

State Effect: General fund expenditures increase by \$61,300 in FY 2022; future year expenditures reflect annualization. Overall, the bill does not affect special fund finances; however, the bill redirects \$20.0 million annually from the BRF Wastewater Account to the new CWC Account through FY 2030.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	61,300	71,600	73,800	76,400	79,100
Net Effect	(\$61,300)	(\$71,600)	(\$73,800)	(\$76,400)	(\$79,100)

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

Local Effect: The overall impact on local governments is unknown, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Relevant Definitions

“Environmental outcome” means nitrogen load reductions that can be directly measured or modeled using the Chesapeake Bay Program Models. A “quantification plan” is an MDE-approved plan that describes (1) the method that will be used to measure or model environmental outcomes; (2) the required compliance monitoring that will occur to ensure the proposed actions were taken; (3) any verification steps that MDE or the owner of a project or a practice to confirm environmental outcomes; and (4) the timeline for proposed payments under a contract with MDE.

Reauthorization of the Clean Water Commerce Act

The bill extends the termination date of CWCA, as modified by the bill, by nine years (from June 30, 2021, to June 30, 2030).

Establishment and Capitalization of the Clean Water Commerce Account

In fiscal 2022 and each fiscal year thereafter, MDE must transfer \$20.0 million from the Wastewater Account to the new CWC Account established by the bill and administered by MDE. The CWC Account consists of (1) revenue transferred to the account pursuant to that requirement and (2) any money from any other sources accepted for the benefit of the account. MDE may establish subaccounts within the CWC Account.

Use of Money in the Clean Water Commerce Account and Unencumbered Funds

Expenditures from the account may be made only in accordance with the State budget. The CWC Account may only be used to purchase cost-effective environmental outcomes that (1) support the State’s efforts to achieve the Chesapeake Bay TMDL and (2) have an expected life of at least 10 years. The bill specifies the percentages that must be used to procure environmental outcomes from (1) agricultural practices, with priority given to certain projects, as specified; (2) projects established in communities disproportionately burdened by environmental harms and risks, as specified; and (3) nonagricultural landscape restoration projects, as specified. A project may include environmental outcomes from one or more of the specified project types. Any unencumbered funds that are not used to purchase environmental outcomes are (1) no longer subject to these allocation requirements and (2) available for use consistent with the provisions governing the CWC Account in subsequent fiscal years.

In calculating pollution reductions under the Chesapeake Bay TMDL, as specified, credit for any reductions funded using the CWC Account must be attributed to the sector of the source that makes the reductions.

Requirements for the Provision and Verification of Environmental Outcomes

MDE must (1) use a competitive process to invite funding proposals from interested persons, as specified, for the provision of environmental outcomes; (2) develop and use a scoring system to evaluate a submitted funding proposal; (3) provide each person that submits a funding proposal with a copy of the scoring system, as specified; and (4) publicly announce a request for proposals or otherwise initiate a procurement process for environmental outcomes to be funded under the bill at least once a year. Among other things, MDE must also (1) require each funding proposal to include a number of specified items; (2) announce the criteria used to evaluate proposals; and (3) when evaluating proposals, prioritize specified factors. Further, MDE must (1) approve a process to verify environmental outcomes purchased pursuant to the bill and (2) use consistent standards and processes for doing so, as specified.

The bill establishes various requirements for environmental outcomes purchased under the bill; among other things, an environmental outcome must be in addition to any load reduction required by any federal, State, or local law, regulation, policy, or permit, including any applicable TMDL. An environmental outcome purchased pursuant to the bill may not be resold or transferred to any other person separately from the property on which the environmental outcome is located.

The bill also establishes requirements governing contracts entered into pursuant to the bill. Among other things, (1) a contract entered into by MDE must require the owner of the project or practice to periodically submit status updates in accordance with the quantification plan for the environmental outcomes of the project or practice and (2) may be funded for the extended life of the project or practice yielding the environmental outcome, not to exceed 20 years.

A project or practice that is partially financed with another source of State funds may be funded using the CWC Account subject to a specified proration requirement. An environmental outcome that is funded *entirely* with public funds is not eligible to be purchased with funds from the CWC Account. However, if an environmental outcome is *partially* funded with public funds and is verified in accordance with the verification process established by MDE pursuant to the bill, funds from the CWC Account may be used to purchase the remaining portion of the environmental outcome that is not funded with public funds.

Required Registry, Required Reports, and Changes to the Bay Restoration Fund Advisory Committee

MDE must maintain a public registry for the environmental outcomes of each project or practice that includes (1) a description of the project or practice and the associated spatial information and (2) a summary of the contract provisions for the project or practice, in order to ensure that the environmental outcomes are maintained for the life expectancy of the environmental outcome. MDE must make the registry available to the public on its website.

By December 31 annually, in conjunction with an annual report that is already required to be submitted, the Bay Restoration Fund Advisory Committee (BRFAC) must report to specified committees of the General Assembly on (1) the total amount of CWC Account funding expended and encumbered during the immediate preceding fiscal year and since July 1, 2022; (2) the amount and type of environmental outcomes purchased and the types of projects or practices that produced those outcomes, as specified; (3) the type and value of any co-benefits provided by projects or practices funded through the CWC Account; (4) the cost-effectiveness of purchased environmental outcomes, as specified; and (5) for fiscal 2025 only, any necessary amendments to CWCA to reflect historic and projected demand for funding from the CWC Account and BRF, as specified.

Finally, the bill modifies the membership of BRFAC.

Current Law:

Bay Restoration Fund

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants (WWTPs) 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).

BRFAC is a statutorily mandated committee formed to evaluate the cost, funding, and effectiveness of the WWTP upgrades; consult and advise the counties and MDE regarding the septic system upgrade program; and recommend future changes to the bay restoration fee if necessary. BRFAC is required to annually report to the Governor and the General Assembly on its findings and recommendations.

Clean Water Commerce Act of 2017

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. The 2017 CWCA authorized up to \$4.0 million in fiscal 2018, \$6.0 million in fiscal 2019, and \$10.0 million per year in fiscal 2020 and 2021 from BRF to be spent to achieve the stated cost-effective pollutant load reductions. The nitrogen, phosphorus, and sediment load reductions could not be from the agricultural sector and were required to be created on or after July 1, 2017. The 2017 CWCA is scheduled to terminate on June 30, 2021.

Chesapeake Bay Total Maximum Daily Load

The current bay restoration policy framework is primarily guided by an executive order, two-year goal milestone setting, and a Chesapeake Bay TMDL, which was established by the U.S. Environmental Protection Agency in December 2010, as required under the federal Clean Water Act. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements: the State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%. All reduction measures must be in place by 2025, with at least 60.0% of the actions completed by 2017.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs

General fund expenditures for MDE increase by \$61,324 in fiscal 2022, which accounts for a 120-day start-up delay. This estimate reflects the cost of hiring one accountant to (1) track projects and manage the CWC Account and (2) prepare and post the required public registry. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes that a spreadsheet satisfies the public registry requirement. To the extent that a more sophisticated database is necessary, MDE incurs additional programming costs.

Position	1.0
Salary and Fringe Benefits	\$55,743
Operating Expenses	<u>5,581</u>
Total FY 2022 MDE Administrative Costs	\$61,324

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

Impact on the Bay Restoration Fund and the Clean Water Commerce Act

According to the Comptroller's Office, through November 30, 2020, a total of \$1.3 billion in bay restoration fees collected from users of wastewater facilities had been deposited in MDE's Wastewater Account. Under the bill, from fiscal 2022 through 2030, MDE must transfer \$20.0 million annually from the Wastewater Account within BRF to the new CWC Account within BRF.

Although the bill does not have an overall effect on MDE's special fund finances, by redirecting \$20.0 million annually from the Wastewater Account to the CWC Account, the bill changes the types of projects that will receive funding through BRF. Additionally, MDE advises that because it already has plans to spend the available BRF funding on capital projects, the bill could impact or delay those projects due to the required redirection of funding. In addition, MDE anticipates that, given the rigorous procurement, contracting, and project selection process required by the bill, it is unlikely that MDE will be able to fund the purchase of environmental outcomes in fiscal 2022.

Local Fiscal Effect: Since local governments are eligible to receive funding from both the Wastewater Account and the new CWC Account, the overall impact on local governments cannot be estimated at this time. As a result of the redirection of funding, some local governments may benefit and others may receive less funding than they otherwise would have received.

Small Business Effect: The overall effect on small businesses is unclear. While small businesses may be eligible to receive funding under the bill from the new CWC Account, they are also eligible to receive funding from the Wastewater Account.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 507 (Delegate Stein) - Environment and Transportation and Appropriations.

Information Source(s): Harford County; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

Fiscal Note History:
rh/lgc

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