

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 653

(Delegate Love, *et al.*)

Environment and Transportation

Budget and Taxation and Education, Health,
and Environmental Affairs

Conservation Finance Act

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, task force, and review and reporting requirements. The primary agencies that are affected are the Maryland Department of Agriculture (MDA), the Maryland Department of the Environment (MDE), the Maryland Environmental Service (MES), and the Department of Natural Resources (DNR), but there are changes to procurement and contracting opportunities that affect additional agencies. **The bill takes effect July 1, 2022. Provisions related to a new task force terminate June 30, 2024, and provisions related to a new commission terminate June 30, 2025.**

Fiscal Summary

State Effect: General fund expenditures for DNR increase significantly in FY 2023 to conduct a required study. MES nonbudgeted expenditures increase beginning in FY 2026 to conduct reviews/evaluations of pay-for-success contracts; nonbudgeted revenues increase correspondingly from reimbursements. State expenditures (all/multiple funds) increase for affected State units to reimburse MES. Other near-term impacts are primarily operational and are not necessarily expected to have a significant fiscal impact; as discussed below. Any indirect impacts cannot be predicted, but the bill may encourage additional private investment in affected projects.

Local Effect: Local expenditures may increase beginning in FY 2026 to reimburse MES for reviews/evaluations of local pay-for-success contracts. Overall, a reliable estimate of other impacts 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.

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 establishes actions that MDE is authorized to take and actions MDE must take, 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) changes to the water infrastructure asset (including removal) are a priority for improving fish passage or for other environmental benefits. More specifically, MDE is authorized to 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. Alternatively, MDE must 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. If MDE determines that a water infrastructure asset is not a priority for changes (including removal), but is a priority for the installation of less than 30 megawatts of small hydroelectric power plant capacity, 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, as specified.

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." 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.

The bill makes certain stylistic changes to statute governing the Maryland Water Quality Revolving Loan Fund (WQRLF) and the Maryland Drinking Water Revolving Loan Fund (DWRLF). Other, more substantive changes to these statutes are discussed below.

The bill also establishes a new reporting requirement for the Water Infrastructure Financing Administration. Beginning November 1, 2024, and annually thereafter, the administration must report to the General Assembly on the amounts allocated by type of assistance provided under WQRLF and DWRLF to support each type of green and blue infrastructure.

Maryland Water Quality Revolving Loan Fund: The bill requires the Water Quality Infrastructure Administration to establish a technical assistance subaccount within WQRLF to provide technical assistance to specified entities for projects in rural, small, and tribal communities, including financial assistance to support the development of an application for financial assistance or a financing plan under WQRLF. Federal funds that are deposited into WQRLF for technical assistance for projects in rural, small, and tribal communities must be deposited into the new subaccount. Priority must be given to projects

in disadvantaged communities and communities that are disproportionately burdened by environmental harms and risk. Eligible entities are (1) a publicly owned treatment works that primarily serve a rural, small, or tribal community; (2) a State, regional, interstate, or municipal entity; and (3) a nonprofit organization working with a rural, small, tribal, or disadvantaged community.

The bill also 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 support long-term or permanent green or blue infrastructure projects that provide a water quality benefit to Maryland's portion of the Chesapeake Bay and are proposed by eligible entities and meet certain standards;
- 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 specified sources.

The bill further requires the Water Infrastructure Financing Administration, in creating an intended use plan for WQRLF, to prioritize (1) opportunities to provide assistance to disadvantaged communities or communities that are disproportionately burdened by environmental harms and risk and (2) green and blue infrastructure, with particular focus on natural areas or natural features.

Maryland Drinking Water Revolving Loan Fund: Similar to the changes above with respect to WQRLF, the bill requires the Water Infrastructure Financing Administration to establish a technical assistance subaccount within DWRLF. Federal funds that are deposited into DWRLF for the purpose of providing technical assistance to small drinking water systems must be deposited into the new subaccount. The new subaccount may be used to provide financial assistance to eligible entities to provide technical assistance to small drinking water systems including for (1) assessing risks from lead water pipes and supporting the development of lead pipe inventories and (2) supporting the development

of an application for financial assistance or a financing plan under DWRLF. Priority must be given to entities providing technical assistance for small drinking water systems in disadvantaged communities or communities that are disproportionately burdened by environmental harms and risk. Eligible entities are (1) a small drinking water system, as defined under the federal Safe Drinking Water Act (SDWA); (2) a multijurisdictional entity; and (3) a nonprofit organization working with a rural, small, tribal, or disadvantaged community.

The bill specifies that the current authority to use DWRLF funding to establish a linked deposit program in accordance with State law and 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.

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 communities or communities disproportionately burdened by environmental harms and risks 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 BayStat Subcabinet, 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 those projects that meet certain goals and create certain benefits, 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, 2025.

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 (GASB) 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, and the Secretary of the Environment must ensure that, to the extent practicable, the task force membership reflects the geographic, racial, gender, and cultural diversity of the State. Task force members may not receive compensation but are entitled to reimbursement for expenses.

The task force must (1) document the extent to which GASB 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 relevant and timely. The task force must report its findings and recommendations to the Governor and the General Assembly by September 30, 2023. The task force terminates June 30, 2024.

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. Further, by July 1, 2024, DNR, in consultation with appropriate experts and in order to learn about establishing and verifying carbon credits, must begin implementing (or otherwise support) at least one carbon offset project on State land and at least one carbon offset project in a marine or estuarine habitat.

The Secretary of Natural Resources is authorized to purchase environmental outcomes that provide for cost-effective long-term or permanent green or blue infrastructure projects that meet certain requirements. The Secretary must consult with the Secretary of the environmental agency of the state in which the project is located, as specified.

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.

The bill requires DNR, in consultation with the BayStat Subcabinet agencies and appropriate experts, using funding received through State or federal grant programs, to study and assess the potential for digital tools and platforms to contribute to Chesapeake Bay restoration and climate solutions, as specified. The study must include a number of items, including, as practicable, an inventory and assessment of digital tools and platforms based on the Digital Climate Solutions Report required under federal law, as specified, and an analysis of the likely applications of the digital tools and platforms assessed for drinking water management. DNR must report its findings to the General Assembly by December 1, 2023.

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 DNR determines to be consistent with the applicable local comprehensive plan and State and local objectives for land protection.

Forest Conservation and Carbon Sequestration

The bill amends the State’s policy regarding the retention and sustainable management of forest. The existing policy includes 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. The bill specifies that this includes allowing landowners, after July 1, 2022, to use forests on State lands that are reforested or afforested under the Forest Conservation Act (FCA) to satisfy buffer or insurance provisions required by registries or protocols associated with private forest carbon credit transactions.

BayStat Program and the 2010 Trust Fund

The bill defines several new terms that are related to the current BayStat Program, including “aggregator,” “environmental outcome,” “evaluator,” and “quantification plan.” Current law requires the BayStat Subcabinet to prepare an annual final work and expenditure plan based on the budget approved by the General Assembly. The bill specifies that beginning with the plan prepared for fiscal 2024, the plan must be informed by an analysis carried out by the BayStat Program Scientific 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 BayStat Program must encourage and 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, 2021. 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 BayStat Subcabinet agencies may maintain up to 2% of the total in competitive grants and contracts administered by the BayStat Subcabinet agencies for the purpose of meeting additional project needs, as specified.

The bill expands the duties of the current BayStat Program Scientific Advisory Panel to include contracts, as specified. Additionally, by January 31, 2023, the panel must (1) analyze and compare the fund distributions through the competitive program and by each BayStat Subcabinet agency for fiscal 2012 through 2023 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 BayStat Subcabinet, 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), MES, 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 and local entities 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 outcome 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 provisions regarding (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 agriculture services, payment for achievement of baseline water quality requirements; or (4) termination prior to the first payment.

Beginning July 2025, and every three years thereafter, MES must review and evaluate the results of all pay-for-success contracts that are completed pursuant to the bill's authority for the previous three fiscal years. The review must include a number of specified items about projects undertaken using pay-for-success contracts, including project costs, the length of time taken to complete the projects, and whether projects met contract terms. The first review must include a review of all pay-for-success contracts completed between July 1, 2022, and June 30, 2025. Each unit that enters into a pay-for-success contract must execute an agreement with MES to reimburse MES for costs associated with reviewing each of the unit's completed contracts. MES must provide a copy of each review to the appropriate unit and to specified committees of the General Assembly.

Current Law:

Maryland Department of Agriculture – Maryland Agricultural Water Quality Cost-Share Program

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 40 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 (1) uses data sets and mapping tools to review and analyze the environmental justice implications of current State policy, laws, and regulations; (2) assesses the adequacy of State and local laws, permits and actions, and policies to address the issue of environmental justice and sustainable communities; (3) coordinates with the Children's Environmental Health and Protection Advisory Council, the Maryland Office of Minority Health and Health Disparities, and the Commission on Climate Change on recommendations to further environmental justice and sustainable communities; and (4) recommends options to the Governor and the General Assembly 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; evaluates downstream hazard conditions; 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 waterway 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, grant funding, and/or loan forgiveness 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).

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 MDA'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). Chapters 694 and 695 of 2021 created the Clean Water Commerce Account within BRF. MDE is required to transfer \$20.0 million each fiscal year into the account to be used to purchase environmental outcomes to help the State achieve water quality goals.

Forest Conservation Act

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. FCA establishes requirements and priorities for on-site or off-site afforestation or reforestation.

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.

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, typically generates around \$50.0 million each year for the trust 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 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:

Department of Natural Resources – Administrative Costs

DNR estimates that costs to conduct the required study to assess the potential for digital tools and platforms to contribute to Chesapeake Bay restoration and climate solutions are approximately \$1.0 million in fiscal 2023 to contract with appropriate experts in the fields of computer science, financing, climate change, bay restoration, drinking water, and earth sciences. DNR notes that although the bill authorizes using funding from State or federal grant programs for this purpose, it is unaware of any available funding, and as such, additional general funds are likely necessary. The Department of Legislative Services (DLS) generally concurs that costs to conduct the study are significant but is unable to independently verify DNR's estimate at this time.

Maryland Environmental Service – Administrative Costs and Reimbursements

MES nonbudgeted expenditures increase in each year that MES conducts the required reviews and evaluations of the results of pay-for-success contracts. Thus, MES nonbudgeted expenditures increase beginning in fiscal 2026, and nonbudgeted revenues increase correspondingly from reimbursements from affected State and local units (discussed below). The magnitude of the costs incurred by MES is unknown and depends in large part on the scope and number of pay-for-success contracts entered into under the bill. Thus, a reliable estimate of the costs incurred by MES – and reimbursements received from State and local units – cannot be made at this time.

Other Fiscal Impacts to State Agencies under the Bill

Any unit that enters into a pay-for-success contract incurs costs to reimburse MES for the costs incurred to conduct the reviews/evaluations, as discussed above. Thus, State expenditures (all/multiple fund types) increase beginning in fiscal 2026 to reimburse MES.

Other 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.

Most of the affected agencies that responded to requests for information regarding the potential effects of the bill, other than MDOT and DNR, 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. Even if long-term costs to evaluate a new financing option or use a new procurement method (such as entering into a pay-for-success contract) are similar, employees may need additional training in order to use the financing and procurement mechanisms authorized by the bill.

There could also be cost savings for infrastructure projects. For example, MDOT estimates that depending on the availability of credits, MDOT may realize significant savings from being able to purchase already completed, approved, and calculated restoration and mitigation credits to offset the environmental impacts of MDOT projects under a pay-for-success contract. Another potential benefit under the bill is being able to commoditize or receive credit for existing environmental projects. For example, the Maryland Port Administration anticipates that its work at Hart Miller Island, which contains more than 800 acres of wetlands, forested uplands, and diverse wildlife habitat, could be quantified as positive environmental outcomes with regard to water quality, access to recreational green space, and carbon sequestration and may have additional value under the bill.

On the other hand, MDOT advises that since the department 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. DLS advises that, without actual experience under the bill, any effect on MDOT is speculative.

As another example, DNR anticipates that the department needs to dedicate one employee with specialized training in request for proposal and procurement of pay-for-performance contracts since these contract types have unique regulations, review criteria, and other legal requirements that are not part of traditional grant-making processes. Additionally, the bill authorizes an easement approved or acquired by MET and DNR to allow for the potential of economic return from ecosystem services provided by the property. DNR advises that

evaluating economic returns from ecosystem services for affected easements likely necessitates additional review when evaluating the purchase of easements. DNR also notes that the bill's changes to FCA require different and new considerations that are not currently evaluated when implementing FCA. Ultimately, the effects of these operational impacts are unknown.

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: Similar to the effect on State units described above, any local government unit that enters into a pay-for-success contract incurs costs beginning in fiscal 2026 to reimburse MES for costs incurred to conduct the reviews/evaluations.

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, and there may be less available funding for traditional projects.

Local governments may also benefit from additional options to repair or remove water infrastructure assets. Some water infrastructure assets are locally owned. Broadly, local governments may benefit from the new financing methods that are available under the bill, particularly for infrastructure projects. 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. Other impacts on small businesses are unknown at this time.

Additional Information

Prior Introductions: SB 737 of 2021, a bill with similar provisions, passed the Senate with amendments and received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: SB 348 (Senator Elfreth, *et al.*) - Budget and Taxation and Education, Health, and Environmental Affairs.

Information Source(s): Howard, Montgomery, and Prince George's counties; Department of Information Technology; Maryland Environmental Service; Department of Commerce; Maryland Association of Municipal Wastewater Agencies; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; Washington Suburban Sanitary Commission; Maryland Department of Emergency Management; Maryland Municipal League; University System of Maryland; 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; Maryland Energy Administration; Public Service Commission; Department of Legislative Services

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