

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 354

(Senators Elfreth and Pinsky)

Education, Health, and Environmental Affairs

Environment and Transportation

**Bay Restoration Fund - Intended Use Plans and Privately Owned Wastewater
Facilities**

This bill establishes new reporting requirements for the Maryland Department of the Environment (MDE) related to grant funding under the Maryland Water Quality Revolving Loan Fund (WQRLF) and alters an existing joint reporting requirement for MDE and the Maryland Department of Planning (MDP) related to funding provided from the Bay Restoration Fund (BRF). The bill also (1) prohibits MDE from providing funding from BRF to the owner of a privately owned wastewater facility under specified conditions and (2) alters the definition of “privately owned wastewater facility.” Finally, the bill specifies that the bill’s provisions do not apply to a privately owned industrial wastewater facility that is connecting to a publicly owned wastewater facility and has been awarded grant funding from BRF for this purpose in the fiscal 2023 capital budget or any preceding capital budget. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: Affected State agencies can implement the bill with existing resources. Overall finances of BRF are not affected; to the extent some privately owned wastewater facilities become ineligible for funding, other projects are funded. The bill does not affect State revenues.

Local Effect: Local grant revenues and expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

New Reporting Requirement Related to the Water Quality Revolving Loan Fund

The bill requires MDE to provide the General Assembly with a copy of each intended use plan that MDE submits to the U.S. Environmental Protection Agency (EPA), in accordance with Title VI of the Federal Water Pollution Control Act, to request federal capitalization grants and awards for use in WQRLF. MDE must provide a copy of such a plan to the General Assembly within five days after MDE publishes the plan for public comment.

Provisions Related to the Bay Restoration Fund

The bill generally prohibits MDE from providing funding from BRF to the owner of a privately owned wastewater facility if MDE or EPA has determined that, in the two years immediately preceding the date on which the facility owner submitted a proposal for funding from BRF, the facility did not comply with a discharge permit issued by MDE. However, MDE may still provide funding to a wastewater facility that would be ineligible because of this restriction if MDE determines, based on proof submitted by the facility owner when submitting a funding proposal, that the facility owner lacks the financial capacity to purchase or upgrade a wastewater treatment system that would bring the facility into compliance with the discharge permit.

When submitting its annual operating budget proposal to the Department of Budget and Management (DBM), MDE must include a list of each noncompliant facility that received BRF funding in the immediately preceding 12 months and the reasons for providing funding. If such a list is provided to DBM, MDE must also provide the list to the General Assembly.

The bill also alters an existing annual reporting requirement for MDE and MDP that relates to BRF. Specifically, the bill requires that the joint report include information on each noncompliant privately owned wastewater facility that received BRF funding in the immediately preceding year and the reasons for providing the funding.

The bill also alters the definition of “privately owned wastewater facility” under the BRF statute to mean a wastewater facility that is owned by a private entity *and provides wastewater treatment or disposal services to multiple residential dwelling units*. Because the term is used in provisions regarding eligibility for funding from BRF, the change in the definition means that any privately owned wastewater facility that does not provide wastewater treatment or disposal services to multiple residential dwelling units (*e.g.*, a

facility that provides wastewater treatment or disposal services solely to commercial or industrial units) is ineligible for funding from BRF.

Current Law:

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 both WQRLF and BRF.

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. In order to receive funding from EPA, states must fulfill certain requirements, which include establishing and submitting an intended use plan as part of the application process. An intended use plan lists proposed projects eligible for financing from EPA.

Bay Restoration Fund: 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 (ENR) technology; funds are also used for septic system upgrade grants, among other things, and the Cover Crop Program within the Maryland Department of Agriculture. 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 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.

By January 1 annually, MDE and MDP must jointly report to the Governor and specified legislative committees on the impact that a wastewater treatment facility that was upgraded to ENR during the previous calendar year using BRF funds had on growth within the municipality of county where the wastewater treatment facility is located. MDE and MDP must include specified information in the report and consult with the Bay Restoration Fund Advisory Committee in determining what other information should be included in the report.

In addition to several other authorized uses, the Wastewater Account of BRF may be used to award grants for up to 50% of eligible costs of projects relating to planning, design, construction, and upgrade of a privately owned wastewater facility to ENR. A privately owned wastewater facility is a wastewater facility that is owned by a private entity.

State Permitting for Wastewater Discharges

MDE's Water and Science Administration and Land and Materials Administration issue discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under the National Pollutant Discharge Elimination System. Groundwater discharges are regulated through State-issued groundwater discharge permits. "Discharge permit" is defined in statute as a permit issued by MDE for the discharge of any pollutant or combination of pollutants into the waters of the State. Statute specifies that the issuance of a discharge permit is contingent on the authorization from the permittee to MDE to allow the right of entry to the permit site at any reasonable time to inspect and investigate any violation or potential violation of a permit condition.

Local Fiscal Effect: Local governments are eligible to receive funding from BRF. The bill's changes that affect eligibility for funding for certain privately owned wastewater facilities likely affect the overall amount of grant funding provided to such entities. To the extent any funds are redirected to local facilities as a result, local government grant revenues and expenditures increase.

Small Business Effect: According to MDE, there are likely some privately owned wastewater facilities that are potentially affected by the bill's changes regarding eligibility for BRF funding. To the extent that any small businesses own or operate wastewater facilities that become ineligible for funding or must provide additional documentation under the bill to receive such funding, grant revenues and expenditures may decrease, and application costs may increase.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 714 (Delegate Stein) - Environment and Transportation.

Information Source(s): Frederick and St. Mary's counties; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Planning; U.S. Environmental Protection Agency; Department of Legislative Services

Fiscal Note History:
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Analysis by: Kathleen P. Kennedy

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