

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 245

(Chair, Environment and Transportation Committee)(By
 Request - Departmental - Environment)

Environment and Transportation

Education, Energy, and the Environment

Department of the Environment - Fees, Penalties, Funding, and Regulation

This departmental bill increases several fees and penalties that support various programs and special funds within the Maryland Department of the Environment (MDE). The bill also, among other things, (1) authorizes MDE to establish new fees for specified programs; (2) alters and enhances the State’s regulatory framework governing dams and establishes a related special fund; and (3) makes various administrative, clarifying, and technical changes. **The bill generally takes effect July 1, 2024, but provisions affecting the Maryland Clean Air Fund take effect June 1, 2024.**

Fiscal Summary

State Effect: Special fund revenues from fees may increase minimally in FY 2024 and increase by an estimated \$12.2 million in FY 2025. General fund expenditures decrease by \$3.5 million in FY 2025; the FY 2025 budget as introduced reduces MDE’s general fund appropriation for various programs contingent on the bill. Special fund expenditures increase by at least \$3.7 million in FY 2025; the FY 2025 budget as introduced includes \$3.7 million in special funds for MDE contingent on the bill. Future years reflect ongoing fee revenues, general fund savings, costs, and inflation. Other effects are discussed below.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$12.2	\$13.2	\$13.3	\$13.4	\$13.5
GF Expenditure	(\$3.5)	(\$3.5)	(\$3.6)	(\$3.7)	(\$3.7)
SF Expenditure	\$3.7	\$4.0	\$4.1	\$4.4	\$4.5
Net Effect	\$11.9	\$12.7	\$12.8	\$12.7	\$12.8

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

Local Effect: Any increase in costs for local governments to pay new or increased fees cannot be reliably estimated at this time but are not anticipated to be significant, as discussed below. Local revenues are not materially affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary/Current Law: Broadly, the bill makes various changes to MDE's regulatory authority, the special funds it uses to carry out its statutory duties, and the fees that generate revenue for those special funds. Changes to the Maryland Clean Air Fund take effect June 1, 2024; the bill's other changes take effect July 1, 2024. Generally, the bill:

- effective June 1, 2024, makes the following changes to the Maryland Clean Air Fund: (1) expands the purpose of the fund; (2) repeals the requirement that when the fund balance is at least \$2.0 million, any additional money received by MDE for the fund must be deposited into the general fund; and (3) increases the cap on the emissions-based air quality operating permit fees set by MDE;
- alters and enhances the regulatory framework governing the construction, reconstruction, repair, removal, modification, and operation of dams by, among other things, (1) requiring dam owners to annually register with MDE; (2) establishing a new special fund and related fees; and (3) expanding MDE's authority to take emergency action if a dam is in imminent danger of failing;
- authorizes MDE to charge specified fees related to on-site sewage disposal system (septic system) permits and individual well construction permits under specified circumstances;
- authorizes MDE to establish a fee for processing and issuing the training certification required for specified personnel involved in on-site clearing and grading operations or sediment control associated with a construction project (which is paid into the Maryland Clean Water Fund);
- increases the per-barrel oil transfer fee that supports the Maryland Oil Disaster Containment, Clean-up and Contingency Fund (Oil Fund) for fiscal 2025 through 2029;
- increases existing fees under the Wetlands and Waterways Program by approximately 30%, establishes new additional application fees for activities proposed in a Tier II High Quality Watershed, and explicitly authorizes MDE to adjust the fees for inflation without legislative enactment, as specified;
- increases registration fees for rental dwelling units paid by owners of affected property under the Reduction of Lead Risk in Housing Subtitle (that support the Lead Poisoning Prevention Fund);

- increases the application fee that must be paid to participate in the Voluntary Cleanup Program, which supports the Voluntary Cleanup Fund;
- requires MDE to include additional information in the factors used to calculate the annual fees that must be paid by a generator of coal combustion by-products (CCBs) (which accrue to the State Coal Combustion By-Products Management Fund) and, consequently, requires additional entities to pay the fee; and
- increases specified surface mining license and permit fees that accrue to the Surface Mined Land Reclamation Fund.

A more detailed discussion of each of these changes, as well as relevant current law, is discussed below.

Maryland Clean Air Fund

Under current law, the Maryland Clean Air Fund must be used to conduct activities related to identifying, monitoring, and regulating air pollution in the State and to provide grants to local governments to supplement funding for programs that are consistent with ambient air quality control. When the fund equals or exceeds a maximum limit of \$2.0 million, additional money received for the fund by MDE must be deposited into the general fund.

Under the bill, effective June 1, 2024:

- the purpose of the fund is expanded to include reducing air pollution in the State;
- additional money received for the fund when the fund balance equals or exceeds \$2.0 million is no longer required to be deposited into the general fund;
- the maximum amount of the emissions-based fee that MDE may establish for air quality permits to operate is increased from \$50 per ton of regulated emissions to \$200 per ton of regulated emissions; and
- a clarifying change is made regarding MDE's ability to adjust the emissions-based fee to reflect changes in the Consumer Price Index, regardless of federal authorization.

Water Appropriation and Use (Including the Regulation of Dams)

Title 5, Subtitle 5 of the Environment Article governs the appropriation or use of waters, reservoirs, and dams in the State. In order to conserve, protect, and use water resources in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as is feasible, the appropriation or use of surface waters and groundwaters of the State. Generally, a permit must be obtained from MDE to appropriate or use, or to construct any structure that may appropriate or use any waters of the State. Permits must also be obtained from MDE to construct, reconstruct, or repair any reservoir, dam, or

waterway obstruction; and to construct, reconstruct, change, or make an addition to any conduit, pipeline, wire cable, trestle, or other device, structure, or apparatus in, under, through, or over the bed or waters of the Potomac River, as specified.

Under current law, in addition to being subject to an injunctive action, a person who violates any provision of Title 5, Subtitle 5 of the Environment Article relating to water appropriation and use or any rule, regulation, order, or permit adopted or issued under any such provision is liable for a civil penalty up to \$5,000 per violation. Each day is a separate violation. MDE is also authorized to seek injunctive relief. Additionally, a person who violates any provision of Title 5, Subtitle 5 of the Environment Article or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under the subtitle is guilty of a misdemeanor and subject to fines, imprisonment, and enjoinder, as specified under § 9-343 of the Environment Article.

Included in Title 5, Subtitle 5, 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 that failure. To that end, 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. Under specified circumstances, MDE may take emergency actions necessary to protect life, property, or the environment.

The bill alters and enhances the regulatory framework related to the construction, reconstruction, repair, removal, modification, and operation of dams in the State; however, the bill may not be construed to expand the definition or scope of what is considered a dam under State law and regulation. Specifically, the bill:

- establishes a Private Dam Repair Fund to provide financial assistance for the repair, upgrade, or removal of private dams, as discussed in more detail below;
- requires dam owners (as defined by the bill) to annually register their dams with MDE and pay a registration fee, as discussed in more detail below;
- requires MDE to establish (1) a dam safety permit for the construction, reconstruction, repair, removal, or modification of a dam and (2) a related permit fee, as discussed in more detail below;
- makes a series of technical and clarifying changes by, among other things, replacing references to "water infrastructure assets" to "dams" and defining what is considered an "unsafe condition";
- authorizes MDE to take emergency actions necessary to protect life, property, or the environment if a dam is in imminent danger of failing;

- expands the scope of an existing civil penalty applicable to violations of the water appropriation and use provisions of Title 5, Subtitle 5 (which are paid to the Maryland Clean Water Fund) to apply to any violation of Title 5, Subtitle 5 and increases the maximum civil penalty from \$5,000 to \$10,000 per violation;
- applies specified existing criminal penalties applicable to violations of Title 5, Subtitle 5 to the bill's provisions governing dam regulation; and
- specifies that funds collected from any such penalties relating to an unsafe condition, as defined under the bill, must be paid into the Private Dam Repair Fund.

Private Dam Repair Fund: The Private Dam Repair Fund is a special, nonlapsing fund administered by the Maryland Water Infrastructure Financing Administration within MDE. Expenditures from the fund may be made only in accordance with the State budget. The fund consists of dam safety permit fees, dam owner registration fees, loan repayments, specified penalties, funds appropriated in the State budget to the fund, interest earnings, and any other money from any other source accepted for the benefit of the fund.

The fund may be used only for (1) providing direct financial assistance to private dam owners for MDE-directed upgrades, repairs, or removals; (2) making loans in accordance with the bill; (3) funding emergency repairs and removals of private dams performed by MDE; and (4) reimbursing the administrative cost to MDE of processing and issuing dam safety permits and performing its other duties related to dam regulation.

Beginning July 1, 2027, MDE may provide loans from the fund to owners of private dams for the purpose of repairing or removing private dams deemed to be in an unsafe condition by MDE. MDE may establish criteria for awarding loans, and the bill establishes various provisions regarding eligibility, applications, loan terms and amounts, and loan repayments, among other things. MDE must adopt regulations to implement the loan program.

The bill also establishes a reporting requirement for MDE related to the fund.

Dam Registration and Related Fees: Except as specified, all dam owners must register their dams annually with MDE. To register, a dam owner must submit a specified application to MDE and pay a registration fee. MDE must establish the registration fee by regulation and base the fee on the dam hazard classification. As noted above, registration fees are paid into the Private Dam Repair Fund.

Dam Safety Permits and Related Fees: By regulation, MDE must establish and collect a fee to be paid prior to the issuance of a dam safety permit. MDE must base the fee on the project cost and the cost to the department for administering the permit. The application for a new dam, or the enlargement, repair, alteration, or removal of an existing dam, must include the estimated project cost. Periodically, MDE must review the fees and, if needed,

adjust the fees to ensure the amount collected covers its costs for administering the permit. As noted above, dam safety permit fees are paid into the Private Dam Repair Fund.

Maryland Clean Water Fund and New Fee Authority

Under current law, the Maryland Clean Water Fund consists of all application fees, permit fees, renewal fees, funds, and civil and administrative penalties collected under specified water pollution control laws. MDE must use the Maryland Clean Water Fund for specified activities and purposes that, broadly speaking, address water quality and wastewater treatment. In determining the use of money from the fund, priority must be given to activities relating to the water quality of the Chesapeake Bay and its tributaries.

The bill authorizes MDE to establish by regulation a fee for processing and issuing septic system permits and individual well construction permits in a county if a licensed environmental health specialist reviews and approves the permits and (1) MDE withdraws the authority delegated to the county to process and issue septic system permits and individual well construction permits or (2) the county health officer or official to which the authority is delegated returns the delegated authority to MDE. The fee may not exceed \$575; however, MDE may annually increase the fees for inflation, as specified. In adjusting the fees for inflation, MDE may not annually increase the fees by more than 3%. Fees collected by MDE under these provisions must be deposited into the Maryland Clean Water Fund.

The bill also authorizes MDE to establish by regulation a fee for processing and issuing the training certification required for specified personnel involved in on-site clearing and grading operations or sediment control associated with a construction project. The certification fee must be set at a rate that produces funds approximate to the cost of processing and issuing the certification.

The Oil Fund and the Oil Transfer Fee

The Oil Fund was established in 1986 to provide funding to MDE's oil pollution prevention programs, such as permitting, enforcement, and oil spill response. A fee was imposed on each barrel of oil transferred into the State. The fee has been increased and extended multiple times since its establishment. Under current law, beginning July 1, 2024, the fee is 5.0 cents per barrel.

Pursuant to current law, costs incurred by the State from the Oil Fund are required to be reimbursed by responsible parties; reimbursements are also deposited into the fund. When the fund balance exceeds \$5.0 million, monthly oil transfer fees are suspended until the balance is \$4.0 million, or until there is evidence that the balance could be significantly reduced by recent discharges.

The bill (1) expressly requires the licensee that owns the oil when the oil is first transferred into the State to pay the per-barrel fee and (2) increases the per-barrel fee from 5.0 cents per barrel to 9.0 cents per barrel from July 1, 2024, to June 30, 2029. (Under the bill, beginning July 1, 2029, the fee returns to 5.0 cents per barrel.) The bill also repeals the eligibility requirement that an applicant for a license has implemented or is in the process of implementing specified pollution control plans.

Wetlands and Waterways Program and Fund

Wetlands in the State are protected, and the Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland's tidal wetlands and nontidal wetlands and waterways. Under current law, generally, a person must obtain a permit or license before working in wetlands in the State. Regulations define the criteria for evaluating tidal wetlands licenses and permits, as well as the property information that permit and license applicants must provide as part of the application process. The Board of Public Works (BPW) has the authority to determine whether to issue a license to dredge, fill, or alter State wetlands; MDE must assist BPW in making such a determination and, in some cases, BPW delegates the authority to issue such a license to MDE. Authorizations granted to work in privately owned wetlands are issued by MDE.

Under current law, application fees for wetlands and waterways authorizations range from \$250 to \$7,500 (multiplied by the impact area in acres). However, there are several fee exemptions, including with respect to applications for (1) stream restoration, vegetative shoreline stabilization, wetland creation, or another project in which the primary effect is to enhance the State's wetland or water resources; (2) performance of agricultural best management practices contained in an approved soil conservation and water quality plan; and (3) performance of forestry best management practices contained in an approved erosion and sediment control plan, as specified. Application fees are paid into the Wetlands and Waterways Program Fund.

The bill increases the existing permit fees that accrue to the Wetlands and Waterways Program Fund and establishes new additional application fees that accrue to the fund for activities proposed in a Tier II High Quality Watershed (as defined by the bill), as shown in **Exhibit 1**. The bill also authorizes the fees to be modified without legislative enactment and requires MDE to issue a public notice of any adjusted fees at least 90 days before the new fee rates take effect. Both under current law and under the bill, MDE is authorized to adjust the fees for inflation, as specified.

Exhibit 1
Wetlands and Waterways Program Fees under Current Law and the Bill

	<u>Current Law</u>	<u>The Bill</u>
<u>Existing Wetlands Permit Fees</u>		
Minor Projects		
Application/permit	\$750	\$980
Modification	250	330
Major Projects		
Less than one-fourth acre impact	\$1,500	\$1,950
At least one-fourth acre but less than one-half acre impact	3,000	3,890
At least one-half acre but less than three-fourths acre impact	4,500	5,830
At least three-fourths acre but less than one acre impact	6,000	7,780
One acre or more impact*	7,500	9,720
Modification	1,500	1,950
<u>Existing Specific Project Fees</u>		
Specified lifts/hoists	\$300	\$385
Installation of up to six mooring pilings	300	390
In-kind structure repair/replacement	300	390
Platform installation up to 200 square feet	300	390
Nonhabitable structure construction	300	390
Specified bulkhead replacement	500	650
In-kind <i>existing</i> structure repair/replacement	500	650
Specified shoreline stabilization projects	250	290
<u>New Additional Tier II High Quality Watershed Fees</u>		
Minor projects or modifications	n/a	\$400
Major projects or modifications	n/a	1,600

* For major projects with a one acre or more impact, the listed fee must be multiplied by the impact area in acres.

Source: Department of Legislative Services

The bill also clarifies the uses of the Wetlands and Waterways Program Fund to include activities related to the management, conservation, protection, and preservation of the State's Tier II High Quality Waters and Tier II High Quality Watersheds.

Lead Poisoning Prevention Fund and Related Registration Fees

The Lead Poisoning Prevention Fund must be used to cover the costs of fulfilling the duties and responsibilities of MDE and the Lead Poisoning Prevention Commission related to the prevention of lead poisoning. The fund consists of all fees and penalties imposed under the Reduction of Lead Risk in Housing Subtitle, including annual registration fees for each rental unit dwelling in the State paid by owners of “affected property” and monies received by grant, donation, appropriation, or from any other source. For each fiscal year, MDE must use at least \$750,000 from the fund for community outreach, education programs, and enforcement efforts, as specified.

The bill alters and increases the registration fee paid by owners of affected property for each rental dwelling unit. Instead of an *annual* fee of \$30 per unit, the bill increases the fee to \$120 per unit to be collected by MDE *once every two years*. The bill also increases the processing fee that must be paid by an owner who submits a certification to MDE that the rental dwelling unit is lead free; the processing fee is increased from \$10 to \$50.

The bill also authorizes MDE to establish a protocol to stagger the registrations of affected property under the Reduction of Lead Risk in Housing Subtitle to equally divide registrations over sequential calendar years.

Voluntary Cleanup Program and Fund

Under current law, the Voluntary Cleanup Program provides State oversight for the voluntary cleanup of properties contaminated by hazardous substances. To participate in the program, an applicant must submit a specified application and pay the applicable application fee. Fees accrue to the Voluntary Cleanup Fund. MDE may use the application fees from the fund for activities related to the review of proposed voluntary cleanup projects and the direct administrative oversight of voluntary cleanup projects, including cost recovery and program development. Any other money in the fund may be used for any activities related to the Voluntary Cleanup Program.

Under the bill, the initial application fee that an applicant must pay to participate in the Voluntary Cleanup Program is increased from \$6,000 to \$10,000. Additionally, the bill requires an applicant to pay for any additional costs incurred by MDE if the direct costs of review of the application and administration and oversight of the response action plan exceed the application fee.

State Coal Combustion By-Products Management Fund

Chapter 480 of 2009 established a Coal Combustion By-Products Management Fund comprising of fees collected by MDE on each ton of CCBs generated. The fee is adjusted

annually to ensure that fee revenues approximate the cost of regulatory activities. However, the fee may not be imposed on CCBs that are (1) beneficially used, as determined by MDE or (2) used for mine reclamation in accordance with MDE regulations or regulations of the receiving state. The money generated from the fee must be used to administer and implement programs to control the disposal, use, beneficial use, recycling, processing, handling, storage, transport, or other requirements related to coal combustion by-product management.

The bill establishes additional factors MDE must use when calculating the annual fees that must be paid by a generator of CCBs (which accrue to the State Coal Combustion By-Products Management Fund). Specifically, in addition to the existing factors, MDE must base the fees on the volume of CCBs that have been disposed of and remain in landfills or other storage units in the State that are subject to inspection and monitoring, not including CCBs that have been (1) added to cement products; (2) used in coal mine reclamation; or (3) beneficially reused in a manner acceptable to MDE.

Surface Mining and the Surface Mined Land Reclamation Fund

Under current law, a person may not engage in surface mining within the State without first obtaining a surface mining license. The license application fee is \$300, and the annual renewal fee is \$150. Additionally, a licensee may not engage in surface mining within the State except on affected land that is covered by a valid surface mining permit. A permittee may apply at any time for modification of the permit; the permit modification fee is \$100. In addition, a fee of \$12 for each additional acre of affected land over and above the amount of land covered in the original permit, for each year of operation, must be charged. This additional fee may not exceed \$1,000 per year. Generally, the fee to renew a permit is \$12 per acre of affected land for each year of operation, not exceeding \$1,000 per year.

Under current law, all funds received by MDE from license fees, permit fees, special reclamation fees, the forfeiture of bonds and of cash deposits and securities, as well as specified fines, are deposited into the Surface Mined Land Reclamation Fund. The fund may be used by MDE to administer and enforce the laws governing surface mining in the State, including, under specified circumstances, for the reclamation of pre-law surface mines.

Among other changes, the bill increases specified surface mining license and permit fees that accrue to the Surface Mined Land Reclamation Fund, as shown in **Exhibit 2**. With respect to the annual permit renewal fee, the bill establishes a new flat fee of \$120 for permits that affect five acres or less; the bill retains (and increases) a per-acre fee for permit renewals that affect more than five acres. For both permit renewals and modifications, with respect to the per-acre fees charged, the bill repeals the \$1,000 maximum fee and instead establishes the following maximum fees: (1) \$10,000 in fiscal 2025; (2) \$10,500 in

fiscal 2026; (3) \$11,000 in fiscal 2027; (4) \$11,500 in fiscal 2028; and (5) \$12,000 in fiscal 2029 and each fiscal year thereafter.

Exhibit 2
Surface Mining License and Permit Fees under Current Law and the Bill

	<u>Current Law</u>	<u>The Bill</u>
License Fees		
Application	\$300	\$500
Renewal	150	300
Permit Modification Fees		
Base	\$100	\$200
Per acre of affected land	12	75*
Annual Permit Renewal Fees		
Five acres or less	\$12 (per acre)	\$120
More than five acres – Per acre of affected land	12	75*

* Subject to specified limits, as described above.

Source: Department of Legislative Services

Background: MDE advises that several of the fees affected by the bill have not been increased since the 1990s or early 2000s, and that fee increases are needed to provide additional funding for many of its programs where, in recent years, fees have not generated sufficient revenue to offset program costs. This has resulted in an increasing reliance on general funds. In fact, the fiscal 2025 budget as introduced includes language that reduces MDE’s general fund appropriation by a total of \$3.5 million across four programs contingent on the enactment of legislation that increases various specified fees, which this bill effectuates.

Regarding the bill’s regulatory framework governing dams, MDE advises that the State has approximately 557 active dams and, of this total, 107 are classified as high hazard, and 135 are classified as significant hazard to downstream communities, infrastructure, and the environment. Moreover, the aging dam infrastructure is likely to result in more dams being characterized as “unsafe” due to poor conditions or inadequate capacity since most of these active dams are more than 50 years old. MDE advises that the bill is intended to provide MDE with the information, authority, and funding to require and assist with repairs as needed.

State Fiscal Effect:

Overview of the Bill's Effect on State Revenues and Expenditures

An overview of the bill's effect on State finances is provided here. More detailed information on the various programs and special funds affected is provided below.

Special Fund Revenues: Overall, MDE's special fund revenues from fees increase by approximately \$12.2 million in fiscal 2025, increasing to \$13.5 million by fiscal 2029, as shown in **Exhibit 3**. Special fund revenues may increase minimally in fiscal 2024 due to the increase in specified fees that take effect June 1, 2024, and may increase further beginning in fiscal 2025 due to any increase in civil penalties collected under the bill.

Exhibit 3 **Estimated Special Fund Revenue Increases under the Bill** **FY 2025-2029** **(\$ in Millions)**

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
Maryland Clean Air Fund	\$2.3	\$2.3	\$2.4	\$2.4	\$2.5
Private Dam Repair Fund	0.6	0.6	0.6	0.6	0.6
Maryland Clean Water Fund	0.4	0.4	0.4	0.4	0.4
Oil Fund	2.7	3.6	3.6	3.6	3.6
Wetlands and Waterways Program Fund	0.5	0.5	0.5	0.6	0.6
Lead Poisoning Prevention Fund	3.1	3.1	3.1	3.1	3.1
Voluntary Cleanup Fund	0.3	0.3	0.3	0.3	0.3
State CCBs Management Fund	1.0	1.0	1.1	1.1	1.1
Surface Mined Land Reclamation Fund	1.2	1.3	1.3	1.3	1.3
Total	\$12.2	\$13.2	\$13.3	\$13.4	\$13.5

CCBs: coal combustion by-products

Note: Totals may not sum due to rounding.

Source: Maryland Department of the Environment; Department of Legislative Services

General Fund Expenditures: Because the fiscal 2025 budget as introduced includes language that reduces MDE's general fund appropriation contingent on the enactment of legislation that increases various specified fees, which this bill effectuates, general fund expenditures decrease by approximately \$3.5 million in fiscal 2025, as shown in **Exhibit 4**. Future year estimates of the reduction in general fund expenditures assume that, in the

absence of the bill, general fund appropriations provided to these programs would have increased by 2% annually.

Exhibit 4
Estimated General Fund Expenditure Reductions
FY 2025-2029

<u>Program</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
Air Quality	\$2,250,000	\$2,295,000	\$2,340,900	\$2,387,718	\$2,435,472
Wetlands and Waterways	330,000	336,600	343,332	350,199	357,203
Voluntary Cleanup	275,000	280,500	286,110	291,832	297,669
Surface Mining	600,000	612,000	624,240	636,725	649,459
Total GF Exp. Reductions	\$3,455,000	\$3,524,100	\$3,594,582	\$3,666,474	\$3,739,803

GF: general fund

Source: Department of Legislative Services

It is worth noting that, in addition to the general fund expenditure reductions effectuated by the bill due to the contingency language in the fiscal 2025 budget as introduced, it is possible – or even likely – that, in the absence of the bill, some of the other programs affected by the bill could need additional general fund support in the out-years to sustain program activity. Accordingly, general fund savings could be higher in the out-years to the extent the bill’s changes avoid future general fund deficiency appropriations or any increase in general fund support that would otherwise be needed. Any such impact has not been accounted for in this analysis.

Special Fund Expenditures: Overall, MDE’s special fund expenditures increase by at least \$3.7 million in fiscal 2025, increasing to at least \$4.5 million by fiscal 2029, as special fund expenditures replace general fund expenditures and as additional staff are hired to handle MDE’s new regulatory duties related to dams (discussed in more detail below). The fiscal 2025 budget as introduced includes a total of \$3.7 million in special funds for MDE contingent on the enactment of legislation that increases various specified fees, which this bill effectuates.

Although not required by the bill, additional special fund expenditures may occur due to the increase in available special funds. The extent to which MDE spends any additional special funds in any given year – beyond what has been quantified in this analysis – is unknown. In at least some cases, MDE plans to build up a fund balance for a few years

before spending the additional fee revenue. Accordingly, this analysis does not reflect any additional spending beyond what has been quantified above.

Also, given that the bill shifts spending from general funds to special funds for certain programs, several MDE positions may convert from general-funded positions to special-funded positions.

Air Quality Program and the Maryland Clean Air Fund

MDE advises that the maximum emissions-based fee as set in statute (\$50 per ton of regulated emissions) was originally set in the mid-2000s and has since been repeatedly adjusted for inflation, as provided by current law. The current fee is \$69.79 per ton. By increasing the maximum fee to \$200 per ton, special fund revenues to the Maryland Clean Air Fund increase by approximately \$2.3 million in fiscal 2025, increasing to \$2.5 million by fiscal 2029. This estimate assumes that the fee:

- applies to 17,300 tons of emissions annually, equally distributed throughout the year; and
- is adjusted for inflation annually each January 1, beginning January 1, 2025, (halfway through fiscal 2025).

Additionally, due to the bill's June 1, 2024 effective date, special fund revenues may increase minimally in fiscal 2024.

Although the bill repeals the requirement that when the fund balance is at least \$2.0 million, any additional funds received by MDE must be deposited into the general fund, this provision has no effect on general fund revenues. In the absence of the bill, the fund balance is not anticipated to meet this threshold. In fact, the Comptroller's Office advises that since the reversion requirement was enacted, no reversion has ever been required.

Because the fiscal 2025 budget as introduced includes language that reduces MDE's general fund appropriation by \$2.25 million contingent on the enactment of legislation to increase clean air emission fees, general fund expenditures for the program decrease by \$2.25 million in fiscal 2025. Future year general fund savings assume that the general fund appropriation would have increased by 2% annually in the absence of the bill. Special fund expenditures increase correspondingly as the new fee revenues supplant general funds; the fiscal 2025 budget as introduced includes \$2.25 million in special funds contingent on the enactment of legislation to increase clean air emission fees.

Dam Regulation and the Private Dam Repair Fund

Fee and Penalty Revenues: MDE advises that it plans to set the dam safety permit fees and dam owner registration fees such that special fund revenues to the Private Dam Repair Fund increase by approximately \$618,000 annually beginning in fiscal 2025.

Special fund revenues may increase further to the extent that any civil penalties are assessed for specified violations in any given fiscal year; however, any such impact cannot be predicted. The application of existing criminal penalties to these provisions is not anticipated to materially affect State finances.

Administrative Costs: MDE requires additional staff to administer the enhanced regulatory framework and to provide loans from the Private Dam Repair Fund. Specifically, MDE needs to hire (1) five dam engineers on January 1, 2025 (fiscal 2025), and (2) one underwriter and one senior funding coordinator on July 1, 2027 (fiscal 2028), which is when MDE plans to begin issuing loans from the Private Dam Repair Fund.

The fiscal 2025 budget as introduced includes a special fund appropriation to MDE of \$260,362, contingent on the enactment of legislation to establish a private dam repair fund; the budgeted amount reflects the five engineers needed by MDE. Therefore, special fund expenditures increase by \$260,362 in fiscal 2025. The estimate reflects the cost to hire the five engineers needed by MDE and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Future year expenditures also reflect the additional staff anticipated to be hired in fiscal 2028. By fiscal 2029, administrative costs are estimated to total \$753,502.

Loan Issuance and Repayment: Special fund expenditures increase further beginning in fiscal 2028 as MDE begins to issue loans from the Private Dam Repair Fund; special fund revenues increase in future years (likely beyond the scope of this analysis) as loans are repaid. However, any fiscal impact related to the issuance and repayment of loans has not been included in this analysis; the number and amount of any loans that will ultimately be issued cannot be reliably estimated without actual experience under the bill.

Other Spending from the Fund: In addition to providing direct financial assistance/loans to private dam owners, the fund may also be used for funding emergency repairs and removals of private dams performed by MDE. The extent to which MDE performs such activities in any given year cannot be predicted. Accordingly, any special fund expenditures for these activities have not been included in this analysis.

Maryland Clean Water Fund

Authority to Establish Specified Permit and Certification Fees: The bill authorizes MDE to establish by regulation a fee for processing and issuing (1) septic system permits and individual well construction permits under specified circumstances and (2) training certifications required for specified personnel involved in on-site clearing and grading operations or sediment control associated with a construction project. Pursuant to the bill, such fees are paid into the Maryland Clean Water Fund.

MDE advises that the authority to establish a fee for processing and issuing septic system permits and individual well construction permits is enabling in nature and is not anticipated to affect special fund revenues at this time. MDE currently delegates the existing statutory permitting authority to local government entities who generally manage the process and collect permit fees. However, MDE advises that should it be required to assume these regulatory duties directly in the event of an emergency, it does not have the authority to charge a fee to cover its costs.

With respect to the authority to establish a training certification fee, MDE advises that currently, the course required for personnel involved in on-site clearing and grading operations is available free of charge; however, to be consistent with other certifications it provides, MDE plans to establish a fee of \$75 for such certifications. MDE anticipates providing approximately 5,000 certifications annually; accordingly, special fund revenues to the Maryland Clean Water Fund increase by approximately \$375,000 annually beginning in fiscal 2025.

Water Appropriation and Use Penalties: As discussed earlier, the bill doubles the maximum civil penalty for a violation of the water appropriation and use provisions of Title 5, Subtitle 5 of the Environment Article (from \$5,000 to \$10,000) and expands it to apply to any provision under Title 5, Subtitle 5. Other than specified violations of provisions governing dams (as provided by the bill), such penalties are deposited into the Maryland Clean Water Fund. Thus, special fund revenues to the Maryland Clean Water Fund may increase minimally beginning in fiscal 2025 due to these changes.

The Oil Fund

MDE advises that approximately 90 million barrels of oil are transferred in the State each year. Additionally, MDE advises that the oil transfer fee is paid to MDE at a delay of one quarter, meaning that even though the 4.0-cent fee increase on each barrel of oil transferred in the State takes effect July 1, 2024, MDE does not realize these increased revenues until October 1, 2024. Thus, special fund revenues for the Oil Fund increase by an estimated \$2.7 million in fiscal 2025 and by \$3.6 million annually from fiscal 2026 through 2029 due to the increase in the fee from 5.0 cents per barrel to 9.0 cents per barrel.

Special fund revenues increase by \$900,000 in fiscal 2030 as well due to the delay in the collection of the fee revenues.

Wetlands and Waterways Program Fund

Under current law, MDE advises that the wetlands and waterways fees altered by the bill generate approximately \$1.5 million annually for the Wetlands and Waterways Program Fund. Based on information provided by MDE, the bill's changes to existing fees and the establishment of new additional application fees that accrue to the fund for activities proposed in a Tier II High Quality Watershed are anticipated to result in an increase in special fund revenues of \$524,932 in fiscal 2025, increasing to \$573,340 by fiscal 2029 due to increases in the fees for inflation, as authorized by the bill.

Because the fiscal 2025 budget as introduced includes language that reduces MDE's general fund appropriation by \$330,000 contingent on the enactment of legislation to increase the wetlands and waterways fee, general fund expenditures for the program decrease by \$330,000 in fiscal 2025. Future year general fund savings assume that the general fund appropriation for the program would have increased by 2% annually in the absence of the bill. Special fund expenditures increase correspondingly as the new fee revenues supplant general funds; the fiscal 2025 budget as introduced includes \$330,000 in special funds contingent on the enactment of legislation to increase the wetlands and waterways fee.

Lead Poisoning Prevention Fund

Instead of an *annual* registration fee of \$30 paid by the owner of affected property for each rental dwelling unit in the State, under the bill, the fee is increased to \$120, but MDE collects the fee *once every two years*. On average, under current law, MDE collects approximately \$3.1 million annually from the registration fee. By increasing the fee from \$30 to \$120 but changing the registration from an annual registration to a biennial registration, the bill's changes effectively double MDE's fee revenues from this source. Thus, special fund revenues to the Lead Poisoning Prevention Fund increase by an estimated \$3.1 million annually beginning in fiscal 2025. This estimate assumes that MDE establishes a protocol to stagger the registrations of affected property to equally divide registrations over sequential calendar years, as authorized by the bill. The timing of actual fee revenues could vary depending on how the bill's changes are implemented.

Voluntary Cleanup Program and Fund

The bill increases the initial application fee that an applicant must pay to participate in the Voluntary Cleanup Program (which accrues to the Voluntary Cleanup Fund) from \$6,000 to \$10,000. MDE advises that historically, it only received between 40 and

50 applications for the program each year but that in recent years it has received about 60 or more applications each year. In fact, MDE advises that it received more than 70 applications for the program in fiscal 2022.

MDE anticipates a similar number of applications in future years and, therefore, for purposes of this analysis, it is assumed that MDE receives 69 applications for the program annually. Thus, special fund revenues to the Voluntary Cleanup Fund increase by \$276,000 (\$4,000 per application) annually beginning in fiscal 2025. Additional special fund revenues could be realized to the extent MDE's costs exceed \$10,000 with respect to any given application and associated oversight of the response action, as the bill authorizes MDE to recover such costs.

Because the fiscal 2025 budget as introduced includes language that reduces MDE's general fund appropriation by \$275,000 contingent on the enactment of legislation to increase the Voluntary Cleanup Program fee, general fund expenditures for the program decrease by \$275,000 in fiscal 2025. Future year general fund savings assume that the general fund appropriation would have increased by 2% annually in the absence of the bill. Special fund expenditures increase correspondingly as the new fee revenues supplant general funds; the fiscal 2025 budget as introduced includes \$275,000 in special funds contingent on the enactment of legislation to increase the Voluntary Cleanup Program fee.

State Coal Combustion By-Products Management Fund

MDE advises that special fund expenditures from the State Coal Combustion By-Products Management Fund have been relatively consistent and that, under current law, its fees are set to fully cover those costs. However, the current fee, based exclusively on CCBs produced, has been applicable to fewer generators over the years, as CCBs produced in the State have decreased. MDE advises that with the last coal-fired power plant being slated to close later this year, there will be no generators that meet the threshold to pay the fee, resulting in a deficit for the program of approximately \$1.0 million annually.

The bill's changes allow MDE to apply the fee to *former* generators; however, consistent with current law, MDE plans to set the fee at a level to cover its costs. Thus, based on information provided by MDE, special fund revenues for the State Coal Combustion By-Products Management Fund increase by \$1.0 million in fiscal 2025, increasing to \$1.1 million by fiscal 2029, accounting for inflation.

Surface Mining and the Surface Mined Land Reclamation Fund

The bill increases specified license and permit fees that accrue to the Surface Mined Land Reclamation Fund. Under current law, revenues from the fees are relatively minimal, with both license and permit fee revenues generating less than \$200,000 annually.

Based on information provided by MDE, the bill's changes to the license fees are anticipated to increase special fund revenues by only \$33,000 annually beginning in fiscal 2025; however, the bill's changes to the permit fees are anticipated to increase special fund revenues by approximately \$1.21 million in fiscal 2025, increasing to \$1.31 million by fiscal 2029, largely due to the significant increase in the limit on the total fees that may be charged for a permit modification or permit renewal each year. In total, the bill's changes increase special fund revenues to the Surface Mined Land Reclamation Fund by an estimated \$1.24 million in fiscal 2025, increasing to \$1.34 million by fiscal 2029. This estimate assumes that the bill applies to approximately 25,220 acres annually, although MDE advises that the acreage affected may decline once the new fees are in place.

Because the fiscal 2025 budget as introduced includes language that reduces MDE's general fund appropriation by \$600,000 contingent on the enactment of legislation to increase the minerals, oils, and gas mining fee, general fund expenditures for the program decrease by \$600,000 in fiscal 2025. Future year general fund savings assume that the general fund appropriation would have increased by 2% annually in the absence of the bill. Special fund expenditures increase correspondingly as the new fee revenues supplant general funds; the fiscal 2025 budget as introduced includes \$600,000 in special funds contingent on the enactment of legislation to increase the minerals, oils, and gas mining fee.

Payment of Fees by State Agencies

State expenditures (all/multiple funds) increase to the extent that any State agencies are required to pay any of the fees established or increased by the bill. A reliable estimate of any such increase in expenditures cannot be made, as the number of affected agencies and the amount of any fees paid under the bill are unknown. For example:

- the Department of Natural Resources (DNR) advises that it owns some dams that are likely required to pay the registration fee established by the bill; however, DNR was unable to provide information on the number of dams it owns; and
- some State agencies could be subject to the increased emissions-based air quality fee.

Local Fiscal Effect: Local expenditures increase to the extent that local governments are required to pay any of the fees established or increased by the bill. Although a reliable estimate of the increase in local expenditures cannot be made at this time, any such impact is not anticipated to be significant. Most notably:

- MDE advises that some locally owned landfills, wastewater treatment plants, and correctional facilities pay the emissions-based fees that are increased by the bill, but

their emissions generally fall within the range of 5 to 40 tons per year, resulting in a range of added expenses of only \$650 to \$5,200 annually;

- some local governments own dams and are required to pay the registration fee established by the bill; however, even though the total number of dams owned by local governments is unknown, given the estimated total annual revenues anticipated by MDE, the impact on any one local government is not anticipated to be significant; and
- local governments that provide on-site construction services must pay the \$75 fee for affected employees to receive the training certification required for specified personnel involved in on-site clearing and grading operations or sediment control associated with a construction project; however, the overall effect on any one local government is anticipated to be minimal.

The bill's penalty provisions are not anticipated to materially affect local finances.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Board of Public Works; Department of Commerce; Department of Budget and Management; Department of Housing and Community Development; Comptroller's Office; Maryland State Treasurer's Office; Maryland Association of Counties; Maryland Municipal League; Harford County; City of College Park; Moody's Analytics; IHS Markit; Department of Legislative Services

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Revised - Clarification - March 21, 2024
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of the Environment - Fees, Penalties, Funding, and Regulation

BILL NUMBER: HB 245

PREPARED BY: Maryland Department of the Environment

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

Air Operational Permit:

- Minimal. Some permitted air sources subject to emissions-based fees are also small businesses, most notably crematories. Their emissions are very small, only around one ton per year. Therefore, they would only pay around \$130 per year under this bill.

On-Site Sewage Disposal:

- Minimal. While this does not have a direct impact on small business, if the Department were to take back the delegation and process well and septic permits for counties where there are deficiencies, it will likely improve permit turnaround times.

Responsible Personnel:

- Minimal. Anyone acting as the responsible personnel for a developer on a construction project that requires an approved erosion and sediment control plan would be impacted. This includes the building industry, local jurisdictions, and private property owners. Small business owners that provide the on site construction services requiring the certification will be required to pay the certification fee.

Wetlands and Waterways:

- Minimal. Small businesses subject to the increased fee (engineering firms, home builders, etc.) already pay an application fee; the increase is intended to bring the existing fees in line with the Consumer Price Index since the time of the last adjustment.
- Additional staff and resources provided by the increased fees will result in faster permitting for small businesses. Some small businesses serving as environmental consulting firms would be affected positively by charging higher rates.

Dams:

- Minimal. Some private dam owners may be small businesses. The bill will require these dam owners to register with the Department annually and pay a dam owner registration fee. The bill will also require small business owners who apply for a dam safety permit to pay a dam safety permit fee. While it is a loan program, the bill will create a source of funding to assist private owners with dam repairs or removal that did not exist before.

Voluntary Cleanup:

- Minimal. If a small business is the owner of an eligible property, the proposed \$4,000 increase in the application fee would be a very small percentage of the cost to assess, remediate, and redevelop a contaminated property.

Lead:

- Increasing the registration renewal fee from \$30 to \$120 per unit biannually would increase the annual costs by \$30 per unit for property owners, which will have a minor financial impact.

Coal Combustion Byproducts:

- None.

Non-Coal Surface Mining:

- Minimal. The impact would be minimal to small operators. Large companies would have an increase in fees that is commensurate with the staff time required to review permit documentation and inspect existing sites. The current fee structure has a cap of \$1,000.00. This benefits any operation with more than 83.5 acres permitted. The largest companies are realizing the benefit.
- The new fee schedule would be equitable across all operations.

Oil Control:

- Minimal. The oil transfer fee is typically paid by major petroleum companies licensed to transfer oil into the State. To the extent that there are small businesses that hold oil transfer licenses, they would be subject to 8 cent per barrel oil transfer fee.