

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 726 (Senator Lewis Young)  
Education, Energy, and the Environment

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Bay Restoration Fund - Authorized Uses - Decommission of Wastewater  
Treatment Lagoon

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This bill authorizes the Bay Restoration Fund (BRF) Wastewater Account, beginning in fiscal 2026 and subject to specified guidelines, to be used for 100% of the cost of (1) decommissioning a wastewater treatment lagoon that is located, in whole or in part, in a specified flood plain and not intended for use with a new wastewater treatment system and (2) the purchase and installation of all pump station and related systems necessary to redirect wastewater out of the floodplain to another wastewater treatment facility. The treatment lagoon must be located, in whole or in part, in a floodplain designated by the Federal Emergency Management Agency as a Special Flood Hazard Area Zone A or V.

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Fiscal Summary

**State Effect:** Overall BRF revenues and expenditures are not affected, but at least \$10.0 million from MDE's Wastewater Account is redirected to an eligible facility in FY 2026, as discussed below.

**Local Effect:** Local grant revenues and expenditures from BRF for the Town of Middletown increase by an estimated \$10.0 million in FY 2026. Local grant revenues and expenditures from BRF for other jurisdictions may decrease as those funds are no longer available for other eligible purposes, although the effect on particular local governments is unknown. Local finances may be further affected to the extent other eligible facilities result in a further redirection of BRF funds.

**Small Business Effect:** Minimal overall, but potential meaningful impact on some small businesses to the extent they are involved in projects that receive funding under the bill or projects that would have received funding from BRF in the absence of the bill.

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## Analysis

### Current Law:

#### *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 (WWTPs) 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. Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030).

Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account. Eligible uses of the Wastewater Account include:

- grants for projects relating to the planning, design, construction, and upgrade of a WWTP to achieve ENR (up to 100% of eligible costs for publicly owned WWTPs, and up to 50% of eligible costs for privately owned WWTPs);
- combined sewer overflow abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations (up to 87.5% of total project costs);
- grants to certain owners of WWTPs that are operating at or above ENR levels to partially offset the cost of operations and maintenance;
- the payment of principal and interest on bonds issued for and deposited into BRF;
- reasonable administrative costs incurred by certain local governments or billing authorities, not to exceed 5% of total restoration fees collected by the local government or billing authority;
- stormwater alternative compliance plans (up to 100% of project costs);
- nitrogen reduction of septic systems in accordance with MDE's regulations regarding septic systems;
- beginning in fiscal 2022, transfers of \$20.0 million annually to the Clean Water Commerce Account to purchase environmental outcomes in support of the State's efforts to achieve the Chesapeake Bay Total Maximum Daily Load; and
- future upgrades of WWTPs to achieve additional nutrient removal or water quality improvement.

The priority for project funding from the Wastewater Account is as follows:

- (1) ENR upgrades at major WWTPs (design capacity of at least 500,000 gallons per day (gpd));
- (2) the most cost-effective ENR upgrades at minor WWTPs (design capacity of less than 500,000 gpd);
- (3) as determined by MDE and based on water quality and public health benefits, for the following:
  - a. beginning in fiscal 2016, combined sewer overflow abatement, rehabilitation of existing sewers and upgrading conveyance systems, including pumping stations;
  - b. nitrogen reduction from septic systems; and
  - c. the most cost-effective and efficient stormwater control measures by local governments who have implemented a system of charges to fully fund a stormwater management program.

**State Fiscal Effect:** MDE advises that the bill applies to the Middletown WWTP, owned and operated by the Town of Middletown in Frederick County, but does not know if the bill applies to any other facilities. Based on engineering estimates from the town, MDE estimates costs of \$10.0 million to provide the additional funding to the town for the Middletown WWTP – funding that will not be available for other lower-priority uses of BRF, including the Clean Water Commerce Act, sewer overflow abatement, stormwater management, and the connection of septic systems to public sewers.

Accordingly, while overall special fund expenditures for BRF are unchanged, funds are reallocated between eligible uses: \$10.0 million in fiscal 2026, and potentially more if other facilities are determined to be eligible for funding in fiscal 2026 or later.

**Local Fiscal Effect:** Local grant revenues and expenditures from BRF for the Town of Middletown increase by \$10.0 million in fiscal 2026 for the decommissioning of the Middletown WWTP’s wastewater lagoon and related costs that are eligible for BRF funding under the bill. Local grant revenues and expenditures from BRF for other local governments may decrease as those funds are no longer available for other eligible purposes, many of which benefit local governments, although the effect on particular local governments is unknown. Local finances may be further affected to the extent other eligible facilities result in a further redirection of BRF funds.

**Additional Comments:** MDE’s Water Infrastructure Financing Administration has issued bonds that are secured by the BRF fees (the “BRF Revenue Bonds”) that are currently outstanding. The bill does not make use of BRF fees to pay the costs of lagoon decommissioning subject to the payment of debt service on its outstanding BRF revenue bonds, which MDE advises could have a negative impact on the credit ratings assigned to the outstanding bonds.

MDE's Land and Materials Administration has guidelines for decommissioning lagoons but does not have guidelines on redirecting wastewater out of a floodplain.

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### **Additional Information**

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

**Designated Cross File:** HB 1478 (Delegate Pippy) - Rules and Executive Nominations.

**Information Source(s):** Maryland Department of the Environment; Caroline, Frederick, Howard, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services.

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