

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1083

(Delegates Schuh and V. Clagett)

Environmental Matters

Environment - On-Site Sewage Disposal Systems - Requirements

This bill requires that, beginning January 1, 2011, the owner of an on-site sewage disposal (OSDS) system that is failing, a threat to public health, or in need of repair or replacement as determined by an inspector certified under the bill, must have the system repaired or replaced with systems utilizing best available technology for nitrogen removal (BAT). In addition, all new systems must utilize BAT. The bill redirects one-third of money within the Septics Account of the Bay Restoration Fund (20% of funds collected from septic system users) to provide for reimbursement for additional inspections established in regulation by the Maryland Department of the Environment (MDE). The bill authorizes a tax credit that may be claimed for costs associated with switching to BAT.

Fiscal Summary

State Effect: General and special fund revenues decrease by about \$2.0 million and \$80,200, respectively in FY 2010 due to the personal and corporate income tax credits established by the bill. By FY 2014, the value of the tax credits escalates to about \$78.4 million and \$1.0 million. General fund expenditures increase by \$75,300 in FY 2010 due to additional administrative costs at the Comptroller's Office to implement the tax credits. Special fund expenditures increase by \$252,200 in FY 2010 for MDE for staff to implement the bill; this is partially offset by fees authorized under the bill. Special fund revenues increase minimally beginning in FY 2011 due to civil penalties. The bill transfers about \$2.4 million from the Septics Account of the Bay Restoration Fund to a separate account within the fund beginning in FY 2010.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	(\$1,969,700)	(\$15,098,100)	(\$32,215,000)	(\$53,318,700)	(\$78,407,600)
SF Revenue	(\$80,200)	(\$534,700)	(\$697,100)	(\$859,500)	(\$1,021,800)
GF Expenditure	\$75,300	\$0	\$0	\$0	\$0
SF Expenditure	\$252,200	\$295,500	\$309,800	\$324,700	\$340,500
Net Effect	(\$2,377,400)	(\$15,928,300)	(\$33,221,900)	(\$54,503,000)	(\$79,769,900)

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

Local Effect: Local government revenues decrease minimally beginning in FY 2010, due to lower highway user revenues associated with the corporate income tax credit. Local government expenditures in counties may increase significantly to implement the bill. Revenues may increase commensurately, assuming the counties establish a fee to be charged to inspectors as authorized under the bill. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful beneficial impact for small businesses engaged in the inspection of OSDS; any benefit may be partially offset by the various fees authorized by the bill to be imposed on OSDS inspectors.

Analysis

Bill Summary: Beginning January 1, 2011, the owner of an OSDS must have it inspected once every 10 years and also before any transfer of title. MDE is required to adopt regulations that establish inspection standards, establish conditions for OSDS repair or replacement, define a “failing” system, and ensure appropriate maintenance of BAT systems. The regulations may not require OSDS replacement unless a new drain field is required or the system is found to be a threat to public health. In addition, the regulations may not define a failing system as one that does not have BAT.

An OSDS inspector is required to certify to MDE the completion of an approved instruction course on proper OSDS inspection, and to make certification documents available to its customers. MDE must adopt regulations setting a cost-recovery fee charged to inspectors for maintaining a list on its web site of all certified inspectors. Inspectors must register with a county before conducting business there.

By January 1, 2011, counties are required to include an OSDS management plan within their sewer and water plans. The plan must set out the inspection schedule established by MDE regulation, but may also include a phase-in approach so that only one-tenth of the county’s systems are scheduled for inspection for each of the first 10 years. Each county must notify all OSDS owners in the county of the inspection requirements under the bill.

Following the inspection of an OSDS system, the inspector must submit a report to the county and the owner stating whether the system is failing, a threat to the public health, or otherwise in need of repair or replacement in accordance with the MDE regulations established under the bill. If the system needs repair or replacement, the county must send notice to the owner. On receipt of this notice the owner has 180 days to initiate the required system repair or replacement. Exempted from this requirement are individuals older than 65 unless the system poses a threat to public health and those who demonstrate

substantial financial hardship and have not received financial assistance from the Bay Restoration Fund.

The bill establishes a tax credit in the amount of 10% of the costs attributable to upgrading to BAT, repairing or replacing a failing system with BAT, or the cost difference of purchasing BAT above a conventional system. The cost used to calculate the amount of the credit must be reduced by the amount of any grant provided to the owner for installing or purchasing a system utilizing BAT. The credit may be claimed for up to 10 consecutive taxable years. In addition, owners may seek reimbursement for the cost of inspections from a separate account established under the bill. This new account consists of 20% of Bay Restoration Fund money collected from OSDS users currently due for the Septics Account.

Penalty revenues collected under the bill are deposited in the Bay Restoration Fund. A civil penalty of \$100 is to be assessed on the first day of each 30-day period in excess of:

- 90 days from the date notice is given, but during which an owner has not initiated an inspection;
- 180 days from the date notice is given, but during which an owner has not completed an inspection;
- 180 days from the date notice is given, but during which an owner has not initiated a required repair or replacement;
- one year from the date notice is given, but during which an owner has not completed a required OSDS repair; or
- two years from the date notice is given, but during which an owner has not completed a required OSDS replacement.

Current Law: Local health departments implement State regulations regarding septic systems through delegation agreements with MDE. The local approving authority performs site evaluations, reviews plans, inspects systems installations, inspects liquid waste haulers, and investigates complaints. MDE provides technical assistance on certain sites, reviews and represents the approving authority on contested cases, and pursues enforcement or compliance on cases unresolved by the approving authority. MDE also approves courses of study that individuals inspecting septic systems during property transfers must attend. In addition, MDE certifies all installers of sand mound septic systems.

State law requires each county to develop a comprehensive county plan for the adequate provision of sewerage systems. Each plan, which is required to cover a 10-year period and to be adopted by the county governing body, should anticipate the wastewater infrastructure needs of the county and identify the geographic extension of this

infrastructure in accordance with the jurisdiction's growth management objectives. The plan must be reviewed and amended as needed every three years and submitted to MDE for approval. No State or local building permit may be issued, or subdivision plat approved, unless the county plan accommodates the needs of the proposed building, and MDE may not issue a permit for a sewerage system in a county that does not have an approved plan.

Chapter 428 of 2004 established the Bay Restoration Fund to reduce nutrient pollution to the Chesapeake Bay by upgrading wastewater treatment systems with enhanced nutrient removal (ENR) technology. The Septics Account within the fund supports grants and loans to septic system owners to upgrade their septic systems and to implement an education and outreach program. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include providing grants or loans for up to 100% of the cost of replacing multiple septic systems in the same community with a new community sewerage system that meets ENR standards and other specified conditions. As of January 31, 2009, the Comptroller had deposited approximately \$29.4 million into MDE's Septics Account.

Background: Based on information provided by MDE, there are approximately 420,000 septic systems and sewage holding tanks in the State. MDE administers three programs (the Water Quality State Revolving Loan Fund, the Supplemental Assistance Grant Program, and the federal Special Appropriation Projects grant) that can, in addition to other uses, provide funding to extend public sewers to areas of need. According to MDE, a recent study in Anne Arundel County estimated that the average cost of extending sewerage to septic system communities totaled \$24,000 per unit.

State Fiscal Effect:

Effect of the Tax Credit on the General Fund and the Transportation Trust Fund (TTF)

The bill does not specify the applicability of the tax credit to a particular tax year; thus, the Department of Legislative Services (DLS) assumes only expenses incurred on or after October 1, 2009, are eligible for the credits. Thus, general fund revenues may decrease by about \$2.0 million in fiscal 2010, by about \$15.1 million in 2011, the first full fiscal year in which the personal income tax credit is claimed, and by \$78.4 million by fiscal 2014. TFF revenues may decrease by \$80,223 in fiscal 2010 and by more than \$1.0 million in fiscal 2014 due to the corporate income tax credit. A portion of this revenue is then shared with local governments as highway user revenues. This estimate is based on the following information and assumptions:

- a tax credit of 10% per year for 10 years is claimed for all eligible expenditures under the bill;

- the four expenditures for which a tax credit is available under the bill are the cost of (1) upgrading to BAT; (2) cost difference between a BAT and conventional system; (3) cost of repairing a failing system while adding BAT; and (4) the cost of replacing a failing system with BAT;
- MDE advises that there were 2,000 new systems in 2008 with an average cost difference between a conventional system and BAT of \$12,000;
- the number of new systems in fiscal 2010 is the same as 2008 but reflects the October 1, 2009 effective date of the bill, and the number increases each year until reaching the long-term average of 7,700 in fiscal 2014 reflecting an improving housing market and economy;
- MDE advises that the long-term average of annual system repairs and replacements is 2,000, but that this may increase due to the increase in inspection frequency under the bill to about 2,800 per year, at a cost for each repair or replacement to BAT of \$19,000;
- MDE advises that there were 600 upgrades in 2008 with an average cost of \$12,000;
- the number of new systems in fiscal 2010 is the same as 2008 but reflects the October 1, 2009 effective date of the bill, and the number increases each year until reaching the long-term average of 9,500 in fiscal 2014;
- the expenditure that may be used in calculating the amount of the credit must be reduced by the amount of any State, federal, or local grants, including any amounts provided from the Septics Account of the Bay Restoration Fund; and
- 2% of all tax credits are claimed by corporations to reflect MDE data on the amount of money currently expended from the Septics Account that is for commercial septic upgrades.

Effect on the Bay Restoration Fund

The bill requires the Comptroller to reduce the amount deposited into the Septics Account from 60% to 40% and to instead deposit the 20% previously due for the Septics Account into a separate account for reimbursement of OSDS inspection costs. Thus after a diversion of funds, the amount available for the separate account is projected to be about \$2.4 million in fiscal 2010, which accounts for the bill's effective date. DLS advises that, although the bill requires this transfer on October 1, 2009, the reimbursements the fund is to support do not begin until January 1, 2011. Therefore, for a period of 15 months, money previously held in the Septics Account to fund septic system upgrades will be unused.

Nevertheless, by fiscal 2012, the first full year in which inspection reimbursements will be made from the fund, the new account will be fully subscribed assuming one-tenth of

all systems are inspected annually at a cost of more than \$200 per inspection (including the required dye test), and that most owners seek reimbursement from the fund.

MDE Expenditures

Bay Restoration Fund expenditures increase by \$252,179 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost for MDE to hire one environmental sanitarian to prepare regulations and administer the inspector training program, one natural resources planner to prepare regulations and administer the fund reimbursements, and an environmental compliance specialist and assistant Attorney General to enforce the bill. Currently, four full-time employees within the Water Management Administration oversee the permitting of OSDS, evaluation of BAT, and administration of the Bay Restoration Fund.

Current law specifies that reasonable costs for MDE to implement the septic system upgrade program may not exceed 8% of the funds deposited into the Septics Account. Although the additional expenditures required under the bill do not cause administrative and operating costs to exceed 8% of the funds in the Septics Account, less money is otherwise available for providing loans and grants.

General fund expenditures increase by \$75,300 in fiscal 2010 only, for the Comptroller to revise its tax forms and reprogram its electronic filing program.

	<u>FY 2010</u>	<u>FY 2011</u>
MDE Positions	4	
MDE Salaries and Fringe Benefits	\$214,828	\$291,354
MDE Start-up Costs and Operating Expenses	37,351	4,176
Comptroller Expenses	<u>75,300</u>	<u>0</u>
Total State Expenditures	\$327,479	\$295,530

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses. The estimate does not account for the cost of developing and maintaining the web site for listing all certified inspectors by county; any associated costs are required to be recovered under the bill with a fee established in regulations and charged to inspectors for this purpose.

Local Fiscal Effect: Counties may incur expenditures to (1) include an OSDS management plan within their sewer and water plans; (2) notify all OSDS owners in the county of the inspection requirements under the bill; (3) after receipt of an inspection

report, if the system needs repair or replacement, the county must send notice to the owner. Any expenditure incurred by a county to implement the bill may be fully offset with fee revenue charged to inspectors as authorized by the bill.

Local government revenues decrease minimally due to lower highway user revenues associated with the corporate income tax credit. The decrease in fiscal 2010 is about \$24,000, but escalates to about \$306,500 in fiscal 2014.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Baltimore City, Maryland Department of the Environment, Comptroller's Office, Department of Legislative Services

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