

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 539

(Senator Colburn, *et al.*)

Education, Health, and Environmental Affairs

Environmental Matters

Environment - Bay Restoration Fund - Authorized Uses

This bill expands the uses of the Septics Account of the Bay Restoration Fund (BRF) to include providing grants or loans for connecting a property served by an on-site sewage disposal (septic) system to an existing municipal wastewater facility achieving enhanced nutrient removal (ENR) level treatment. The grants or loans may be for up to the cost that would be currently authorized for repairing or replacing a failing septic system with one that uses best available technology (BAT) for nitrogen removal. Funding may only be provided if specified conditions are met.

Fiscal Summary

State Effect: Overall finances of the BRF Septics Account are not affected. Maryland Department of the Environment (MDE) workloads increase beginning in FY 2012 to implement the bill, but the increased workload can be handled with existing resources.

Local Effect: Potential minimal operational impact on local governments to document specified funding criteria. Although local expenditures may increase to provide sewerage service to additional customers, it is assumed that any such increase is offset by user fees and any assistance provided under the bill.

Small Business Effect: Potential minimal beneficial impact to small businesses eligible for funding under the bill.

Analysis

Bill Summary: Funding under the bill may only be provided if (1) the environmental impact of the septic system is documented by the local government and confirmed by MDE; (2) it can be demonstrated that the replacement of the septic system with service to a

wastewater facility with ENR is more cost-effective for nitrogen removal than upgrading an individual septic system *or* the individual replacement of the septic system is not feasible; (3) the project is consistent with the appropriate county's comprehensive plan; (4) the septic system was installed on or before October 1, 2008, and the property it serves is located in a priority funding area (PFA); and (5) the local government has adopted a policy or procedure that guarantees that all future connections with the ENR facility meet each of these conditions.

Current Law/Background: Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The main goal of the fund is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading them with ENR technology. The fund is financed by a bay restoration fee (generally \$30 annually) assessed on WWTP users and users of septic systems and sewage holding tanks.

Of the BRF revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account commonly referred to as the Septics Account to provide grants and loans to septic system owners for the upgrade of their septic systems, and to implement an education and outreach program. The remaining funds collected from users of septic systems and sewage holding tanks (40%) must be transferred to the Maryland Agricultural Water Quality Cost Share Program within the Maryland Department of Agriculture (MDA) to provide financial assistance to farmers for planting cover crops.

Priority for funding from the Septics Account is as follows: (1) failing systems in the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area); (2) other failing systems; (3) new or replacement systems in the Critical Area; and (4) other new or replacement systems. Originally, grants and loans made from funds within the Septics Account were used to cover up to 100% of the cost of repairing, replacing, or upgrading a septic system to a system utilizing BAT, or for covering the difference in cost between a new conventional system and one utilizing BAT. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include covering 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.

Chapter 280 of 2009 prohibits a person from newly installing or replacing a septic system on property in the Critical Area unless the installed system utilizes BAT. MDE is required to assist homeowners in upgrading a septic system with money authorized for this purpose from the Septics Account if sufficient funds are available; Chapter 382 of 2010 requires MDE, through calendar 2012, to pay 100% of the cost difference between a conventional septic system and a system utilizing BAT for those homeowners required to replace a failing system in the Critical Area under Chapter 280 of 2009. In addition,

Chapter 280 of 2009 created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any assistance provided, for anyone required to install a BAT system under that Act.

As of February 28, 2011, the Comptroller had deposited approximately \$328.2 million into BRF as a result of fees collected from WWTP users. With respect to fees collected from septic system users, the Comptroller had deposited approximately \$41.0 million into MDE's Septics Account and had transferred approximately \$36.1 million to MDA's Cover Crop Program.

Since January 1, 2010, MDE has implemented income-based criteria for septic upgrade grants as a form of economic means testing, which also complies with the legislative intent expressed in Chapter 382 of 2010. According to MDE, this economic means testing will not apply to top priority failing systems in the Critical Area, and MDE has instructed local agencies (which now wholly implement the septic system upgrade program) to implement their programs accordingly. For homeowner occupied primary dwellings, grant awards are based on federal income tax brackets, as follows:

- homeowners in the 10% to 15% tax bracket receive grants for 100% of costs;
- homeowners in the 25% tax bracket receive grants for 75% of costs;
- homeowners in the 28% tax bracket receive grants for 50% of costs; and
- homeowners in the 33% to 35% tax bracket receive grants for 25% of costs.

As part of its federally mandated Watershed Implementation Plan (WIP) process, MDE has estimated that 3,000 septic system upgrades in Maryland will be completed through calendar 2011 and is planning to upgrade 600 systems annually from 2012 to 2017, with a goal of upgrading a total of 5,700 systems between 2010 and 2017. The upgrades planned for 2012 through 2017 are estimated to provide an annual nitrogen reduction to the Chesapeake Bay of 51,186 pounds as part of Maryland's commitment to the federal Chesapeake Bay Total Maximum Daily Load (TMDL), which is currently reflected in the final Phase I WIP. This amounts to less than 1% of the total nitrogen reduction needed to meet the WIP requirement for 2017. However, the overall contribution of septic system upgrades to achieving the final nitrogen reduction requirement in WIP is much greater, at about 15% of the final 2020 target load.

To meet the goals of the Chesapeake Bay TMDL, MDE also plans to connect 930 failing septic systems to WWTPs with ENR technology. Current funding is sufficient to connect 704 failing systems by the end of 2011, and 226 additional systems are expected to be

connected by 2017 with funding from the Maryland Water Quality Revolving Loan Fund and supplemental assistance grants.

State Fiscal Effect: MDE advises that there are about 430,000 septic systems in the State. However, only a small fraction of septic systems is likely to qualify under the bill's five conditional criteria. For example, it may be instructive to note that, under similar criteria established by Chapters 225 and 226 of 2008 for providing assistance for the replacement of septic systems with a new community sewerage system, not a single grant has been approved to date. Further, some septic system owners who do qualify under the bill may not avail themselves of the available grant or loan if this assistance is less than the total cost to the owner of extending sewer system coverage. MDE advises that the cost of connecting a property to a sewer system varies widely but averages about \$32,700, including local sewer connection fees. By contrast, the award authorized in the bill is capped at an amount equal to what would be authorized for repairing or replacing a failing septic system with one that uses BAT; this amount averages about \$19,000.

Finally, Legislative Services advises that the bill does not establish the use of funds under the bill as a priority relative to other uses of Septics Account funding. Thus, to the extent Septics Account funding is available under the bill in any fiscal year, it appears that MDE would have discretion as to how much funding would be redirected.

Local Fiscal Effect: In addition to the minimal operational impact on a local government to document the environmental impact of a septic system on request from an applicant under the bill, as well as any expenditures and offsetting revenues to connect a property to sewer lines, there is the potential for a more substantial impact on a local government that is able to secure Septics Account assistance under the bill to support financing for a larger sewer connection project.

For example, Harford County advises that it plans to connect all existing developed properties within PFA to sewer lines discharging to a WWTP that is scheduled to be retrofitted with ENR technology. In addition, Anne Arundel County has previously advised that several communities have been identified for sewer connection. While several thousand septic systems are located within PFAs in Anne Arundel and Harford counties, it is unknown how many of these systems would be failing at the time that the sewer connection project begins and to what extent any of the properties would qualify under the bill. It is also uncertain whether any funds will be available in the Septics Account at that time.

Additional Information

Prior Introductions: A similar bill, HB 313 of 2010, received an unfavorable report from the House Environmental Matters Committee. Another similar bill, SB 967 of 2009, passed in the Senate with amendments and received a hearing in the House Environmental Matters Committee, but no further action was taken. Its cross file, HB 1362, received a hearing in the House Environmental Matters Committee, but no further action was taken.

Cross File: HB 57 (Delegates Costa and Vitale) - Environmental Matters.

Information Source(s): Anne Arundel, Charles, Frederick, Harford, and Montgomery counties; City of Bowie; Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2011
mc/lgc Revised - Updated Information - March 30, 2011

Analysis by: Evan M. Isaacson

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