

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 1392 (Delegate Lafferty)  
Environmental Matters

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**On-Site Sewage Disposal System - Nitrogen Removal Technology - Homeowner  
Funding Assistance**

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This bill makes permanent the requirement for the Maryland Department of the Environment (MDE) to pay the full difference in cost between a conventional on-site sewage disposal (septic) system and a septic system that utilizes nitrogen removal technology for a homeowner that is required to replace a failing septic system in the Chesapeake and Atlantic Coastal Bays Critical Area with a system that utilizes nutrient removal technology. Currently, this requirement to pay the full cost difference only applies through December 31, 2012.

The bill takes effect July 1, 2012.

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**Fiscal Summary**

**State Effect:** Overall finances of the Bay Restoration Fund (BRF) Septics Account are not affected. However, the bill's continuation of the 100% grant assistance for homeowners with a failing septic system in the Critical Area will result in fewer grants, beginning in FY 2013, for those with failing septic systems outside of the Critical Area and for the owners of other septic systems that are given lower priority for grant funding. General fund revenues increase minimally beginning in FY 2014 due to a reduction in the amounts of subtraction modifications against the personal income tax claimed by homeowners required to upgrade their systems in the Critical Area, as the current modification is based on the amount of assistance provided, which increases under the bill as of January 1, 2013.

**Local Effect:** The bill is not anticipated to materially affect local finances or operations in most counties; however, income tax revenues increase minimally beginning in FY 2014 for counties within the Critical Area.

**Small Business Effect:** Minimal.

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## **Analysis**

**Current Law/Background:** Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The main goal of BRF is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology, and to support septic system upgrades and the planting of cover crops. Of the revenue collected from users of septic systems and sewage holding tanks, 60% is distributed to MDE's Septics Account for the upgrade of septic systems and 40% is transferred to the Maryland Department of Agriculture (MDA) to provide assistance to farmers for planting cover crops.

Priority for funding from the Septics Account is as follows: (1) failing systems in the 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 nitrogen removal technology, or for covering the difference in cost between a new conventional system and one utilizing nitrogen removal technology.

Chapter 280 of 2009 prohibits a person from newly installing or replacing a septic system on property in the Critical Area unless it utilizes the best available nitrogen removal technology. *For calendar 2010 through 2012*, MDE must assist homeowners by paying 100% of the cost difference between a conventional septic system and one that utilizes nitrogen removal technology with money from BRF, if the homeowner is required to replace a failing septic system in the Critical Area. Chapter 280 also created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less assistance provided, for those required to replace a failing system in the Critical Area pursuant to the Act.

Since January 1, 2010, MDE has implemented income-based criteria for septic system 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 does not currently 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 outside of the Critical Area, 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.

MDE advises that, beginning January 1, 2013, it plans to instruct counties and other local organizations delegated responsibility to implement the septic system upgrade program to apply this income-based grant structure to septic system upgrades within the Critical Area as well.

As of February 29, 2012, the Comptroller had deposited approximately \$389.7 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 \$50.3 million into MDE's Septics Account and had transferred approximately \$42.2 million to MDA's Cover Crop Program.

**State Fiscal Effect:** Assuming Septics Account revenues average about \$8.5 million annually and the average cost for a septic system upgrade to best available technology is \$13,000, the Septics Account can fully fund about 650 upgrades annually. MDE estimates that roughly 2,000 septic systems statewide are repaired or replaced annually. MDE also estimates that the vast majority of grants from the Septics Account support upgrades for failing systems in the Critical Area, which, as noted, receive top priority and full grant funding through December 31, 2012. Thus, only a small fraction of Septics Account funding is estimated to currently support upgrades for failing systems outside of the Critical Area (second priority) with no funds available for lower priority upgrades. The bill extends this current distribution of upgrade grants.

In the absence of the bill, beginning January 1, 2013, all grants issued will be income-based, thereby supporting additional septic system upgrades through the issuance of partial grants. The decrease in the number of grants available under the bill's continuation of 100% grant assistance cannot be estimated without additional information regarding the income profile of the current grant recipient population.

Chapter 280 of 2009 created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less BRF assistance provided, for those required to replace a failing system in the Critical Area pursuant to that Act. Because this bill increases the amount of grant funding provided to those individuals as of January 1, 2013, the amounts that they will be able to subtract from their federal adjusted gross income decreases beginning in that tax year. Thus, general fund revenues increase minimally beginning in fiscal 2014.

**Additional Comments:** The Administration has introduced legislation (HB 446/SB 240) to increase the bay restoration fee. As introduced, the legislation is estimated to roughly double the amount of funding available for septic system upgrades each year.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, Department of Legislative Services

**Fiscal Note History:** First Reader - March 16, 2012  
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