

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 11 (Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters Education, Health, and Environmental Affairs

Environment - Bay Restoration Fund - Authorized Uses

This departmental bill expands the uses of the Septics Account of the Bay Restoration Fund (BRF) to include (1) providing grants or loans for connecting a property served by an onsite sewage disposal (septic) system to an existing biological nutrient removal (BNR) facility; (2) covering the cost of the principal on debt issued by a local government for specified sewer connection projects; and (3) providing assistance for specified sewer connection projects located outside of a priority funding area (PFA). The Maryland Department of the Environment (MDE) must adopt regulations establishing specified procedures for public participation and review of projects outside of a PFA, and MDE must report to specified legislative committees by December 1 of each year, beginning in 2015, on the impact of each such project funded. Finally, the bill repeals the requirement that a local government adopt a policy or procedure to guarantee that any future connection to an existing ENR facility meets each of several specified BRF requirements in State law.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: Special fund expenditures may increase in FY 2014 as additional projects become eligible to receive funding from the Septics Account; expenditures only increase in years during which the Septics Account is not fully subscribed; otherwise, the bill does not affect the overall finances of the Septics Account. Revenues are not affected.

Local Effect: Local grant revenues and expenditures may increase in any fiscal year in which the Septics Account is not fully subscribed. However, in most years, the bill is not anticipated to result in an overall increase in local grant revenues or expenditures.

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

Analysis

Bill Summary: The bill expands the eligibility for assistance from the Septics Account for a sewer connection project outside of a PFA under the following conditions (1) the septic system was installed as of October 1, 2008; (2) the project meets specified requirements of the PFA law; and (3) the project is consistent with a public health area of concern that is either identified in the county water and sewer plan or certified by a county environmental health director with concurrence by MDE and (if funding is approved) is subsequently added to the county water and sewer plan within a timeframe agreed upon with MDE that takes into consideration the county's water and sewer plan update and amendment process. The funding agreement for a project outside of a PFA that meets these conditions for funding must ensure (1) denial of access for any future connections that are not included in the project's proposed service area and (2) that the project will not unduly impede access to funding for upgrading individual septic systems in the county.

The bill requires MDE, as part of its review of a project outside of a PFA that receives preliminary approval for funding, to consider (1) the public health issues the project addresses; (2) the potential infill development resulting from the project, as identified in the funding agreement; (3) any measures taken to mitigate the potential impacts of new growth; and (4) the total net nitrogen reduction resulting from the project, including additional loading from new growth. This information must be included in the public notification of the project, and if a hearing is requested, discussed at the public hearing on the project.

The bill requires MDE to adopt regulations establishing procedures regarding the review of projects outside of a PFA that receive preliminary approval for funding, including the opportunity to request a public hearing. The regulations do not apply to a project (1) that will be served by an existing ENR facility; (2) for which an application for funding was submitted by February 15, 2014; (3) that was the subject of a public notification process initiated by February 15, 2014, and certified by MDE as substantially addressing the bill's considerations regarding review of a project outside of a PFA; (4) that, after February 15, 2014, was the subject of a public hearing held by the governing body for the county where the project will be installed (after giving at least two weeks' advance notice of the hearing to the public); and (5) that has been approved by a majority of the members of the governing body.

The bill requires MDE to report to specified legislative committees by December 1 each year, beginning in 2015, on (1) each project outside of a PFA funded and (2) a summary of any impacts that the funding had on overall funding for upgrading individual septic systems to BAT.

Current Law: Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration. The main goal of BRF is to provide grants to owners of wastewater treatment plants to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with ENR technology. The fund is also used to support septic system upgrades and the planting of cover crops.

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, and Chapter 150 of 2012 doubled the fee for most users. Of the revenues 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.

Originally, grants and loans made from funds within the Septics Account were used to cover the cost of repairing, replacing, or upgrading a septic system, or for covering the difference in cost between a new conventional system and one utilizing the best available technology (BAT) for nitrogen removal. 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 certain nutrient removal standards and satisfies certain conditions.

Chapters 492 and 493 of 2011 further expanded the uses of the Septics Account to include providing grants or loans for connecting a property served by a septic system to an existing ENR facility. 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 BAT. Funding 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 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.

MDE's BNR program provides grants to local governments for 50% of the eligible cost of an upgrade to BNR technology, which provides a lesser degree of nutrient removal than ENR technology. (WWTPs must be upgraded to BNR technology before they are eligible for ENR funding from BRF.)

Background: According to MDE, the existing statute relating to the use of the Septics Account for the connection of septic systems to wastewater treatment plants is restrictive. MDE advises that the bill is intended to give local governments more flexibility in using Septics Account funds to address their septic system needs. In addition to allowing for the connection of septic systems located outside of a PFA under specified conditions and allowing a local government to use the funding from the Septics Account for the repayment of principal on local bonds under certain conditions, MDE advises that the bill's repeal of the requirement that a local government adopt a policy or procedure to guarantee that any future connection to an existing ENR facility meets each of several specified BRF requirements allows the owner of a vacant lot to connect to an ENR facility. As noted above, the owner of a vacant lot, or a property with a septic system installed after October 1, 2008, may not currently connect to a sewer connection project funded by BRF; the bill allows such property owners to connect to a sewer line funded by BRF, but only at the owners' expense. The bill maintains the requirement that a septic system be installed by October 1, 2008, in order for the owner of the system to receive BRF assistance as part of a sewer connection project.

Through December 31, 2013, a total of \$551.4 million in bay restoration fees had been collected from wastewater facility users and, after administrative costs, \$545.0 million had been deposited in MDE's Wastewater Account. In addition, \$136.5 million had been collected from users of septic systems and sewage holding tanks and, after administrative costs, \$76.7 million had been deposited in MDE's Septics Account, and \$59.9 million had been provided to MDA to support the planting of cover crops. According to the December 2013 draft of the 2014 *Bay Restoration Fund Advisory Committee Annual Report*, BRF has supported the installation of 4,481 BAT septic systems through the end of fiscal 2013. Additionally, as of December 2013, BRF revenues have supported ENR upgrades to 33 major wastewater facilities, with 21 other facilities under construction and 13 in the planning or design stages.

State Expenditures: Special fund expenditures from the Septics Account may increase in fiscal 2015 as additional projects become eligible to receive grants or loans, but only to the extent that the Septics Account is not fully subscribed.

While the Septics Account was fully subscribed in fiscal 2012, bay restoration fee revenues nearly doubled after the enactment of Chapter 150 of 2012, thereby nearly doubling the funding capacity of the Septics Account beginning with fiscal 2013. In fiscal 2013, local health departments and other entities delegated authority by MDE to

distribute septic system upgrade grants were not able to disburse their full grant awards. However, MDE advises that it anticipates that the unused funds from fiscal 2013 will be awarded in fiscal 2014, and that there is demand for Septics Account funding assistance for between 2,000 and 2,500 systems annually, which is significantly greater than the available funding each year.

The bill is, therefore, not likely to affect Septics Account finances in most fiscal years. Instead, the only impact in most years is to reduce the availability of assistance for owners of septic systems granted a lower priority by statute (such as new systems located outside of the Chesapeake and Atlantic Coastal Bays Critical Area). MDE can otherwise implement the bill with existing resources.

Local Fiscal Effect: Local grant revenues and expenditures may increase in any fiscal year in which the Septics Account is not fully subscribed, as discussed above. However, in most years, the only impact of the bill is to alter the distribution of grants such that a greater amount of assistance is provided for sewer connection projects, as opposed to other authorized uses of the Septics Account (primarily for septic upgrades to BAT). The Maryland Association of Counties indicates that certain jurisdictions, such as Anne Arundel, Charles, Prince George's, and Queen Anne's counties, may benefit from the bill's expanded uses and eligibility for assistance from the Septics Account.

Small Business Effect: MDE has indicated that the bill has minimal impact on small businesses. However, the Department of Legislative Services advises that, to the extent that the bill results in a greater number of sewer connection projects funded by the Septics Account, any small business engaged in the installation of sewer system infrastructure, including engineering and design firms, may realize a potentially meaningful increase in the demand for their services. Small businesses engaged in the installation of septic systems utilizing BAT may incur a corresponding reduction in the demand for their services.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Worcester counties, the cities of Baltimore and Laurel, Maryland Department of the Environment, Comptroller's Office, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

Fiscal Note History: First Reader - January 24, 2014
mc/lgc Revised - House Third Reader - March 13, 2014
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment – Bay Restoration Fund – Connection to ENR Facility

BILL NUMBER: HB 11

PREPARED BY: 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

N/A