

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 12 (Chair, Environmental Matters Committee)(By Request -
Departmental - Environment)

Environmental Matters Education, Health, and Environmental Affairs

Bay Restoration Fund - Authorized Uses - Local Entities

This departmental bill requires up to 10% of the funds in the Septics Account of the Bay Restoration Fund (BRF) to be distributed to a local public entity delegated by the Maryland Department of the Environment (MDE) to cover reasonable costs associated with the implementation of MDE regulations pertaining to onsite sewage disposal (septic) systems that utilize the best available technology (BAT) for the removal of nitrogen.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Special fund expenditures may increase in FY 2015 due to the cost recovery grants authorized by the bill; 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 cost recovery grant revenues increase in counties where the local health department or other public entity is delegated authority to administer State septic system upgrade regulations; septic system upgrade grant revenues may decrease as discussed below.

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.

Analysis

Current Law:

The Bay Restoration Fund

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 enhanced nutrient removal (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 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 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 certain nutrient removal standards and satisfies certain conditions. Chapters 492 and 493 of 2011 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.

Background:

Local Responsibility for Administration of BAT Upgrade Grants

On July 1, 2010, MDE completed its phase out of the administration of septic system grants directly to homeowners. Previously, while MDE made some direct grants, Septics Account funding was mostly provided in large grants to county health departments and other delegated entities for administration and distribution to homeowners.

Septic System Regulations Effective January 1, 2013

Regulations published for final adoption in September 2012 increased the administrative burden on local health departments and other delegated entities. The regulations require,

beginning January 1, 2013, BAT for septic systems for (1) new construction in the Chesapeake Bay watershed and the Atlantic Coastal Bays watershed; (2) new construction in the watershed of any nitrogen-impaired water body; and (3) any replacement system on property located in the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area. The regulations also require that BAT systems be maintained and operated for the life of the system through (1) a responsible management entity, established by the approving authority or local government and acceptable to MDE; (2) a renewable operating permit, including enforcement provisions, inspections, and monitoring, required by the approving authority; or (3) a service contract maintained between a property owner and a certified service provider.

Thus, the regulations are anticipated to increase the number of BAT systems installed each year and also to establish additional responsibilities for local jurisdictions with respect to inspection, enforcement, and operation and maintenance. According to MDE, the bill alleviates some of the financial burden on local governments for these additional plan review, construction inspection, and operation and maintenance tracking duties.

MDE advises that it is currently considering the manner in which cost recovery grants may be distributed under the bill. One preliminary proposal is to establish a table with fixed grant amounts based on the applicable size category of the county and the project type.

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 new cost recovery grants are made to local health departments, 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 funding for septic system upgrades, as some funding is provided to local governments for cost recovery.

The Comptroller can implement the bill using existing budgeted resources.

Local Fiscal Effect: MDE anticipates Septics Account revenues of about \$16 million annually beginning in fiscal 2015. Therefore, the bill's 10% (maximum) cost recovery set-aside results in an increase in cost recovery grants, and a decrease in BAT upgrade grants, of up to about \$1.6 million annually, assuming the Septics Account is fully subscribed.

Not all counties have been delegated authority by the State to administer septic system upgrade grants and regulations. For example, Montgomery County advises that it utilizes a third-party nonprofit organization to administer its septic system upgrade grants. Therefore, Montgomery County is not eligible to receive cost recovery grants under the bill. However, under the bill, fewer grant revenues for the upgrade of septic systems to BAT are available to all counties, resulting in a net decrease in grant revenues to Montgomery County and any other jurisdiction that has not been delegated authority by MDE. According to the December 2013 draft of the 2014 *Bay Restoration Fund Advisory Committee Annual Report*, three other counties (Frederick, Howard, and Washington) also rely on the same nonprofit entity to administer septic system upgrade grants.

Small Business Effect: The small business impact statement provided by MDE characterizes the bill's impact as minimal, but notes that up to 115 fewer septic system upgrades may be made each year as some money is made available to local governments to cover administrative costs. A decrease of 115 septic upgrades may result in a meaningful reduction in revenues to at least some small businesses engaged in the sale or installation of BAT septic systems.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; Town of Leonardtown; 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

Analysis by: Evan M. Isaacson

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Environment –Bay Restoration Fund – Use of Funds

BILL NUMBER: HB 12

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

Independent contractors are usually the installers of OSDS systems. There may be a small impact on contractors as the number of OSDS upgrades may be reduced annually. It is anticipated that at most there will be 115 less systems upgraded annually using BRF septic funding. At the same time, this funding will help local governments ensure regulations are followed will benefit independent contractors who will be hired by homeowners and businesses that rely on septic systems for their waste treatment to ensure that BAT systems are properly operated and maintained.