

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 361 (The Speaker, *et al.*) (By Request - Administration)  
Environment and Transportation

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Bay Restoration Fund - Fee Exemption, Disbursements, and Financial Assistance  
(Septic Stewardship Act of 2018)

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This Administration bill (1) exempts a user of an on-site sewage disposal system (commonly referred to as a septic system) from paying the bay restoration fee under specified circumstances; (2) alters the distribution of bay restoration fee revenues collected from users of septic systems and sewage holding tanks; and (3) expands the authorized uses of the Bay Restoration Fund (BRF) Septics Account to include providing financial assistance to homeowners for the reasonable cost of pumping out septic systems under specified conditions. **The bill takes effect July 1, 2018.**

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Fiscal Summary

**State Effect:** BRF special fund revenues decrease by an estimated \$230,000 annually beginning in FY 2019 due to the fee exemption. The reduction in fee revenues, combined with the redistribution of revenues under the bill, results in a decrease in nearly \$3.0 million in annual funding available to the Septics Account within the Maryland Department of the Environment (MDE) and an increase of approximately \$2.7 million in annual funding available to the Maryland Department of Agriculture (MDA).

**Local Effect:** Local grant revenues and expenditures used primarily for septic system upgrades decrease. Any counties that establish septic stewardship programs may incur costs to do so but may also benefit. Potential decrease in long-term expenditures to meet Total Maximum Daily Load (TMDL) goals.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment as discussed below.

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## Analysis

### Bill Summary:

#### *Bay Restoration Fee Exemption*

A septic system user is exempt from paying the bay restoration fee if (1) the user's septic system uses the best available technology (BAT) for nitrogen removal and (2) the user has not received a State or federal grant or an income tax subtraction modification for the septic system that uses BAT.

#### *Redistribution of Fee Revenue*

The bill alters the distribution of the bay restoration fee revenue collected from users of septic systems and sewage holding tanks so that 50% is distributed into MDE's Septics Account and 50% is distributed to MDA to fund cover crop activities. Under current law, 60% is deposited into MDE's Septics Account and 40% is distributed to MDA.

#### *Expanded Use of MDE's Septics Account*

The bill also expands the authorized uses of MDE's Septics Account to include providing financial assistance to an eligible homeowner for the reasonable cost of pumping out a septic system once every five years. Financial assistance may only be provided if the homeowner resides in a local jurisdiction that has developed a septic stewardship plan that includes provisions to ensure that septic systems are operated and maintained, including provisions for routine pump-outs and inspections.

**Current Law:** Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned Wastewater Treatment Plants (WWTPs) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and MDA's Cover Crop Program.

#### *Assessment of Bay Restoration Fee*

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. Fee revenue generated from users of WWTPs is deposited into MDE's Wastewater Account and used, among other specified uses, to provide grants for up to 100% of the eligible costs to upgrade WWTPs to ENR. The local government, billing authority, owner of a privately owned WWTP, or a municipal corporation in which

a septic system or sewage holding tank is located may collect the fee. Certain WWTP users may be exempt from paying the bay restoration fee.

Of the fee 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. 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 MDA to provide financial assistance to farmers for planting cover crops.

#### *Uses of MDE's Septics Account*

The Septics Account within MDE may be used for grants or loans for up to 100% of (1) the cost of upgrading septic systems to BAT; (2) the cost difference between a conventional septic system and one that uses BAT; (3) the cost of repairing or replacing a failing septic system with one that uses BAT; (4) 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; or (5) the cost of connecting a property served by a septic system to a wastewater facility meeting specified levels of treatment. The Septics Account may also be used for specified administrative costs for MDE (up to 8% of funds deposited) and for certain local entities (up to 10% of funds deposited). Finally, the Septics Account may be used to provide financial assistance to qualifying low-income homeowners for up to 50% of the cost of an operation and maintenance contract of up to five years for a BAT system.

Grant awards for septic system upgrades under BRF are income based. Homeowners with an annual household income of \$300,000 or less, are eligible for up to 100% of the approved cost of replacing or repairing a septic system. Homeowners with an annual income of more than \$300,000 are eligible for up to 50% of the approved cost. 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.

#### **Background:**

##### *BRF Funding and Progress*

According to the Comptroller's Office, through December 31, 2017, a total of \$1.01 billion in bay restoration fees collected from wastewater facility users had been deposited in MDE's Wastewater Account. In addition, of the fee revenues collected from users of septic systems and sewage holding tanks, \$145.1 million had been deposited in MDE's Septics Account, and \$105.6 million had been provided to MDA to support the planting of cover crops. As of January 2018, BRF has supported ENR upgrades to 56 major wastewater facilities, with 8 other facilities under construction and 3 in the planning or design stages.

As of September 20, 2017, BRF has funded 8,975 BAT upgrades, of which 5,532 upgrades were completed within Maryland's Critical Areas. In addition, 310 homes have been connected to public sewerage using BRF. Further, BRF has supported the planting of more than three million acres of cover crops.

#### *Cost-effectiveness of Upgrading Septic Systems Compared to Planting Cover Crops*

MDE advises that, by adjusting the allocation of fee revenues from users of septic systems and sewage holding tanks, the bill seeks to increase cost-effectiveness and accelerate bay restoration. According to MDE, planting cover crops provides greater nitrogen reduction at a fraction of the cost of upgrading a septic system to BAT. MDE advises that recent loading analyses, using the Chesapeake Bay model, estimate that BAT septic system upgrades cost approximately \$133 per pound of nitrogen reduced (for systems within 1,000 feet of a stream), while planting cover crops costs approximately \$13 per pound of nitrogen reduced. Based on these model estimates, but not accounting for the loss in revenue resulting from the bill's fee exemption, MDE estimates that the redistribution provision may reduce nitrogen loading by approximately 180,000 pounds annually.

#### *Chesapeake Bay Restoration and the Total Maximum Daily Load*

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. The State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%.

**State Fiscal Effect:** Special fund revenues from the bay restoration fee decrease by an estimated \$230,000 annually beginning in fiscal 2019 due to the fee exemption established by the bill. This estimate is based on information provided by MDE and assumes that approximately 3,800 septic system users may be exempt as a result of the bill. Additionally, special fund revenues are shifted from MDE's Septics Account to MDA's Water Quality Cost Share Program due to the redistribution of fee revenue collected from users of septic systems and sewage holding tanks. In total, beginning in fiscal 2019, special fund revenues for MDE decrease by an estimated \$2,967,307 annually, and special fund revenues for MDA increase by \$2,737,307 annually. It is assumed that special fund expenditures in both agencies are affected correspondingly.

In 2017, special fund revenues collected from users of septic systems and holding tanks totaled \$28,523,067. Of this, pursuant to current law, \$17,113,840 (60%) was distributed to MDE's Septics Account and \$11,409,227 (40%) was distributed to MDA for cover crop activities. Under the bill, special fund revenues collected from users of septic systems and sewage holding tanks are anticipated to total \$28,293,067 annually beginning in fiscal 2019, reflecting the \$230,000 decrease anticipated due to the bill's fee exemption. As a result of the redistribution of fee revenues, beginning in fiscal 2019, both MDE and MDA receive approximately \$14,146,534 (50%) annually. MDA advises that no additional staff is needed to handle the additional funding.

This analysis assumes that fee revenues collected from users of septic systems and sewage holding tanks generally remain constant over time.

### **Local Fiscal Effect:**

#### *Local Funding for Septic System Upgrades and Specified Administrative Costs*

The redistribution of bay restoration fee revenues, along with the fee exemption, result in a decrease in the amount of funding available to counties from the Septics Account. Local grant revenues and expenditures for BAT upgrades (and other allowable uses of the Septics Account) decrease by approximately \$2.7 million annually (which reflects the 8% of Septics Account funding that MDE retains for administrative costs).

Under current law, up to 10% of Septics Account revenues may be used to cover a portion of the reasonable costs of a local public entity to implement regulations adopted by MDE related to septic systems that use BAT. Thus, under the bill, an estimated \$296,731 annually beginning in fiscal 2019 is no longer available for this purpose.

#### *Funding for Septic System Pump Outs and the Establishment of Septic Stewardship Plans*

The bill authorizes the Septics Account to be used for specified pump out costs if the county where the septic system is located has developed a qualifying septic stewardship plan. Costs to develop a local septic stewardship plan are unknown, but MDE anticipates that some counties may be able to complete plans with existing staff and resources. MDE advises that by having a qualifying septic stewardship plan in place, a local government would have more control in prioritizing how BRF funds are spent.

#### *Potential Long-term Impacts*

Although the bill decreases funding provided for BAT upgrades, it increases funding available for planting cover crops. As noted above, MDE advises that cover crops are more cost effective than BAT upgrades. To the extent that planting additional cover crops results

in greater nitrogen reductions, local water quality may improve over time. This may assist counties in meeting their TMDL goals, thus reducing long-term expenditures for bay restoration activities.

**Small Business Effect:** DLS advises that the bill has the potential to have a meaningful impact on some small businesses in the State. First, the decrease in funding available for septic system upgrades may have a meaningful impact on small businesses engaged in the sale and installation of BAT systems. Second, small businesses that provide pump-out services for septic systems may benefit from an increase in the demand for their services due to the bill's provision that authorizes the use of the Septics Account for this purpose under specified conditions. Finally, agricultural producers benefit from the increase in funding available for the planting of cover crops under the bill. Most farms are small businesses. Based on information provided by MDA, the additional funding will result in the planting of approximately 60,000 acres of cover crops.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 314 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

**Information Source(s):** Baltimore City; Montgomery and Prince George's counties; Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health; Comptroller of Maryland; Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2018  
md/lgc

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Analysis by: Kathleen P. Kennedy

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

# ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: The Septic Stewardship Act of 2018

BILL NUMBER: SB 314/HB 361

PREPARED BY: Maryland 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

Small businesses that pump out septic systems may see a positive increase in business.