

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 458 (Delegate Lafferty)
Environment and Transportation

Environment – Sale or Transfer of Home With On-Site Sewage Disposal System
– Nitrogen Removal Technology Requirement

This bill requires a homeowner who is selling or transferring ownership of a home that (1) has an on-site sewage disposal system (septic system) and (2) is located in Maryland within the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area), to ensure that the septic system either utilizes, or will be upgraded to utilize, the best available technology for nitrogen removal (BAT) before the home is sold or transferred. Existing civil and administrative penalties apply to violations.

Fiscal Summary

State Effect: General fund income tax revenues decrease beginning in FY 2019 from the application of an existing subtraction modification. Overall finances of the Bay Restoration Fund (BRF) Septics Account are not affected. The Maryland Department of the Environment (MDE) can likely handle any increase in workload with existing resources, as discussed below. The application of existing penalty provisions to the bill's prohibition is not anticipated to materially affect State finances.

Local Effect: Local government expenditures increase to oversee installation and repairs of additional BAT systems. To the extent that State income tax revenues decrease, local income tax revenues also decrease.

Small Business Effect: Meaningful.

Analysis

Current Law:

Requirement to Install a BAT System versus a Conventional Septic System

Pursuant to Chapter 280 of 2009, a person is generally prohibited from newly installing or replacing a septic system on property in the Critical Area unless the installed system uses BAT. MDE is required to assist homeowners with the upgrade from a conventional septic system to a system that utilizes BAT with money authorized for this purpose within the BRF Septics Account, if sufficient funds are available. There is also a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided. Civil and administrative penalties apply to violations of these provisions; violators are subject to a maximum fine of \$8,000.

Regulations require septic systems that utilize BAT (as opposed to conventional septic systems) only for new construction in the Critical Area unless (1) the system has a design flow of 5,000 gallons per day or greater or (2) the local jurisdiction has required septic systems utilizing BAT outside of the Critical Area in order to protect public health or the waters of the State. Regulations define “new construction” to exclude the renovation, repair, or change of use of an existing residence or other building, unless the residence or building is located in the Critical Area and the approving authority finds that the residence or building’s existing septic system is inadequate to serve the proposed changes. Regulations require all systems utilizing BAT that are sold in the State to include a two-year operation and maintenance contract and a two-year warranty.

Uses of MDE’s Septics Account

Priority for funding from the Septics Account is as follows: (1) failing systems in the Critical Area and (2) other failing systems that MDE determines are a threat to public health or water quality. Septics funds can be used to cover up to 100% of (1) the cost of upgrading septic systems to use 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 certain 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.

Septic System Inspectors

All individuals performing inspections of septic systems for property transfers must complete a one-time course approved by MDE in the proper inspection of septic systems.

Background: Not all septic systems are inspected during a property transfer. MDE's Onsite Systems Division offers the free, but required, training for septic system inspectors between 6 and 15 times annually. MDE advises that 1,012 individuals have completed the course since the requirement to take the training began in 1999. Of those individuals, 435 received the training in the first year. MDE maintains a list of trained inspectors on its website.

According to MDE, there are approximately 420,000 septic systems in Maryland. Of these, 52,000 systems are located within the Critical Area. A conventional septic system does not remove much nitrogen, instead delivering about 23.2 pounds of nitrogen per year to the groundwater. A BAT upgrade reduces a system's nitrogen load in half. As of September 20, 2017, BRF has funded 8,975 BAT upgrades, of which 5,532 upgrades were completed within the Critical Area. In addition, 310 homes have been connected to public sewerage using BRF.

According to the Comptroller, through fiscal 2016, 3,151 income tax returns have claimed an income modification subtraction related to the costs to upgrade a septic system to BAT. The Comptroller advises that between 2013 and 2017, the subtraction amount averaged \$4,400.

State Revenues: General fund income tax revenues decrease beginning in fiscal 2019 from the application of the existing subtraction modification to the septic systems upgraded as a result of the bill. According to the State Department of Assessment and Taxation's Real Property Data Search, approximately 132,500 properties were sold in counties or cities that contain Critical Area land in 2017. However, the number of homes sold in the Critical Area with conventional septic systems that would have required BAT upgrades under the bill, and the number of such upgrades that would have qualified for assistance from BRF, is unknown. Thus, a reliable estimate of the decrease in general fund revenues resulting from the application of the existing subtraction modification is unknown.

State Expenditures: MDE anticipates that the bill triggers an increase in the number of septic system inspections conducted for property transfers statewide. As a result, MDE advises that its general fund expenditures increase by \$158,910 in fiscal 2019 to hire two full-time natural resource planners to standardize State septic inspections and conduct outreach and training to septic system inspectors. Additionally, MDE anticipates that the increase in the number of inspections may result in the discovery of damaged septic system disposal areas, necessitating the installation of an innovative and alternative septic system, which requires input from an MDE regional consultant. MDE's estimate includes costs for travel and the purchase of two vehicles. MDE's out-year estimates are at least \$134,684 annually from fiscal 2020 through 2023.

The Department of Legislative Services disagrees. The need to hire additional staff depends on the number of homes that require BAT upgrades as a result of the bill and the increase in the number of septic system inspectors that must be trained, which cannot be accurately estimated at this time. Thus, without actual experience under the bill, the need for additional staff is unclear, and it is assumed that MDE can begin to implement the bill with existing budgeted resources. Should existing resources prove insufficient, MDE may request additional resources through the annual budget process.

Local Revenues: To the extent that State income tax revenues decrease, local income tax revenues also decrease. As discussed above, the magnitude of any decrease in local income tax revenues is unknown.

Local Expenditures: Local governments are delegated authority to oversee many aspects of the installation of septic systems. Thus, local government expenditures increase under the bill because the bill results in an increase in septic system permits, construction inspections, and soil evaluations. Additionally, local government workloads increase to track and monitor BAT septic systems. Again, because the number of additional BAT systems that are installed as a result of the bill each year is unknown, the impact on local expenditures cannot be reliably estimated.

Small Business Effect: Small businesses in the State that manufacture, install, and provide operation and maintenance services on BAT septic systems are meaningfully affected. There is likely an increase in business as a result of the expected increase in the number of BAT systems installed. Similarly, there is a potential decrease in sales and installation of conventional septic systems. Small businesses that inspect septic systems may also benefit from an increase in the demand for their services.

Because BAT systems are more expensive than conventional systems, affected property owners, some of which may be small businesses, incur increased costs related to the purchase, installation, and maintenance of BAT septic systems.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Garrett, and Montgomery counties; Comptroller's Office; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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