

**Department of Legislative Services**  
 Maryland General Assembly  
 2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 851 (Senators West and Young)  
 Education, Health, and Environmental Affairs

**Bay Restoration Fund - Authorized Uses, Mandatory Appropriation, and County Authority to Incur Indebtedness**

This bill expands the authorized uses of the Septics Account within the Bay Restoration Fund (BRF) to include loans to homeowners of all income levels to cover the costs of repairing or replacing a failing on-site sewage disposal system (commonly referred to as a septic system) with a septic system that utilizes the best available technology for the removal of nitrogen (BAT), as specified. The bill also authorizes a county to borrow money and incur indebtedness through the issuance and sale of notes in anticipation of the receipt of the county’s allocation of funds under BRF, as specified. The Governor must appropriate \$10.0 million in the fiscal 2021 State operating or capital budget to BRF to be used to repair or replace failing septic systems with BAT systems. **The bill takes effect July 1, 2019.**

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$10.0 million in FY 2021 due to the bill’s mandated appropriation. Special fund revenues and expenditures increase correspondingly. To the extent any loans are made, special fund revenues increase from loan repayments (not reflected below). **This bill establishes a mandated appropriation for FY 2021 only.**

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$0	\$10,000,000	\$0	\$0	\$0
GF Expenditure	\$0	\$10,000,000	\$0	\$0	\$0
SF Expenditure	\$0	\$10,000,000	\$0	\$0	\$0
Net Effect	\$0	(\$10,000,000)	\$0	\$0	\$0

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local grant revenues and expenditures from BRF increase by \$10.0 million in FY 2021 only. Revenues and corresponding debt service expenditures increase to the extent a county issues notes under the bill. Local administrative expenditures may increase.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** The Governor must appropriate \$10.0 million in the fiscal 2021 annual State operating or capital budget to pay for the costs of repairing or replacing failing septic systems that use BAT.

### *Loans from the Bay Restoration Fund's Septics Account*

The Maryland Department of the Environment (MDE) is authorized to provide financial assistance to septic system owners of all income levels to repair or replace failing systems with BAT systems through the issuance of low- or no-interest loans. A loan must cover up to 100% of the cost of repairing or replacing a failing septic system with one that utilizes BAT, including the cost of replacing or repairing a failing drain field, trench, or seepage pit. A loan can only be made to a homeowner residing in a local jurisdiction that has developed and implemented a qualifying septic stewardship plan. All loan repayments must be deposited into BRF.

### *County Bond Authority*

The bill authorizes a county to incur indebtedness through the issuance and sale of notes in anticipation of the receipt of the county's allocation of funds from the BRF. A county may expend the net proceeds of the sale of notes to make grants and loans (1) for the authorized uses under § 9-1605.2(h)(2)(i) of the Environment Article, which addresses authorized uses of the Septics Account and (2) to refund one or more issues of notes. The principal of the notes may be paid from the county's BRF allocation and any other revenues that are pledged to the payment of the notes in the authorizing resolution. The interest on the notes may not be paid from the county's BRF allocation, but may be paid from money made available to the county to finance upgrades to septic systems from any other source, including other State and federal programs.

A county may pledge its full faith and credit and taxing power to the payment of the principal and interest on the notes in the authorizing resolution. If a county pledges its full faith and credit and taxing power to the payment of a note, a county must, in each fiscal year that the note is outstanding, impose *ad valorem* taxes on all assessable property in the county at a rate and amount sufficient to pay the principal and interest. If tax proceeds are inadequate for the payment, the county must impose additional taxes in the succeeding fiscal year to make up the deficiency.

The authority to borrow money and issue notes under the bill is supplemental to any other power granted to a county by any other law, and is not in derogation of any other existing county borrowing power.

## **Current Law:**

### *Bay Restoration Fund*

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 with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and Maryland Department of Agriculture's (MDA's) Cover Crop Program.

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 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 (1) for specified administrative costs for MDE (up to 8% of funds deposited) and for certain local entities (up to 10% of funds deposited); (2) to provide financial assistance to qualifying low-income homeowners for up to 50% of the cost of an operating and maintenance contract of up to five years for a BAT system; (3) to provide financial assistance (not to exceed 10% of the funds allocated to the local jurisdiction) to eligible homeowners for the reasonable cost of pumping out a septic system at least once every five years if the homeowner lives in a local jurisdiction that has developed and implemented a qualifying septic stewardship plan, among other requirements; and (4) in fiscal 2020 and 2021, to provide financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan.

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.

#### *MDE Distribution of Block Grants to Local Health Departments*

MDE awards the balance of funds in the Septics Account to local health departments as block grants for BAT septic system upgrades. MDE makes awards based on the following factors: (1) the total number of septic systems within a county; (2) the number of septic systems within the Critical Area within a county; and (3) the grant funding requested by the county or its authorized agent.

With the factors above taken into consideration, projects that upgrade septic systems to BAT are then prioritized for grant funding by local health departments as follows: (1) failing systems in the Critical Area; (2) failing systems outside the Critical Area; (3) nonconforming systems in the Critical Area; (4) nonconforming systems outside the Critical Area; (5) other systems in the Critical Area, including new construction; and (6) other systems outside the Critical Area, including new construction.

#### *Septic Stewardship Plans*

Chapter 585 of 2018 authorized use of the Septics Account, for fiscal 2020 and 2021 only, to provide financial assistance to a local jurisdiction for the development of a septic stewardship plan. To qualify for this financial assistance, a local jurisdiction's septic stewardship plan must (1) be adopted by the local jurisdiction's governing body, after consultation with the local health department; (2) state specific goals that are consistent with the nitrogen load reduction identified in the local jurisdiction's watershed implementation plan; (3) specify public education and outreach measures that will be taken, as specified; (4) provide technical guidance for the siting, design, evaluation, and construction of septic systems; (5) require a residential or commercial septic system to be pumped out and inspected at least once every five years, unless a more frequent pump-out schedule is recommended during an inspection; (6) specify certification and licensing procedures for a person who pumps out and inspects septic systems; (7) specify recordkeeping requirements; (8) specify enforcement mechanisms, compliance incentives, and penalties; (9) outline specified funding mechanisms; and (10) establish a process for periodically evaluating and revising the plan.

To date, no local jurisdictions have established septic stewardship plans.

### *Water Quality Revolving Loan Fund*

MDE's Water Quality Financing Administration provides low-interest rate loans under the two revolving loan fund programs and grants under the BRF program for (1) water quality point source projects (such as wastewater treatment plants) and nonpoint source pollution control projects (such as existing landfill capping) consistent with the federal Clean Water Act and BRF; (2) drinking water system upgrade projects (such as drinking water treatment plants) to achieve or maintain compliance with the federal Safe Drinking Water Act; and (3) septic system upgrade projects using BAT, consistent with BRF.

**Background:** According to the Comptroller's Office, through January 31, 2019, a total of \$1.1 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, \$166.6 million had been deposited in MDE's Septics Account and \$119.9 million had been provided to MDA to support the planting of cover crops.

### **State Fiscal Effect:**

#### *Mandated Appropriation*

General fund expenditures increase by \$10.0 million in fiscal 2021, which reflects the bill's mandated appropriation, to pay for the cost of repairing or replacing failing septic systems with BAT systems. Special fund revenues to BRF and expenditures from BRF increase correspondingly in fiscal 2021 only. Although the bill specifies that this funding may be provided in either the operating or the capital budget, this analysis assumes that the appropriation is funded with general funds. In addition, the analysis assumes that MDE uses the full amount of the appropriation to provide block grants to local governments in fiscal 2021.

#### *Providing Loans to Septic System Owners*

MDE does not provide funding to individuals using BRF. Instead, as noted above, MDE distributes funds from the Septics Account to local health departments in the form of block grants for BAT septic system upgrades. Local health departments then distribute the funding in the form of grants to qualified individuals.

MDE advises that it is unclear if MDE would need to issue loans directly to homeowners under the bill or if counties would do so. Either way, MDE advises that it needs to hire four additional staff to oversee the loan program, at a cost of approximately \$300,000 annually beginning in fiscal 2020. The Department of Legislative Services (DLS) advises, however, that the extent to which the loan program is used is unclear.

Pursuant to the bill, loans can only be made to a homeowner who resides in a local jurisdiction that has developed and implemented a qualifying septic stewardship plan. Since no local jurisdiction has developed or implemented a septic stewardship plan to date, no one is currently eligible for the loan program established by the bill. Further, even if there end up being homeowners eligible for loans, the number of loan applications that would be submitted is unknown. Accordingly, DLS assumes that MDE can begin to implement the bill with existing staff. Should the need for additional staff emerge, MDE may request additional resources through the annual budget process.

DLS notes that, should loans be made from BRF, special fund revenues from loan repayments increase pursuant to the terms of any loans made.

The Comptroller can continue to administer BRF with existing resources.

**Local Fiscal Effect:** Local grant revenues from BRF increase by \$10.0 million in fiscal 2021 only as a result of the bill's mandated appropriation. As noted above, it is assumed that MDE uses this funding to provide local block grants to counties. Local expenditures increase correspondingly, assuming that they are able to spend the funding. (MDE notes that some counties have had difficulty expending annual grant funding from BRF.)

The bill authorizes a county to issue debt in anticipation of the receipt of the county's allocation of funds from BRF to (1) make grants and loans in accordance with authorized uses of the Septics Account and (2) refund one or more issues of notes. Revenues and corresponding debt service expenditures increase to the extent a county issues notes under the bill. However, the number of counties that choose to issue notes and the total amount of debt issued as a result of the bill cannot be reliably estimated.

For the reasons noted above, it is unclear to what extent a county would take on the additional responsibility to issue loans as authorized under the bill. To the extent that any counties do so, county administrative costs likely increase to administer a loan program.

**Small Business Effect:** Contractors who are involved with the installation and replacement of septic systems may benefit to the extent the additional funding provided by the bill results in additional repairs and replacements of septic systems.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Anne Arundel and Garrett counties; Maryland Association of Counties; Comptroller's Office; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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