

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1320 (Delegate Stein, *et al.*)
Environment and Transportation

Bay Restoration Fund - Disbursement and Use of Fund

This bill (1) modifies the distribution of bay restoration fee revenues collected from users of septic systems and sewage holding tanks that accrue to the Maryland Department of the Environment’s (MDE) Bay Restoration Fund (BRF) Septics Account and the Maryland Agricultural Water Quality Cost Share (MACS) Program within the Maryland Department of Agriculture (MDA); (2) expands the authorized uses of the Septics Account; and (3) modifies the prioritization of projects that receive funding from the Septics Account. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: Potential minimal indeterminate impact on MDE and MDA special fund revenues (and corresponding expenditures) in FY 2025 through 2030 from the change in the distribution of fee revenue, as discussed below. Beginning in FY 2031, MDA special fund revenues (and corresponding expenditures) increase significantly, and MDE special fund revenues (and corresponding expenditures) decrease correspondingly.

Local Effect: Although the total amount of grant funding provided to local governments from the Septics Account is likely not materially affected in the near term, the distribution of such funding across jurisdictions may be significantly affected, as discussed below. Beginning in FY 2031, local grant revenues (and corresponding expenditures) decrease significantly due to a decrease in available funding in the Septics Account.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Bay Restoration Fund – Generally

Chapter 428 of 2004 established BRF. *Under current law and the bill*, 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 the Cover Crop Program within MDA. 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. Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030).

Distribution of Fees Collected from Users of Septic Systems and Sewage Holding Tanks

Under current law, of the fee revenues 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) within MDE, and the remaining funds (40%) must be transferred to the MACS Program within MDA to provide financial assistance to farmers for planting cover crops.

Under the bill, instead of requiring 40% of the total fees collected from septic systems and sewage holding tanks users to be transferred to MDA, in each fiscal year, the Comptroller must transfer an amount equal to the amount transferred to MDA in fiscal 2024, regardless of the amount of fees collected in each year. The Septics Account within MDE receives the remaining fee revenues each year – instead of 60% of the fees collected each year.

Maryland Department of the Environment's Septics Account – Uses and Priority

Authorized Uses: Under current law, the Septics Account within MDE may be used to provide grants or loans for up to 100% of (1) the cost of upgrading septic systems to best available technology (BAT) for nitrogen removal; (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. *Under the bill*, the Septics Account may also be used to provide grants or loans for up to 100% of the costs attributable to (1) the testing, engineering, or design of a BAT septic system and (2) installing or replacing the drain field for a BAT septic system.

Under current law and the bill, 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 under certain circumstances; and (4) in fiscal 2020 and 2021, to provide financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan.

Project Prioritization: Under current law, statutory priority for funding from the Septics Account is as follows: (1) first, for failing systems in the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area); and (2) then, for other failing systems that MDE determines are a threat to public health or water quality. *Under the bill*, this order of prioritization is modified to be as follows: (1) first, for failing systems in the Critical Area *and failing systems and nonconforming systems within 1,000 feet of a nitrogen-impaired body of water*; and (2) then, for other failing systems that MDE determines are a threat to public health or water quality. *Under current law and the bill*, priority is then given to low-income owners, as defined by MDE, for the costs of repairing or replacing a failing septic system with a BAT septic system and other wastewater treatment systems. The balance of funds in the Septics Account is then awarded by MDE to local health departments as block grants for BAT septic system upgrades.

State Fiscal Effect: As discussed below, because the total amount of fees collected from users of septic systems and sewage holding tanks has historically been fairly consistent from year to year, near-term impacts to MDE's Septics Account and MDA's MACS Program due to the change in the distribution of fee revenues are anticipated to be relatively minimal. However, to the extent that actual special fund revenues distributed to MDA in fiscal 2024 vary from the historic norm, special fund revenues (and corresponding expenditures) for MDE and MDA may be more meaningfully affected. The bill's changes to the authorized uses of the Septics Account do not affect the overall finances of BRF, but MDE may incur costs to develop mapping capacity to implement the bill's changes to the prioritization of projects, as discussed below.

Distribution of Fee Revenues

As shown in **Exhibit 1**, fees collected from users of septic systems and sewage holding tanks, which accrue to MDE's Septics Account and MDA's MACS Program, have been relatively consistent over the last 10 years. Consequently, special fund revenues distributed to MDE (60%) and MDA (40%) have varied by only a few hundred thousand dollars from year to year over this time period.

Exhibit 1
Bay Restoration Fund
Septic Systems and Holding Tank User Fee Distribution
Fiscal 2014 through 2023
(\$ in Millions)

<u>Fiscal Year</u>	<u>MDE Portion (60%)</u>	<u>MDE Variance From Average</u>	<u>MDA Portion (40%)</u>	<u>MDA Variance From Average</u>
2014	\$16.8	-0.5	\$11.2	-0.4
2015	17.5	0.1	11.6	0.1
2016	17.3	0.0	11.5	0.0
2017	17.1	-0.2	11.4	-0.1
2018	17.8	0.5	11.9	0.3
2019	16.9	-0.4	11.3	-0.3
2020	17.4	0.1	11.6	0.0
2021	17.0	-0.3	11.3	-0.2
2022	18.6	1.2	12.4	0.8
2023	16.9	-0.4	11.3	-0.3
10-Year Avg.:	\$17.3	0.0	\$11.6	0.0

Avg.: Average

MDA: Maryland Department of Agriculture

MDE: Maryland Department of the Environment

Note: Totals may not sum due to rounding.

Source: Maryland Department of the Environment; Comptroller's Office

Given this historic consistency in fee revenues, near-term impacts to MDE's Septics Account and MDA's MACS Program from the redistribution of funding under the bill are anticipated to be relatively minimal. However, to the extent that actual special fund revenues distributed to MDA in fiscal 2024 vary from the historic norm, special fund revenues (and corresponding expenditures) for MDE and MDA may be more meaningfully affected. The actual amount of fee revenue that will ultimately be transferred to MDA in fiscal 2024 (the current fiscal year) is unknown.

However, beginning in fiscal 2031, the bill results in a significant decrease in special fund revenues deposited into MDE's Septics Account and a significant increase in special fund revenues transferred to MDA; special fund expenditures are correspondingly affected in each agency. This is because, as of July 1, 2030, provisions of Chapter 150 that doubled the fee for most users terminate, thereby reducing the total fees collected by millions of

dollars annually relative to current fee collections. Under current law, both MDE and MDA will realize a decrease in special fund revenues as a result of the fee decrease that is set to occur beginning in fiscal 2031. However, under the bill, MDA receives the same amount of fee revenues that it receives in fiscal 2024 – which is significantly higher than it would otherwise receive under current law at that time. As a result, MDE receives significantly less than it otherwise would.

Because Chapter 150 did not double the fee for *all* users, a precise estimate of the bill's effect on the distribution of fee revenues between MDE and MDA beginning in fiscal 2031 cannot be made. *For illustrative purposes*, however, assuming total fee revenues in fiscal 2031 are approximately half of the 10-year average shown in Exhibit 1, MDA special fund revenues increase by approximately \$5.8 million annually, and MDE special fund revenues decrease correspondingly.

Project Prioritization and Eligibility

The bill's changes to the prioritization of funding for authorized projects from MDE's Septics Account do not necessarily affect the overall finances of the Septics Account but result in a shift in the projects that receive funding. However, MDE advises that it is unknown whether a mapping system exists to evaluate whether failing systems and nonconforming systems are located within 1,000 feet of a nitrogen-impaired body of water and, therefore, eligible for priority funding under the bill's changes. To the extent that such a system must be developed, MDE advises that it may incur contractual costs. Because the necessity and magnitude of those potential costs are unclear, however, this analysis does not reflect any such costs.

Local Fiscal Effect: Similar to the State effect described above, in the near term, the bill's change in the distribution of fees collected from users of septic systems and holding tanks is not anticipated to have a significant impact on the total amount of grant funding provided to local governments from the Septics Account. However, grant revenues (and corresponding expenditures) likely increase for some jurisdictions and decrease for others due to the bill's changes in the prioritization of funding and the expansion of the authorized uses of the Septics Account. Any impacts on individual local governments cannot be reliably estimated without actual experience under the bill.

Beginning in fiscal 2031, due to the significant decrease in available special funds in MDE's Septics Account, local government grant revenues and corresponding expenditures for BAT upgrades (and other authorized uses of the Septics Account) decrease significantly.

Small Business Effect: In the near term, small businesses in the septic industry (such as septic designers, vendors, engineers, and contractors) may be affected, both negatively

and positively, depending on the type and number of projects funded by the Septics Account under the bill. Beginning in fiscal 2031, due to the significant decrease in available special funds in the Septics Account, such businesses are likely to be negatively affected as fewer projects receive funding. On the other hand, beginning in fiscal 2031, agricultural operations, most of which are small businesses, benefit from a significant increase in funding available for the planting of cover crops under MDA's MACS Program.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland Department of Agriculture; Maryland Environmental Service; Comptroller's Office; Maryland Association of County Health Officers; Maryland Association of Counties; Baltimore County; Department of Legislative Services

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