

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 176

(Delegate Lafferty, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Bay Restoration Act of 2009

This bill prohibits a person from newly installing or replacing an on-site sewage disposal (septic) system on property in the Chesapeake and Atlantic Coastal Bays Critical Area unless it utilizes the best available nitrogen removal technology (BAT). The Maryland Department of the Environment (MDE) is required to assist owners in upgrading to a septic system and a system that utilizes BAT with money authorized for this purpose within the Bay Restoration Fund (BRF), if sufficient funds are available. MDE is authorized to adopt regulations that provide a preference for distribution of BRF assistance to low- and middle-income septic system owners under the bill. A person who violates the prohibition in the bill is subject to existing enforcement, but only a total maximum fine of up to \$8,000. In addition, the bill creates a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided.

The subtraction modification applies to all tax years beginning after December 31, 2009.

Fiscal Summary

State Effect: Special fund expenditures from BRF increase by \$93,000 in FY 2010 for personnel and contractual costs. Future year estimates are annualized and reflect ongoing operating costs. General fund revenues decrease by \$132,000 in FY 2011, the first fiscal year that the subtraction modification takes effect. Application of the penalty established by the bill is not expected to significantly affect State finances assuming full enforcement of the bill.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$0	(\$132,000)	(\$265,400)	(\$274,500)	(\$262,500)
SF Expenditure	\$93,300	\$74,600	\$78,200	\$82,000	\$86,000
Net Effect	(\$93,300)	(\$206,500)	(\$343,600)	(\$356,400)	(\$348,400)

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

Local Effect: Local tax revenues decrease for jurisdictions within the Critical Area due to the effect of the subtraction modification. Local operations in these jurisdictions are impacted to the extent that septic system inspection responsibilities change.

Small Business Effect: Minimal.

Analysis

Current Law: Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Water Quality Financing Administration within MDE. The main goal of the fund is to provide grants to owners of wastewater treatment plants (WWTPs) in order to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology.

Of the revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account (the Septics Account) within the fund to provide grants and loans to septic system owners to upgrade their septic systems and to implement an education and outreach program. With respect to grants provided to septic system owners, statutory priority is given first to failing septic systems within the Critical Area, and second, to failing systems that MDE determines are a threat to public health or water quality. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include providing grants or loans for up to 100% of 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. The remaining 40% of the revenue collected from users of septic systems and sewage holding tanks must be transferred to the Maryland Agricultural Water Quality Cost Share Program within the Maryland Department of Agriculture (MDA) to provide financial assistance to farmers for planting cover crops.

Except as otherwise specified, a violation of the water pollution control laws in the Environment Article or of any rule, regulation, order or permit thereof, may be enforceable through an order for injunctive relief, civil penalties of up to \$10,000 per day, administrative penalties of up to \$1,000 per day capped at \$50,000 total, or a misdemeanor with a fine of up to \$25,000 a day, one year imprisonment, or both. The water pollution control laws are enforced by MDE's Water Management Administration and primarily regulate municipal and industrial groundwater and surface water discharges, and industrial pretreatment discharges.

Background: As of March 31, 2009, the Comptroller had deposited approximately \$219.2 million into BRF as a result of fees collected from wastewater treatment plant

users. With respect to fees collected from septic system users, the Comptroller had deposited approximately \$29.5 million into MDE's Septics Account and had transferred approximately \$19.7 million to MDA's Cover Crop Program.

State Expenditures: BRF expenditures increase by \$93,284 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost for MDE to hire one environmental sanitarian to review septic system applications under the new program, develop regulations, and monitor ongoing maintenance of installed systems. The estimate also reflects the cost of contracting with a private vendor for implementing a web-based monitoring system, which research and experience with septic systems utilizing BAT indicates is essential to ensure proper maintenance and track failing systems. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2010</u>	<u>FY 2011</u>
Position	1	
Salary and Fringe Benefits	\$54,611	\$74,060
Contractual Services	35,000	0
Operating Expenses	3,673	515
Total Expenditures	\$93,284	\$74,575

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating expenses.

Current law specifies that reasonable costs for MDE to implement the septic system upgrade program may not exceed 8% of the funds deposited into the Septics Account. Although the additional expenditures required under the bill do not cause administrative and operating costs to exceed 8% of the funds in the Septics Account, less money is otherwise available for providing loans and grants.

The bill requires all newly installed and replacement septic systems in the Critical Area to utilize BAT. Under current law, failing systems that are replaced in the Critical Area receive top priority for assistance from the Septics Account. However, new systems are not given priority status.

Based on information provided by the Bay Restoration Fund Advisory Council and MDE data, Legislative Services projects that the Septics Account may be fully subscribed by the end of calendar 2010 under the authorized uses of funds currently in statute. Therefore, for purposes of this analysis, it is assumed that the assistance required to be provided under the bill will accelerate the depletion of the balance currently in the Septics Account and that, beginning in fiscal 2011, the Septics Account will consist only

of annual account revenues. Nevertheless, the bill only accelerates depletion of the account balance, but does not affect overall Septics Account finances.

State Revenues: Assuming that Septics Account revenues remain at about \$8.8 million annually and that the average cost for a septic system upgrade to BAT is \$12,000, then the Septics Account can fully fund about 733 upgrades annually. MDE estimates that about 240 systems fail in the Critical Area each year. Any upgrade for these 240 systems with BRF assistance would already receive top priority under current law. Thus, sufficient funding is available in the account to support all required replacements under the bill and about 493 additional upgrades. MDE estimates that about 2,000 septic systems statewide are repaired or replaced annually. If even less than one-third of these are replacements of failing systems deemed a threat to public health and supported by the Septics Account under their secondary priority status, then the account is fully subscribed with no funds available to support new septic system installation upgrades to BAT under the bill beginning in fiscal 2011.

Assuming no funding from the Septics Account is available to assist with the installation of new septic systems utilizing BAT as required by the bill, then the owners of all newly installed septic systems in the Critical Area may subtract the full estimated cost difference of the septic system installation, or \$12,000, from their federal adjusted gross income. Based on projected new housing completions and data from MDE regarding the percentage of septic systems in the Critical Area, general fund revenue losses from the provision of the subtraction modification under the bill are about \$132,000 in fiscal 2011 (the first fiscal year in which the subtraction modification affects State finances), growing to about \$262,500 by fiscal 2014. The value of the average subtraction modification for each septic system owner is \$963.

Local Fiscal Effect: MDE delegates permitting of on-site sewage disposal systems to local governments, typically health departments. Under the bill's requirements, some local authorities in jurisdictions within the Critical Area may be required to change their current inspection, monitoring, and other permitting related practices – potentially increasing overall workload. Septic systems utilizing BAT currently comprise only about 16% of new installations in Maryland. In addition, local government revenues for jurisdictions overlapping the Critical Area decrease by about \$81,600 in fiscal 2011 and by about \$162,300 in fiscal 2014 due to the subtraction modification's effect on income tax revenues.

Small Business Effect: Approximately 1,500 businesses are currently involved with the installation of septic systems in Maryland; most are small businesses and are not likely to be significantly impacted by the bill. Given that systems utilizing BAT represent a small share of all installations in Maryland, some businesses may not be equipped to handle their installation, while others with relevant experience may enjoy a competitive

advantage. In addition, some small businesses locating to the Critical Area may incur additional costs.

Additional Comments: MDE advises that, in conjunction with local health departments, it would fully enforce the bill's requirements, including seeking injunctive orders if necessary. Therefore, the above analysis assumes full compliance. However, Legislative Services advises that, by capping total maximum penalties under the bill at \$8,000, and in the absence of criminal penalties, there is a financial incentive to install a new septic system with conventional technology and risk being penalized \$8,000 as opposed to installing a new system utilizing BAT at an additional cost of \$12,000 on average. Therefore, unless MDE and local jurisdictions vigorously enforce the bill with frequent inspections, compliance rates may be less than 100%. To the extent of any noncompliance under the bill, special fund revenues at MDE increase from the bill's penalty.

Additional Information

Prior Introductions: None.

Cross File: SB 554 (Senator Lenett, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of the Environment, Department of Legislative Services

Fiscal Note History: First Reader - February 3, 2009
ncs/ljm Revised - Updated Information - February 23, 2009
Revised - House Third Reader - April 11, 2009

Analysis by: Evan M. Isaacson

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