

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 967

(Senator Colburn)

Education, Health, and Environmental Affairs

Environmental Matters

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Environment - Bay Restoration Fund - Authorized Uses

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This bill expands the uses of the Septics Account of the Bay Restoration Fund within the Maryland Department of the Environment (MDE) to include providing grants or loans for connecting an on-site sewage disposal (septic) system to an existing municipal wastewater facility achieving enhanced nutrient removal (ENR) level treatment. The grants or loans may be for up to 100% of the cost that would be authorized under current law for repairing or replacing a failing septic system with one that uses best available technology for nitrogen removal. Funding may only be provided if specified conditions are met.

The bill terminates September 30, 2014.

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Fiscal Summary

**State Effect:** Overall finances of the Septics Account within the Bay Restoration Fund are not affected. MDE workloads increase beginning in fiscal 2010 to implement the bill, but can be handled with existing resources.

**Local Effect:** Potential operational impact on local governments to document specified funding criteria. Although local expenditures may increase to provide sewerage service to additional customers, it is assumed that any such increase is offset by user fees.

**Small Business Effect:** Potential minimal beneficial impact to small businesses eligible for funding under the bill.

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## Analysis

**Bill Summary:** Funding may only be provided if (1) the environmental impact of the septic system is documented by the local government and confirmed by MDE; (2) it can be demonstrated that the replacement of the septic system with service to a wastewater facility with ENR is more cost effective for nitrogen removal than upgrading each individual septic system *or* the individual replacement of the septic system is not feasible; (3) the project is consistent with the appropriate county's comprehensive plan; and (4) the septic system was installed as of October 1, 2008, and the property it serves is located in a priority funding area.

**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) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with 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 first given 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.

State law requires each county to develop a comprehensive county plan for the adequate provision of sewerage systems. Each plan, which is required to cover a 10-year period and to be adopted by the county governing body, should anticipate the wastewater infrastructure needs of the county and identify the geographic extension of this infrastructure in accordance with the jurisdiction's growth management objectives. The plan must be reviewed and amended as needed every three years and submitted to MDE for approval. No State or local building permit may be issued, or subdivision plat approved, unless the county plan accommodates the needs of the proposed building, and MDE may not issue a permit for a sewerage system in a county that does not have an approved plan.

**Background:** ENR upgrades of the State's 67 major publicly owned WWTPs are currently underway. According to the Bay Restoration Fund Advisory Committee January 2009 Annual Status Report, 9 ENR facilities are operating; 2 other facilities are meeting the ENR treatment level but require further evaluation; 9 ENR upgrades are under construction; 19 are in design; 22 are in planning; and 6 are in preplanning activities. As of February 28, 2009, the Comptroller had deposited approximately \$219.0 million into the Bay Restoration Fund as a result of fees collected from WWTP 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 Fiscal Effect:** MDE estimates that there are about 420,000 septic systems in the State. However, only an indeterminate fraction of these systems will qualify to receive funding under the bill's four-part criteria, and in particular, the requirement to be located in a priority funding area. Further, some septic system owners may not avail themselves of the funding authorized by the bill if the amount of each grant or loan is less than the overall cost of extending sewer system coverage. MDE advises that the cost of connecting a property to a sewer system varies widely, but averages about \$20,000. By contrast, the award authorized in the bill is capped at an amount equal to what would be authorized for repairing or replacing a failing septic system with one that uses best available technology for nitrogen removal; this amount averages about \$19,000.

Although the bill does not affect the total finances of the Septics Account, any additional expenditures from the Septics Account will accelerate the depletion of the account balance in fiscal 2010. Since its establishment, Septics Account revenues have significantly exceeded expenditures, creating excess funding capacity. More recently, the Bay Restoration Fund Advisory Council reported that funding activity has increased significantly, and it expects expenditures to exceed revenues at some point during fiscal 2010, thereby reducing the balance. Once the Septics Account is fully subscribed, the use of funds authorized by the bill may begin to divert resources from the provision of community sewerage systems. Legislative Services advises that the bill does not establish a priority for the use of funds authorized; therefore, MDE will have discretion as to how to distribute money among the various authorized uses of the Septics Account.

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### **Additional Information**

**Prior Introductions:** Similar legislation was introduced in the 2008 session as HB 581/SB 831 and was enacted as Chapters 225 and 226, but without the provisions contained in this bill.

**Cross File:** HB 1362 (Delegate Costa) - Environmental Matters.

**Information Source(s):** Harford and Talbot counties, Baltimore City, Department of Natural Resources, Maryland Department of the Environment, Maryland Municipal League, Department of Legislative Services

**Fiscal Note History:** First Reader - March 17, 2009  
ncs/ljm Revised - Senate Third Reader/Clarification - April 6, 2009

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