

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 62

(Delegates V. Turner and Beidle)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Payment of Cost Differential - Nitrogen Removal Technology

This bill requires the Maryland Department of the Environment (MDE), in calendar 2010 through 2012 only, to pay, using money from the Bay Restoration Fund (BRF), 100% of the cost difference between a conventional on-site sewage disposal (septic) system and one that utilizes best available technology (BAT) for nitrogen removal for a homeowner required to replace a failing system in the Chesapeake and Atlantic Coastal Bays Critical Area in accordance with Chapter 280 of 2009. The bill also expresses legislative intent that MDE may use an economic means test to determine the financial assistance awarded to a homeowner for the cost difference between a conventional septic system and one utilizing nitrogen removal technology, except for failing systems in the critical area covered under the bill.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances as it merely codifies existing practice.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 428 of 2004 established the BRF, 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 them with ENR technology. The fund is

financed by a bay restoration fee (generally \$30 annually) assessed WWTP users and users of septic systems and sewage holding tanks.

Of the BRF 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 to provide grants and loans to septic system owners for the upgrade of their septic systems, and to implement an education and outreach program. During the 2009 session, budget reconciliation legislation altered this allocation, such that for fiscal 2010 only, 22.4% of the revenue is deposited in the Septics Account. The remaining funds collected from users of septic systems and sewage holding tanks (typically 40%) 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.

Statutory priority for funding from the Septics Account is given to failing systems in the Critical Area and then to failing systems anywhere in the State that MDE determines are a threat to public health or water quality. Originally, grants and loans made from funds within the Septics Account were used to cover up to 100% of the cost of repairing, replacing, or upgrading a septic system to a system utilizing BAT, or for covering the difference in cost between a new conventional system and one utilizing BAT. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include covering 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.

Chapter 280 of 2009 prohibits a person from newly installing or replacing a septic system on property in the Critical Area unless the installed system utilizes BAT. MDE is required to assist homeowners in upgrading a septic system with money authorized for this purpose from the Septics Account if sufficient funds are available. In addition, Chapter 280 creates a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any assistance provided, for those required to install a BAT system under Chapter 280.

Background: As of February 28, 2009, the Comptroller had deposited approximately \$273.9 million into the BRF as a result of fees collected from WWTP users. With respect to fees collected from septic system users, the Comptroller had deposited approximately \$33.6 million into MDE's Septics Account and had transferred approximately \$29.6 million to MDA's Cover Crop Program.

Recently there has been a significant increase in the demand for funds from MDE's Septics Account. As of September 2008, the account had funded the upgrade of 375 systems; however, by December 2009, the account had funded the upgrade of 1,955 systems. MDE advises that it continues to provide grants for failing systems in the Critical Area, and that 2,800 nonfailing systems are on a waiting list. MDE further

advises that only 5% of the upgrades on the waiting lists are for new systems in the Critical Area. MDE's priority for funding is as follows: (1) failing systems in the Critical Area; (2) other failing systems; (3) new or replacement systems in the Critical Area; and (4) other new or replacement systems.

Due to the increase in demand for funding, effective January 1, 2010, MDE began implementing income-based grant criteria as a form of economic means testing. According to MDE, this economic means testing will not apply to failing systems in the critical area, and MDE has instructed the counties to implement their septic system upgrade grant programs accordingly. For grants subject to economic means testing, grant awards are based on federal income tax brackets for 2008, as follows:

- homeowners in the 10% to 15% tax bracket receive grants for 100% of costs;
- homeowners in the 25% tax bracket receive grants for 75% of costs;
- homeowners in the 28% tax bracket receive grants for 50% of costs; and
- homeowners in the 33% to 35% tax bracket receive grants for 25% of costs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Budget and Management, Maryland Department of the Environment, Comptroller's Office, Department of Legislative Services

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Analysis by: Evan M. Isaacson

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