

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 237 (Delegate McConkey, *et al.*)
Environmental Matters

Environment - On-Site Sewage Disposal Systems - Funding Availability

This emergency bill exempts a person who installs or replaces an on-site sewage disposal (septic) system in the Chesapeake and Atlantic Coastal Bays Critical Area from being required to utilize nitrogen removal technology if there are not sufficient funds available from the Bay Restoration Fund (BRF) to support all such new or replacement installations.

Fiscal Summary

State Effect: Net BRF finances are unaffected. However, because the bill's exemption will likely be triggered (as discussed below), general fund revenues increase by as much as \$244,000 in FY 2012 as the subtraction modification established by Chapter 280 of 2009 cannot be claimed. In addition, if the exemption is triggered, Maryland Department of the Environment (MDE) workloads increase to revise certain federally mandated State plans before June 1, 2010 deadline.

Local Effect: Local government income tax revenues increase minimally for jurisdictions in the Critical Area because the subtraction modification under Chapter 280 of 2009 cannot be claimed under the bill, assuming this bill exempts people from the requirements of Chapter 280. Local government workloads may decrease minimally in counties with a significant concentration of septic systems in the Critical Area, particularly at the county health departments, to the extent that fewer new septic system installations are required to utilize nitrogen removal technology.

Small Business Effect: Minimal.

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 nitrogen removal technology. The fund is financed by a bay restoration fee (generally \$30 annually) assessed on WWTP users and users of septic systems and sewage holding tanks.

Of the BRF revenue collected from the 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.

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 nitrogen removal technology, or for covering the difference in cost between a new conventional system and one with nitrogen removal technology. 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 nitrogen removal 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 nitrogen removal technology. Under this law, 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 system with nitrogen removal technology under Chapter 280.

Background: As of January 2009, the Comptroller had deposited approximately \$274.2 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

\$33.4 million into MDE's Septics Account and had transferred approximately \$29.1 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 list 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 deemed a threat to health or water quality; (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 is also implementing income-based grant criteria.

State Fiscal Effect: Assuming that Septics Account revenues remain at about \$8.8 million annually and that the average cost for a septic system upgrade is \$10,500, then the Septics Account can fully fund about 840 upgrades annually. MDE estimates that about 240 systems (about 29% of annual account capacity) fail in the Critical Area each year; thus, on average the Septics Account can support about 600 full upgrades for failing systems outside of the Critical Area deemed a threat to health and water quality, and then support lower priority upgrades such as new and replacement installations in the Critical Area, if any funding capacity remains.

MDE advises that the number of new septic system installations in the Critical Area also averages about 240 on an annual basis. Therefore, of the remaining funding capacity from the Septics Account, equivalent to an estimated 600 full upgrades, if only 360 upgrades of failing systems outside of the Critical Area are funded, then the Septics Account will not likely be able to fund all new and replacement systems in the Critical Area. Thus, the exemption established under the bill would be triggered and the requirements of Chapter 280 of 2009 would not apply.

Legislative Services advises that, even under MDE's new income-based grants, it is highly likely that most, if not all, of the annual funding capacity of the Septics Account will be used for the first priority use (failing systems in the Critical Area) and second priority use (failing systems outside of the Critical Area deemed a threat to health or water quality). Therefore, the exemption of Chapter 280 created by the bill will almost certainly be triggered, and new systems in the Critical Area will not be required to utilize nitrogen removal technology.

While net finances of the Septics Account are not affected by the bill, MDE advises that because the exemption from Chapter 280 will likely be triggered, the goal of completing

3,000 septic system upgrades by the end of calendar 2010 will be jeopardized. MDE further advises that this goal is one component of the State's draft watershed implementation plan (WIP), a new mandate under the federal Clean Water Act. Failure to establish an acceptable WIP may have significant consequences, including potential federal sanctions.

However, Legislative Services advises that even if new septic systems installed in the Critical Area are not required to utilize nitrogen removal technology, it is still likely that 3,000 septic systems will be upgraded by the end of 2010. And while systems in the Critical Area contribute much greater amounts of nitrogen to the Chesapeake Bay than systems outside the Critical Area in the near term, it is unlikely that MDE will not be able to revise its WIP to achieve the standards required by federal law due to this bill. However, any revision to the State's WIP that reduces emphasis on nitrogen removal from septic system upgrades will necessarily require greater regulation of water pollution from other sources such as WWTPs, stormwater facilities, or agricultural activities.

A draft of the State WIP is currently under production and is due June 1, 2010. By federal court order, the Chesapeake Bay Total Maximum Daily Load (a nutrient budget for the watershed), complete with all state WIPs, must be in effect by May 2011.

As noted above, 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, for those required to install a system with nitrogen removal technology under Chapter 280. Because this bill likely exempts people from the requirements of Chapter 280, then general fund revenues increase by an estimated \$244,000 in fiscal 2012 because the subtraction modification cannot be claimed. This estimate assumes that no new installations under Chapter 280 of 2009 would otherwise receive assistance from the Septics Account; to the extent some installations are supported by Septics Account funding, the increase in general fund revenue will be less. Future year revenue estimates are based on housing completion forecasts and may vary to the extent that those forecasts are incorrect.

Local Fiscal Effect: Local government income tax revenues for jurisdictions overlapping the Critical Area increase by about \$150,900 in fiscal 2012 and by about \$178,600 in fiscal 2015 because the subtraction modification under Chapter 280 of 2009 cannot be claimed under the bill, assuming the requirements of Chapter 280 no longer apply.

Additional Comments: Legislative Services advises that the bill is not clear as to when the exemption may be triggered, and if triggered, for how long it applies. The bill states that the prohibitions of Chapter 280 of 2009 do not apply "if there are insufficient funds available for [MDE] to provide *all homeowners in the Chesapeake and Atlantic Coastal*

Bays Critical Area who install or replace an on-site sewage disposal system with assistance” from the Septics Account.

One interpretation of the bill is that, on any given date, if an application to provide funding assistance for the upgrade of a new or replacement system in the Critical Area is denied, then the next new or replacement septic system installation will be exempt from utilizing nitrogen removal technology. Another interpretation is that the exemption is triggered based on a consideration of funding provided or denied over a certain period. For example, MDE would consider whether all new and replacement system installations were able to be funded in the prior month or year, and if not, the exemption applies for the following month or year. However, as currently drafted, it is not clear how the bill will be implemented or to what extent MDE has discretion to provide further guidance through regulation.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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