

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 8 (Senator Colburn)
Education, Health, and Environmental Affairs

Environment - Bay Restoration Fund - Payments to Contractors

This bill requires the Comptroller, or authorized local government as appropriate, to disburse Bay Restoration Fund (BRF) grant money directly to contractors that perform eligible on-site sewage disposal (septic) system upgrades.

Fiscal Summary

State Effect: None. The bill merely codifies current practice at the Maryland Department of the Environment (MDE).

Local Effect: The bill codifies a recently adopted administrative change at MDE that need not be followed by the jurisdictions that have been delegated authority to implement the Septic System Upgrade Program. Administrative operations may thus be minimally affected in some counties to implement the bill. However, the bill is not anticipated to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Water Quality Financing Administration within MDE. One of the revenue sources for the fund is a \$30 annual bay restoration fee on users of septic systems and sewage holding tanks. For users of septic systems and sewage holding tanks that receive a water bill, the fee is collected by the billing authority. For users of septic systems and sewage holding tanks that do not receive a water bill, the

county generally collects the fee. Fee revenues are remitted by the billing authorities to the Comptroller who administers, collects, and enforces the fee.

Of the revenue collected from users of septic systems and sewage holding tanks, 60% is deposited into a separate account commonly referred to as the Septics Account for MDE's Septic System Upgrade Program, and 40% must be transferred to the Maryland Department of Agriculture to provide financial assistance to farmers for planting cover crops. 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. As of January 2010, MDE advises that it has provided \$12 million in direct grants and has provided \$16 million to the 14 counties that have delegated authority for the program. Over 1,950 systems have been upgraded.

Statute does not mandate how and to whom payments must be made in compensating the contractors performing work under the BRF Septic System Upgrade Program. Typically, once an upgraded septic system is installed, the contractor submits the invoice to the homeowner. The homeowner sends the invoice to MDE (or to the county authorized to implement the Septic System Upgrade Program), and once the invoice is approved, it is transferred to the Comptroller (in the case of grants from MDE) for release of the grant funds. The Comptroller (or the local government, as appropriate) remits the check for the approved amount to the homeowner, who then pays the contractor.

MDE has been informed that in some circumstances contractors are not being fully compensated because a homeowner fails to pay the contractor from the funds disbursed by the Comptroller. MDE advises that, due to these issues, for applications approved after January 2, 2010, it will begin asking homeowners to authorize the Comptroller to make payments directly to the contractor. For applications approved before this date, MDE will send collection letters to any homeowner who fails to pay the contractor. MDE advises that its new payment process, which is codified by this bill, is not required of local governments with delegated authority. Accordingly, while some counties may already provide payments directly to contractors (such as Anne Arundel County), others may not.

Small Business Effect: Most septic system vendors and installers participating in the Septic System Upgrade Program are small businesses. Although nonpayment to these contractors occurs in a minority of installations, at least one major contractor stated that it would consider ceasing participation in the program unless the payment process was changed. Before MDE voluntarily changed its payment process on January 2, 2010, this major contractor stated that 101 out of its 795 installations remained uncompensated with payment at least 60 days overdue. Presumably, under MDE's new payment process that is codified under the bill, participating small business contractors will incur fewer losses due to nonpayment and legal costs associated with collection activities. According to

MDE, the average installation cost of an upgraded system totals approximately \$10,000 to \$12,000 per equivalent dwelling unit.

Additional Comments: There is also a second cause of nonpayment to contractors under the Septic System Upgrade Program. For a homeowner with an uncollected tax debt, the Comptroller has withheld the funds from the homeowner through a refund offset to satisfy the debt. The bill does not address this cause of nonpayment to contractors.

Additional Information

Prior Introductions: None.

Cross File: HB 36 (Delegate Haddaway, *et al.*) – Environmental Matters.

Information Source(s): Anne Arundel, Dorchester, Garrett, Howard, and Montgomery counties; Maryland Municipal League; Maryland Department of the Environment; Comptroller's Office; Department of Legislative Services

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