

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

House Bill 1164

(Delegates Haddaway-Riccio and Eckardt)

Environmental Matters

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**Bay Restoration Fund - Talbot County Demonstration Projects**

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This bill expands the allowable uses of the Septics Account within the Bay Restoration Fund (BRF) to include the cost of implementing demonstration projects, including grants of up to \$250,000 to Talbot County for the extension of restricted, denied-access sewer lines to designated areas with defined capacity limits based on existing lots of record.

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**Fiscal Summary**

**State Effect:** Overall finances of BRF are not affected. The Maryland Department of the Environment (MDE) can implement the bill with existing resources.

**Local Effect:** Although Talbot County would benefit from any grants provided for sewer extensions under the bill, the amount of funding provided to local governments for septic upgrades would decrease correspondingly.

**Small Business Effect:** Minimal.

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**Analysis**

**Current Law/Background:** Chapter 428 of 2004 established 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 enhanced nutrient removal (ENR) 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 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. The remaining funds collected from users of septic systems and sewage holding tanks (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.

Priority for funding from the Septics Account is as follows: (1) failing systems in the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area); (2) other failing systems; (3) new or replacement systems in the Critical Area; and (4) other new or replacement systems. 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 the best available technology (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; Chapter 382 of 2010 requires MDE, through calendar 2012, to pay 100% of the cost difference between a conventional septic system and a system utilizing BAT for those homeowners required to replace a failing system in the Critical Area under Chapter 280 of 2009. In addition, 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 anyone required to install a BAT system under that Act.

As of February 28, 2011, the Comptroller had deposited approximately \$328.2 million into BRF as a result of fees collected from WWTP users. With respect to fees collected from septic system users, the Comptroller had deposited approximately \$41.0 million into MDE's Septics Account and had transferred approximately \$36.1 million to MDA's Cover Crop Program.

Since January 1, 2010, MDE has implemented income-based criteria for septic upgrade grants as a form of economic means testing, which also complies with the legislative intent expressed in Chapter 382 of 2010. According to MDE, this economic means testing will not apply to top priority failing systems in the Critical Area, and MDE has instructed local agencies (which now wholly implement the septic system upgrade program) to implement their programs accordingly. For homeowner-occupied primary dwellings, grant awards are based on federal income tax brackets, 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.

As part of its federally mandated Watershed Implementation Plan (WIP) process, MDE has estimated that 3,000 septic system upgrades in Maryland will be completed through calendar 2011 and is planning to upgrade 600 systems annually from 2012 to 2017, with a goal of upgrading a total of 5,700 systems between 2010 and 2017. The upgrades planned for 2012 through 2017 are estimated to provide an annual nitrogen reduction to the Chesapeake Bay of 51,186 pounds as part of Maryland's commitment to the federal Chesapeake Bay Total Maximum Daily Load (TMDL), which is currently reflected in the final Phase I WIP. This amounts to less than 1% of the total nitrogen reduction needed to meet the WIP requirement for 2017. However, the overall contribution of septic system upgrades to achieving the final nitrogen reduction requirement in WIP is much greater, at about 15% of the final 2020 target load.

To meet the goals of the Chesapeake Bay TMDL, MDE also plans to connect 930 failing septic systems to WWTPs with ENR technology. Current funding is sufficient to connect 704 failing systems by the end of 2011, and 226 additional systems are expected to be connected by 2017 with funding from the Maryland Water Quality Revolving Loan Fund and supplemental assistance grants.

**State Fiscal Effect:** Assuming Septics Account revenues average about \$8.5 million annually and the average cost for a septic system upgrade to BAT is \$13,000, the Septics Account can fully fund about 650 upgrades annually. MDE estimates that about 2,000 septic systems statewide are repaired or replaced annually, including 240 systems in the Critical Area. These 240 systems receive top priority and full grant funding, encumbering an average of about \$3.1 million annually. Even under income-based grant criteria, the remaining \$5.4 million is not expected to be sufficient to assist in the upgrade of all failing systems in Maryland. The bill does not establish the use of funds under the bill as a priority relative to other uses of Septics Account funding. Thus, to the extent Septics Account funding is available under the bill in any fiscal year, it appears that MDE would have discretion as to how much funding would be redirected. MDE advises that there are existing grant and loan programs available to assist in the financing of sewer extension projects.

**Local Fiscal Effect:** Talbot County advises that if it were to receive a \$250,000 grant under the bill's authorization, the Talbot County Sanitary District would use the funds to

help finance a sewer extension project for a community near the Town of St. Michaels that would connect to the St. Michaels WWTP, which utilizes ENR. The community that would be affected by the sewer extension project is located within the Critical Area and currently served by 21 septic systems. The grant would be used primarily for engineering, construction management, and construction costs for the project.

Legislative Services notes that other demonstration projects could also be funded under the bill; however, the extent to which any other local jurisdictions would seek funds for such projects, and the extent to which MDE would redirect funds for those projects, is unknown. Any funds provided for demonstration projects results in a corresponding decrease in funds provided for septic upgrades.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 1330 of 2007, received a hearing in the House Environmental Matters Committee, but no further action was taken. Its cross file, SB 812, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken.

**Cross File:** SB 916 (Senator Colburn) - Education, Health, and Environmental Affairs.

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

**Fiscal Note History:** First Reader - March 10, 2011  
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