

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1333

(Delegate Frush, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Nitrogen Removal Technology - Payment of Cost Differential

This bill alters the requirement for the Maryland Department of the Environment (MDE) to assist in paying the difference in cost between a conventional on-site sewage disposal (septic) system and a septic system that utilizes nitrogen removal technology for a homeowner that is required to replace a failing septic system in the Chesapeake and Atlantic Coastal Bays Critical Area with a system that utilizes nutrient removal technology. The bill establishes an income-based structure for determining the grant amount for homeowners required to replace a failing septic system in the Critical Area.

The bill takes effect January 1, 2013.

Fiscal Summary

State Effect: Overall finances of the Bay Restoration Fund (BRF) Septics Account are not affected. However, to the extent that the bill's income-based grant structure results in a larger average grant for replacement systems in the Critical Area, fewer grants would be available for those with failing septic systems outside of the Critical Area and for the owners of other septic systems that are given lower priority for grant funding. General fund revenues increase minimally beginning in FY 2014 due to a reduction in the amounts of subtraction modifications against the personal income tax claimed by homeowners required to upgrade their systems in the Critical Area, as the current modification is based on the amount of assistance provided, which increases under the bill.

Local Effect: The bill is not anticipated to materially affect local finances or operations in most counties; however, income tax revenues increase minimally beginning in FY 2014 for counties within the Critical Area.

Small Business Effect: Minimal.

Analysis

Bill Summary: For a homeowner that is required to replace a failing septic system in the Critical Area with a system that utilizes nutrient removal technology, the bill establishes the following income-based grants for the cost difference between a conventional septic system and one that utilizes nutrient removal technology:

- 100% for a household income less than \$150,000 per year;
- 75% for a household income between \$150,000 and \$199,999 per year;
- 50% for a household income between \$200,000 and \$249,999 per year; and
- 25% for a household income of at least \$250,000 per year.

Current Law/Background: Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The main goal of BRF is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology, and to support septic system upgrades and the planting of cover crops. Of the revenue collected from users of septic systems and sewage holding tanks, 60% is distributed to MDE's Septics Account for the upgrade of septic systems and 40% is transferred to the Maryland Department of Agriculture (MDA) to provide assistance to farmers for planting cover crops.

Priority for funding from the Septics Account 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. 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 utilizing nitrogen removal technology.

Chapter 280 of 2009 prohibits a person from newly installing or replacing a septic system on property in the Critical Area unless it utilizes the best available nitrogen removal technology. *For calendar 2010 through 2012*, MDE must assist homeowners by paying 100% of the cost difference between a conventional septic system and one that utilizes nitrogen removal technology with money from BRF, if the homeowner is required to

replace a failing septic system in the Critical Area. Chapter 280 also created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less assistance provided, for those required to replace a failing system in the Critical Area pursuant to that Act.

Since January 1, 2010, MDE has implemented income-based criteria for septic system 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 does not currently 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 outside of the Critical Area, 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.

MDE advises that, beginning January 1, 2013, it plans to instruct counties and other local organizations delegated responsibility to implement the septic system upgrade program to apply this income-based grant structure to septic system upgrades within the Critical Area as well.

As of February 29, 2012, the Comptroller had deposited approximately \$389.7 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 \$50.3 million into MDE's Septics Account and had transferred approximately \$42.2 million to MDA's Cover Crop Program.

State Fiscal Effect: Assuming Septics Account revenues average about \$8.5 million annually and the average cost for a septic system upgrade to best available technology is \$13,000, the Septics Account can fully fund about 650 upgrades annually. MDE estimates that roughly 2,000 septic systems statewide are repaired or replaced annually. MDE also estimates that the vast majority of grants from the Septics Account support upgrades for failing systems in the Critical Area, which, as noted, receive top priority and full grant funding through December 31, 2012. Thus, only a small fraction of Septics Account funding is estimated to currently support upgrades for failing systems outside of the Critical Area (second priority) with no funds available for lower priority upgrades.

The bill alters the distribution of grants by increasing the average grant amount issued for homeowners for septic system upgrades. In the absence of the bill, beginning January 1, 2013, grants issued for failing systems in the Critical Area will be issued in accordance with the current income-based system established by MDE, which would result in the issuance of a lower average grant award than under the structure established by the bill. Therefore, the greater average grant amount reduces the total number of grants available for owners of lower priority septic system upgrades. The difference in the number of grants cannot be estimated without additional information regarding the income profile of the current grant recipient population.

Chapter 280 of 2009 created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less BRF assistance provided, for those required to replace a failing system in the Critical Area pursuant to that Act. Because this bill increases the amount of grant funding provided to those individuals as of January 1, 2013, the amounts that they will be able to subtract from their federal adjusted gross income decreases beginning in that tax year. Thus, general fund revenues increase minimally beginning in fiscal 2014.

Additional Comments: The bill does not specify how the income of grant recipients is to be measured. For example, income could be based on adjusted gross income or net income reported on either the federal or Maryland tax forms.

The Administration has introduced legislation (HB 446/SB 240) to increase the bay restoration fee. As introduced, the legislation is estimated to roughly double the amount of funding available for septic system upgrades each year.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mc/lgc

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