

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 973 (Senator Pipkin)
Education, Health, and Environmental Affairs

Environment - On-Site Sewage Disposal Systems - Nitrogen Removal Technology

This bill prohibits the Maryland Department of the Environment (MDE) from requiring the installation of an on-site sewage disposal (septic) system that utilizes nitrogen removal technology on property outside of the Chesapeake and Atlantic Coastal Bays Critical Area.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: No impact in FY 2013. General fund revenues increase, potentially by more than \$1.0 million annually thereafter, due to fewer subtraction modification claims against personal income taxes from individuals installing septic systems that utilize nitrogen removal technology. State expenditures (all funds) may increase significantly to implement other nutrient reduction strategies necessary to achieve State and federal Chesapeake Bay restoration mandates, partially offset by lower costs for State projects involving the installation of septic systems.

Local Effect: Local income tax revenues increase due to fewer subtraction modification claims against personal income taxes. Local health department workloads related to inspection and enforcement of septic systems that utilizes nitrogen removal technology decrease. Local expenditures decrease minimally as costs decrease for some local projects, and to the extent fewer health department inspection and enforcement resources are needed.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Chapter 280 of 2009 (SB 554) required the best available technology (BAT) for septic systems associated with new construction within the Critical Area and when replacing septic systems in the Critical Area. New MDE regulations effective January 1, 2013, also require septic systems to utilize BAT for nitrogen removal for new construction in the watershed of any nitrogen impaired water body in the State, which currently encompasses nearly the entire State. The regulations also require that all new and existing BAT systems be maintained and operated for the life of the system through one of several specified management measures.

Chapter 280 requires MDE to assist homeowners in upgrading to a septic system that utilizes BAT with money authorized for this purpose within the Bay Restoration Fund (BRF), if sufficient funds are available. Chapter 280 also established a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided.

Chapter 428 of 2004 (SB 320) established BRF, which is administered by MDE. As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks, and Chapter 150 of 2012 (HB 446) doubled the fee for most users. Of the revenues 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 to provide assistance to farmers for planting cover crops. Through January 31, 2013, \$114.8 million had been collected from users of septic systems and sewage holding tanks and, after administrative costs, \$63.7 million had been deposited in MDE's Septics Account. According to MDE, BRF has supported the installation of over 4,000 BAT septic systems.

According to MDE, septic systems account for about 6% of the total nitrogen load to the Chesapeake Bay from Maryland. While nitrogen loading from other sources is declining, nitrogen loading from septic systems continues to increase due to development. MDE has determined that reducing nitrogen discharged by septic systems is a necessary action that the State's Watershed Implementation Plan should take in order to meet the water quality standards and the Total Maximum Daily Load (TMDL) established by the U.S. Environmental Protection Agency (EPA) for the Chesapeake Bay.

Chapter 149 of 2012 (SB 236) imposes restrictions on the installation of septic systems for major new residential subdivisions, and is generally anticipated to result in fewer septic system installations in the future.

According to MDE, the Maryland Department of Planning forecasts that, over the next 25 years, approximately 56,000 septic systems will be installed to serve new homes outside the Critical Area.

State Revenues: General fund revenues increase beginning in fiscal 2014 due to a decrease in the number of subtraction modifications claimed against the taxable income of homeowners that would otherwise be required to install a BAT septic system, but are not required to under the bill. The extent of the general fund increase is unclear due to significant uncertainty regarding the percentage of eligible homeowners that actually claim a subtraction modification, the reduction, if any, in the number of failing systems outside of the Critical Area that are upgraded with a BAT system, and the percentage of future residential development that will be served by septic systems following the enactment of Chapter 149 of 2012, which will likely reduce the future rate of such development. However, *for illustrative purposes only*, general fund revenues increase by \$449,217 in fiscal 2014, which reflects the bill's effective date, and \$983,466 in fiscal 2015, the first full year of the bill's impact, under the following information and assumptions:

- the average cost difference between a conventional septic system and a BAT system is \$13,000;
- 12% of new residential development is serviced by septic systems;
- 50% of eligible taxpayers claim the subtraction modification;
- no assistance from the Septics Account is provided for systems associated with new development; and
- no change in the number of failing septic systems that are upgraded with a BAT system.

As noted, there is considerable uncertainty in this illustrative example. For example, if the percentage of new residential development serviced by septic systems were 24%, consistent with State projections prior to the enactment of Chapter 149 of 2012, and 90% of eligible taxpayers claim a subtraction modification under current law, then general fund revenues increase by \$1.6 million in fiscal 2014 and by more than \$3.5 million in fiscal 2015.

State Expenditures: The installation of BAT systems is a key strategy within the State's Phase II Watershed Implementation Plan as approved by EPA for meeting the nutrient reduction targets of the Chesapeake Bay TMDL. Thus, the bill may necessitate significant additional State and local expenditures associated with other required nutrient reduction measures. To the extent that State agencies have facilities that may otherwise have been required to install a BAT septic system in the future, State expenditures decrease.

Local Revenues: Local income tax revenues also increase as a result of the reduction in subtraction modifications claimed, as discussed above. The total statewide increase in local revenues is likely more than \$100,000 in fiscal 2014, and may exceed \$2.0 million in future years.

Local Expenditures: Local government workloads decrease for oversight of BAT system installation and operation and maintenance (O&M), which are generally more complex than for conventional systems. Further, enforcement workloads decrease in future years to the extent that noncompliance with O&M requirements associated with BAT septic systems decreases. Finally, to the extent that local agencies have facilities that may otherwise have been required to install a BAT septic system in the future, installation and O&M costs decrease.

Small Business Effect: The bill may result in a meaningful benefit for vendors that derive a relatively significant share of their sales or installation services from conventional septic systems. However, the bill may also result in a meaningful decrease in sales for vendors with a competitive advantage in the sale or installation of BAT systems. Additionally, developers with a relatively significant reliance on development with septic systems may realize a meaningfully beneficial savings in development costs due to the reduced cost of septic system installation. Small businesses generally may realize a meaningful savings in expansion costs as a result of the bill's changes. Finally, small businesses engaged in providing O&M services for BAT systems may realize a meaningful decrease in the demand for their services.

Additional Information

Prior Introductions: SB 13 of the 2012 second special session and SB 1305 of the 2012 first special session, both similar bills, were referred to the Senate Rules Committee, but no further action was taken on either bill.

Cross File: None.

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

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