

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 266

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

Environment - On-Site Sewage Disposal Systems - Best Available Technology for Nitrogen Removal

This bill generally codifies and adds specificity to existing requirements for the Maryland Department of the Environment (MDE) to use the Bay Restoration Fund (BRF) Septics Account to assist homeowners with the cost difference between a conventional on-site sewage disposal system (OSDS) and one that uses the best available technology (BAT) for nitrogen removal, if sufficient funds are available. The bill also requires the Bay Cabinet, in consultation with the Chesapeake Bay Commission and other interested parties, to (1) review and recommend alternative nitrogen reductions that account for lost reductions due to specified regulatory changes; (2) determine the most cost-effective methods for reducing nitrogen to the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area) and other nitrogen-impaired bodies of water in the State; (3) recommend a new prioritization for use of BRF based on those methods; and (4) report any findings and recommendations to the Governor and the General Assembly by December 31, 2017.

Fiscal Summary

State Effect: Overall finances of the BRF Septics Account are not affected; the priority for funding established by the bill is generally consistent with current regulations. The Bay Cabinet and the Chesapeake Bay Commission can likely implement the bill with existing budgeted resources and staff.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: The bill generally codifies current regulations and adds specificity for priority funding to assist homeowners in paying the difference between a conventional OSDS and a system utilizing BAT from BRF, if sufficient funds are available. The priority for funding from the Septics Account under the bill is as follows:

- (1) failing systems in the Critical Area;
- (2) failing systems outside the Critical Area;
- (3) existing systems that:
 - a. do not comply with State or local laws, regulations, or policies; and
 - b. are in the Critical Area;
- (4) new systems in the Critical Area;
- (5) existing systems that:
 - a. do not comply with State or local laws, regulations, or policies; and
 - b. are outside the Critical Area; and
- (6) new systems that are outside the Critical Area.

Current Law/Background:

Bay Restoration Fund – In General

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. The fund is also used to support OSDS (septic system) upgrades and the planting of cover crops.

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 doubled the fee for most users. The BRF statute enumerates several uses of fee revenues, including for ENR upgrades of WWTPs, upgrades of septic systems to BAT for nitrogen removal, and funding for Maryland Department of Agriculture (MDA) cover crop activities.

Legislative and Regulatory History of the Requirement to Utilize BAT vs. Conventional Technology for Septic Systems

Chapter 280 of 2009 required the installation of septic systems that utilize BAT for new construction or replacement systems in the Critical Area. Further, Chapter 280 required MDE to assist homeowners to upgrade a conventional septic system to a system that

utilizes BAT with money authorized for this purpose within BRF, if sufficient funds are available. Chapter 280 also created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided. Finally, Chapter 280 applied existing civil and administrative penalties to violations of the Act, but limited the total penalties that could be assessed to \$8,000.

In 2012, MDE adopted regulations that expanded the Chapter 280 requirements beyond the Critical Area, requiring septic systems that utilize BAT for new construction in the Chesapeake Bay watershed, the Atlantic Coastal Bay watershed, and the watershed of any nitrogen-impaired water body. The regulations also required BAT for any replacement system on property located in the Critical Area, which is consistent with the provisions of Chapter 280. Additionally, the regulations required the operation and maintenance (O&M) of a septic system utilizing BAT by the property owner for the life of the system. Finally, the regulations defined “new construction” to include the renovation or repair of a residence or other building where the approving authority determines the existing septic system is inadequate to serve the proposed alteration or altered building.

In 2016, MDE adopted new regulations that retracted the expansions established by the 2012 regulations, among other changes. The 2016 regulations only require septic systems that utilize BAT (as opposed to conventional OSDs) for new construction in the Critical Area, unless (1) the system has a design flow of 5,000 gallons per day or greater or (2) the local jurisdiction has required septic systems utilizing BAT outside of the Critical Area in order to protect public health or the waters of the State. The regulations also redefined “new construction” to exclude the renovation, repair, or change of use of an existing residence or other building, unless the residence or building is located in the Critical Area and the approving authority finds that the residence or building’s existing septic system is inadequate to serve the proposed changes. Finally, the regulations require all systems utilizing BAT that are sold in the State to include a two-year O&M contract and a two-year warranty. The notice of final action for the 2016 regulations was published in Volume 43, Issue 23 of the *Maryland Register* on November 14, 2016, and the regulations took effect November 24, 2016.

Bay Restoration Fund – Septic System Upgrades

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 MDA to provide financial assistance to farmers for planting cover crops.

As noted above, 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. MDE advises that the estimated cost difference between a conventional OSDS and one that utilizes BAT is \$7,500.

Statutory priority for funding from the Septics Account is as follows: (1) failing systems in the Critical Area and (2) other failing systems that MDE determines are a threat to public health or water quality. Septics funds can be used to cover up to 100% of (1) the cost of upgrading a septic system to BAT; (2) the cost difference between a conventional septic system and one that uses BAT; (3) the cost of repairing or replacing a failing septic system with a system that uses BAT; (4) 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; or (5) the cost of connecting a property served by a septic system to a wastewater facility meeting specified levels of treatment. The Septics Account may also be used for specified administrative costs and, for qualifying low-income homeowners, up to 50% of the cost of an O&M contract of up to five years for a BAT septic system. MDE advises that five years of O&M is included in the initial grant amount provided for all residential BAT systems.

Under current implementing regulations, the project prioritization for BRF funding for BAT upgrades to OSDS is as follows:

- (1) failing systems in the Critical Area;
- (2) failing systems outside the Critical Area;
- (3) nonconforming systems in the Critical Area;
- (4) nonconforming systems outside the Critical Area;
- (5) other systems in the Critical Area, including new construction; and
- (6) other systems outside the Critical Area, including new construction.

The Bay Cabinet and the Chesapeake Bay Commission

The Bay Cabinet, which is composed of the Secretaries of Agriculture, Environment, Natural Resources, and Planning as well as the Chancellor of the University System of Maryland, with representatives from other State agencies, advises the Governor on management of the bay and surrounding areas and promotes interagency coordination and integration of bay-related programs.

The Chesapeake Bay Commission is a tri-state legislative commission that was created in 1980 to advise the members of the General Assemblies of Maryland, Virginia, and Pennsylvania on matters of baywide concern. The commission serves as the legislative

arm of the multi-jurisdictional Chesapeake Bay Program and acts in an advisory capacity to the respective members of the General Assembly.

Additional Information

Prior Introductions: None.

Cross File: HB 281 (Delegates Lafferty, *et. al.*) – Environment and Transportation.

Information Source(s): Chesapeake Bay Commission; Comptroller's Office; Maryland Department of the Environment; Department of Legislative Services

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