

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 719 (Delegate Lafferty)
Environment and Transportation

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

This bill expands the requirement to install an onsite sewage disposal system (septic system) that utilizes the best available technology for nitrogen removal (BAT), by prohibiting a person from newly installing or replacing a septic system to service property (1) on which a project is located that requires a general permit for stormwater discharge associated with construction activity and (2) is within 1,000 feet of a “blue-line stream” that is in the watershed of a nitrogen-impaired body of water, unless the installed/replaced septic system uses BAT. Existing civil and administrative penalties apply to violations.

Fiscal Summary

State Effect: General fund income tax revenues decrease beginning in FY 2019 due to the application of an existing subtraction modification. Overall finances of the Bay Restoration Fund (BRF) Septics Account are not affected. The Maryland Department of the Environment (MDE) can handle any increase in workload with existing resources. The application of existing penalties to the bill’s prohibition is not anticipated to materially affect State finances.

Local Effect: Local government expenditures may increase to implement the bill. To the extent that State income tax revenues decrease, local income tax revenues also decrease.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “blue-line stream” is defined as a stream that appears as a broken or solid blue or purple line on a U.S. Geological Survey (USGS) topographic map.

Current Law:

Requirement to Install a BAT System versus a Conventional Septic System

Pursuant to Chapter 280 of 2009, a person is generally prohibited from newly installing or replacing a septic system on property in the Critical Area unless the installed system uses BAT. MDE is required to assist homeowners with the upgrade from a conventional septic system to a system that utilizes BAT with money authorized for this purpose within the BRF Septics Account, if sufficient funds are available. There is also a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided. Civil and administrative penalties apply to violations of these provisions, and violators are subject to a maximum fine of \$8,000.

Regulations require septic systems that utilize BAT (as opposed to conventional septic systems) only 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. Regulations define “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. Regulations require all systems utilizing BAT that are sold in the State to include a two-year operation and maintenance contract and a two-year warranty.

General Permit for Stormwater Discharge

Any construction project that disturbs one or more acres of earth must apply for either a general or individual permit for stormwater discharge associated with construction activity and obtain coverage under the permit before beginning earth disturbance or any part of the project. A notice of intent (NOI) is one of the first steps in acquiring a construction general permit for stormwater discharge. However, prior to submitting a NOI, a final erosion and sediment control plan must be submitted to the appropriate approval authority (such as the Soil Conservation District). Applications fees are required for certain projects and are calculated based on the total disturbed acreage.

Background:

USGS Topographic Maps

According to USGS, a U.S. “Topo” map is a digital topographic map that covers 7.5-minutes of longitude by 7.5-minutes of latitude and is produced at a scale of 1:24,000. U.S. Topo maps are available for download on the Internet from the USGS [Store](#). Map features may be represented as points, lines, or polygons. They incorporate different colors and patterns to distinguish between feature types and to show each feature’s importance. A perennial stream is symbolized by a solid blue line while an intermittent stream is shown by a blue dashed and dotted line. A submerged stream is symbolized as parallel blue dashed lines.

Chesapeake Bay Restoration

Despite restoration efforts, the Chesapeake Bay and Atlantic Coastal Bays are currently impaired for nitrogen. Thus, all new construction (that affects at least one acre of land) that is within 1,000 feet of a blue-line stream that is within the Chesapeake Bay and Atlantic Coastal Bays watersheds triggers the bill’s prohibition.

State Revenues: General fund income tax revenues decrease beginning in fiscal 2019 from the application of an existing subtraction modification to the bill. The number of construction projects (at least one acre or larger) that are served by a conventional septic system and are located within 1,000 feet of a blue-line stream and, thus, would be required to upgrade to BAT due to the bill is unknown. Accordingly, a reliable estimate of the decrease in general fund revenues resulting from the application of the existing subtraction modification is unknown.

Local Revenues: To the extent that State income tax revenues decrease, local income tax revenues also decrease. As discussed above, the magnitude of any decrease in local income tax revenues is unknown.

Local Expenditures: Local governments are delegated authority to oversee many aspects of the installation of septic systems, including systems that utilize BAT. Thus, local government workloads increase to handle additional permit applications for BAT system installations. The bill also changes local screening for new construction projects to determine whether a project requires installation of a BAT system. Determining whether a property is located within 1,000 feet of a blue-line stream requires affected local governments to create or obtain a geographic information system layer to show these properties. Thus, local expenditures may increase.

Small Business Effect: Small businesses in the State that manufacture, install, and provide operation and maintenance services on BAT systems likely realize an increase in business as a result of the increase in the number of BAT systems installed as a result of the bill. Similarly, there is a potential decrease in sales and installation of conventional septic systems.

Because BAT systems are more expensive than conventional systems, affected property owners, some of which may be small businesses, incur increased costs related to the purchase, installation, and maintenance of BAT systems.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, and Montgomery counties; Maryland Department of the Environment; U.S. Geological Survey; Department of Legislative Services

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mm/lgc

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