

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 131 (Delegate Stein)
Environment and Transportation

Environment - Bay Restoration Fund - Septic System Upgrade Program

This bill (1) authorizes the Maryland Department of the Environment (MDE) to establish performance-based funding levels for best available nitrogen removal technology (BAT) for on-site sewage disposal systems (commonly referred to as septic systems) that qualify for funding from the Bay Restoration Fund’s (BRF) Septics Account; (2) modifies the prioritization and eligibility for projects that receive funding from the Septics Account; and (3) explicitly exempts from State procurement law certain MDE actions related to BAT technologies that qualify for funding. **The bill takes effect July 1, 2026.**

Fiscal Summary

State Effect: Overall BRF finances are not affected, but MDE realizes operational benefits in terms of more efficient BRF spending from the Septics Account, as discussed below. State revenues are not affected.

Local Effect: Although the total amount of grant funding provided to local governments from the Septics Account is not affected, the distribution of such funding across jurisdictions may be affected. Local grant revenues and expenditures are commensurately affected. There is likely also an operational impact on local health departments (LHDs) that distribute block grants from MDE, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Bay Restoration Fund – Generally

Chapter 428 of 2004 established BRF. *Under current law and the bill*, the primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants (WWTP) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and the Cover Crop Program within the Maryland Department of Agriculture (MDA). 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. Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030).

Under current law and the bill, of the fee revenues collected from users of septic systems and sewage holding tanks, 60% must be deposited into the BRF Septics Account, and the remaining funds (40%) must be transferred to MDA to provide financial assistance to farmers for planting cover crops.

Bay Restoration Fund Septics Account – Uses and Priority

Authorized Uses of the Septics Account: *Under current law and the bill*, the Septics Account may be used to provide grants or loans for up to 100% of (1) the cost of upgrading septic systems to a BAT system; (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 one 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.

Under current law and the bill, the Septics Account may also be used (1) for specified administrative costs for MDE (up to 8% of funds deposited) and for certain local entities (up to 10% of funds deposited); (2) to provide financial assistance to qualifying low-income homeowners for up to 50% of the cost of an operating and maintenance contract of up to five years for a BAT system; (3) to provide financial assistance (not to exceed 10% of the funds allocated to the local jurisdiction) to eligible homeowners for the reasonable cost of pumping out a septic system under certain circumstances; and (4) in fiscal 2020 and 2021, to provide financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan.

Project Prioritization: Under current law, statutory priority for funding from the Septics Account is as follows: (1) first, for failing systems in the Chesapeake and Atlantic Coastal Bays Critical Area (Critical Area); and (2) then, for other failing systems that MDE determines are a threat to public health or water quality. Under the bill, statutory priority for funding from the Septics Account is as follows: (1) first, for failing systems in the Critical Area; (2) second to failing systems that are located within the watershed of a nitrogen-impaired body of water; and (3) third for other failing systems that MDE determines are a threat to public health or water quality.

Under current law, priority is then given to low-income owners, as defined by MDE, for the costs of repairing or replacing a failing septic system with a BAT septic system and other wastewater treatment systems. Under the bill, priority is then given to low- and moderate-income owners, as defined by MDE, for the same purposes as under current law. Under current law and the bill, the balance of funds in the Septics Account is then awarded by MDE to LHDs as block grants for BAT septic system upgrades.

Grant Eligibility

Under current law, there are eligibility restrictions for grant awards for septic system upgrades. Among other things, grants for the costs of replacing multiple septic systems in the same community with a new community sewerage system may only be provided if the new system will only serve lots that have received a certificate of occupancy, or equivalent certificate, by October 1, 2008. Under the bill, the lots served by a new system must have received a certificate of occupancy, or equivalent certificate, at least 15 years before July 1 of the year in which the application for funding is made.

Under current law, among other requirements, grants for the cost of connecting a property that uses a septic system to an existing WWTP that is achieving or has signed a funding agreement with MDE and is under construction to achieve, ENR or biological nutrient removal level treatment may only be issued if the septic system on the property was installed by October 1, 2008. Under the bill, the septic system must have been installed at least 15 years before July 1 of the year in which the application for funding is made.

Evaluation and Ranking of Best Available Nitrogen Removal Technologies for Septic Systems

Under current law and the bill, MDE is required to evaluate and rank all BAT systems based on (1) the total amount of nitrogen reduction the technology can achieve; (2) the total cost of the technology, including the estimated annual cost of operation and maintenance, including electricity costs; (3) the cost per pound of the nitrogen reduction; and (4) any other information that MDE determines is necessary. Under the bill, MDE may use this evaluation and ranking to establish performance-based funding levels for each BAT system that qualifies for BRF funding. Under current law, MDE is required to make the evaluation

and ranking information available on its website and to provide that information to local governments and residents in relevant correspondence. *Under the bill*, MDE must also share eligible funding levels.

Under current law and the bill, every two years, MDE must request information from vendors that sell or distribute septic systems with nitrogen removal technology that is necessary to conduct the evaluation and ranking of BAT systems.

Procurement and Procurement Exemptions

Under current practice, MDE follows the State Invitation for Bids procurement procedures to obtain ranking information and a standard statewide reimbursement rate from BAT system installers in the State. Participating installers agree to install BAT systems at a specific price for individuals who will apply for BRF reimbursement funding. *Under the bill*, MDE actions related to BAT systems that qualify for funding are explicitly exempt from State procurement procedures, including (1) requesting information from vendors; (2) ranking and evaluating BAT; and (3) establishing performance-based funding levels.

Under current law, the State's procurement code is contained in Division II of the State Finance and Procurement Article, which establishes procedures and requirements for the solicitation, awarding, and monitoring of State contracts. The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College are generally exempt from most provisions of Division II. In addition, State law identifies at least 19 additional units of State government that are exempt, either in full or in part, from Division II (some of the exemptions apply only to specified types of procurement by a unit). For all other units of State government, except for capital expenditures for roads, bridges, and highways by the Maryland Department of Transportation or procurements for modernizing cybersecurity infrastructure valued at less than \$1 million by the Department of General Services, the Board of Public Works (BPW) controls procurement. The Code of Maryland Regulations further delegates BPW's procurement authority, but generally requires that contracts valued at more than \$200,000 require BPW approval.

Under current law and the bill, "procurement" means the process of (1) leasing real or personal property as lessee or (2) buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract. "Procurement" includes the solicitation and award of procurement contracts and all phases of procurement contract administration.

State Fiscal Effect: Overall BRF finances are not affected, but the changes under the bill allow MDE to link Septics Account funding to better outcomes, thus improving the

efficiency of BRF spending. Additionally, MDE notes that the change under the bill in the priority of Septics Account grant funding going second to failing septic systems located within the watershed of a nitrogen-impaired body of water aligns with a suggestion from the Chesapeake Bay Scientific and Technical Advisory Committee's Comprehensive Evaluation of System Response Report (commonly referred to as the CESR report). This change in priority ranking is anticipated to improve local water quality.

Under current practice, MDE uses State procurement procedures to establish reimbursement rates for pre-approved BAT systems. However, upon further review, it has been determined that this process is not a procurement and is thus already exempt from procurement law. Therefore, the bill's procurement exemption provision is not anticipated to materially affect MDE operations or finances.

Local Fiscal Effect: Overall grant funding for local governments from the Septics Account is unchanged under the bill, but local grant revenues and expenditures from BRF increase for some local governments and decrease for others based on the bill's changes to the priority ranking and eligibility for projects and the new performance-based funding levels for BAT systems that MDE may establish under the bill.

Additionally, the Maryland Association of County Health Officers (MACHO) notes that there is likely an operational impact on LHDs, which are responsible for distributing county block grants from MDE in many counties. MACHO anticipates that there may also be an increase in workload to implement the changes in priority funding and eligibility but that the magnitude of any such impact ultimately depends on how MDE implements the bill's changes.

Small Business Effect: Depending on the results of the new performance-based funding levels for BAT systems and any resulting changes in funding provided from the Septics Account under the bill, some small businesses may be meaningfully affected. Small businesses that install and service more efficient BAT systems may see an increase in the demand for their services.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 117 (Senator Hester) - Education, Energy, and the Environment.

Information Source(s): Maryland Association of County Health Officers; Baltimore, Cecil, and Frederick counties; Maryland Association of Counties; City of Annapolis; Comptroller's Office; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Legislative Services

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