

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 1 (Senator Hershey)
Education, Health, and Environmental Affairs

Bay Restoration Fee - Exemption - On-Site Sewage Disposal System Using Best Available Technology

This bill exempts the user of an on-site sewage disposal (septic) system from paying the bay restoration fee if the system utilizes the best available technology (BAT) for nitrogen removal.

Fiscal Summary

State Effect: Special fund revenues decrease by about \$307,100 in FY 2015 for the Maryland Department of the Environment (MDE) and the Maryland Department of Agriculture (MDA) due to the fee exemption; the revenue loss in future years is annualized and reflects additional users becoming exempt. General fund revenues decrease minimally due to a greater number and value of subtraction modification claims against personal income taxes. State expenditures (all funds) associated with achieving various Chesapeake Bay restoration goals and mandates likely increase in future years to the extent that the bill results in the elimination of significant nutrient reductions from the planting of cover crops.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	(\$307,100)	(\$478,100)	(\$546,000)	(\$613,100)	(\$679,300)
GF/FF Exp.	-	-	-	-	-
Net Effect	(\$307,100)	(\$478,100)	(\$546,000)	(\$613,100)	(\$679,300)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local revenues from MDE for providing septic system upgrade grants decrease. Local revenues retained by billing authorities decrease, but so do local administrative costs related to billing. Local income tax revenues decrease due to greater subtraction modification claims against personal income taxes. Local expenditures likely increase in future years to implement other measures necessary to achieve State and federal environmental mandates.

Small Business Effect: Potential meaningful.

Analysis

Current Law: State law does not provide an exemption from paying the bay restoration fee for a septic system user. However, a user of a wastewater facility is exempt from paying the fee if the facility meets one of three conditions. First, the facility's nitrogen and phosphorus effluent concentrations, as reported in specified reports, demonstrate that the facility is achieving enhanced nutrient removal (ENR), or MDE has determined that the facility does not discharge nitrogen or phosphorus and is not required to monitor for nitrogen or phosphorus in its discharge permit. Second, the facility discharges to groundwater and the annual average nutrient concentrations in the wastewater prior to discharge to groundwater have not exceeded 3 milligrams per liter total nitrogen and 0.3 milligrams per liter total phosphorus, as demonstrated by analysis of the groundwater from monitoring wells located on the property and as reported in discharge monitoring reports for the previous calendar year. Third, the facility discharges noncontact cooling water, water from dewatering operations, or reclaimed wastewater from a facility whose users pay into the Bay Restoration Fund (BRF), and the discharge does not result in a net increase in loading of nutrients compared to the intake water. Facilities that meet either of the first two conditions noted above must also have not received a State or federal grant to be exempt from paying the fee.

In addition to these three exemptions applicable to wastewater treatment facilities, a local government or a billing authority for a water or wastewater facility is required to establish a program to exempt a residential dwelling that is able to demonstrate substantial financial hardship as a result of the restoration fee.

Background: Chapter 280 of 2009 required BAT for septic systems associated with new construction within the Critical Area and when replacing septic systems in the Critical Area. 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 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 established BRF, which is administered by the Water Quality Financing Administration. 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 ENR technology. The fund is also used to support septic system upgrades and the planting of cover crops.

Upgrading the State's 67 major publicly owned WWTPs with ENR technology, upgrading septic systems to BAT, and planting cover crops are key pollution-reduction strategies identified in the State's Phase II Watershed Implementation Plan (WIP), which is the State's roadmap to achieving the nutrient pollution limits required under the federally mandated Total Maximum Daily Load (TMDL), or "pollution diet," for the Chesapeake Bay watershed.

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 revenues collected from WWTP users are used to provide grants to upgrade the State's major WWTPs with ENR technology. 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 MDA to provide assistance to farmers for planting cover crops.

Through December 31, 2013, a total of \$551.4 million had been collected from wastewater facility users and, after administrative costs, \$545.0 million had been deposited in MDE's Wastewater Account. In addition, \$136.5 million had been collected from users of septic systems and sewage holding tanks and, after administrative costs, \$76.7 million had been deposited in MDE's Septics Account, and \$59.9 million had been provided to MDA to support the planting of cover crops. According to the December 2013 draft of the 2014 *Bay Restoration Fund Advisory Committee Annual Report*, BRF has supported the installation of 4,481 BAT septic systems through the end of fiscal 2013. Additionally, as of December 2013, BRF revenues have supported ENR upgrades to 33 major wastewater facilities, with 21 other facilities under construction and 13 in the planning or design stages.

State Fiscal Effect:

Bay Restoration Fund, Septic System Upgrades, and Cover Crops

Special fund revenues decrease by \$307,125 in fiscal 2015, which includes a decrease of \$184,275 (60% of the total decrease) for MDE and \$122,850 (40% of the total decrease) for MDA. This estimate is based on the following information and assumptions:

- 5,700 septic systems are upgraded through the end of fiscal 2014;
- each owner of septic systems upgraded by the end of fiscal 2014 pays one-quarter of the \$60 annual bay restoration fee prior to October 1, 2014;
- 1,200 septic systems are upgraded in fiscal 2015, and only a negligible number of owners of newly upgraded septic systems pay a fee prior to October 1, 2014;
- all users exempt from the fee as a result of the bill currently pay \$60 annually; and
- none of these owners are eligible for another exemption under current law.

The extent of the special fund loss grows each year as additional septic systems are upgraded and the owners of such systems become exempt from paying the fee. Thus, while the initial special fund revenue decrease represents a relatively small share of the overall bay restoration fee revenues from septic system users, which are projected at roughly \$25 million in fiscal 2015, the special fund losses as a share of total revenues grows at an accelerating rate each year.

Special fund expenditures for septic system upgrade grants and the planting of cover crops decrease correspondingly. Because bay restoration fee revenues decrease to a greater extent each year, fewer septic systems are upgraded each year under the grant program, and fewer cover crops are planted each year. Further, because fewer septic system upgrades are funded each year, the bill also has the effect of reducing funding available for lower priority upgrades, including for the cost difference of installing BAT systems for new construction.

This analysis assumes that the reduction in special fund revenues to MDE's Septics Account does not affect MDE's ability to pay its administrative costs under the Septic System Upgrade Program. Under current law, MDE is authorized to use up to 8% of fee revenues deposited into the Septics Account to implement an education, outreach, and upgrade program; review and approve the design and construction of upgrades; issue grants; and provide technical support for owners of upgraded systems to operate and maintain the systems. Since local governments now largely administer the upgrade program, it is assumed that the loss in revenues to MDE's Septics Account does not affect MDE's administrative duties. However, general funds may be needed to cover any MDE administrative costs that can no longer be supported with special funds as a result of the bill.

Subtraction Modification Implications

As noted above, Chapter 280 established a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any BRF assistance provided. Therefore, general fund revenues decrease minimally due to an increase in the number and value of subtraction modification claims, as less BRF assistance is available to support the upgrade of septic systems required by State law and regulations.

Bay Restoration Implications

Finally, the planting of cover crops is a key strategy within the State's Phase II WIP for meeting the nutrient reduction targets of the Chesapeake Bay TMDL. Thus, the bill likely necessitates additional State expenditures associated with other required nutrient reduction measures, as fewer cover crops are planted under the bill. It is assumed that the bill does not have a significant impact on the number of septic systems upgraded in the State, as the Septics Account is used primarily to provide funding to owners who would still be required to upgrade their systems (pursuant to current law and regulations).

Local Fiscal Effect: Local grant revenues from MDE and corresponding expenditures paid to homeowners for the upgrade of septic systems decrease. The Septic System Upgrade Program is now entirely run by local governments through grants paid by MDE. Thus, any decrease in bay restoration fee revenues results in a decrease in grants paid to local governments, and, consequently, local expenditures paid as grants to homeowners for the upgrades.

Local revenues retained by billing authorities that collect the bay restoration fee also decrease, but presumably so do their administrative costs.

Local income tax revenues decrease due to a greater number and value of subtraction modification claims against personal income taxes. The decrease in income tax revenues is minimal, particularly in fiscal 2015 and the following initial years. Finally, local expenditures likely increase over the long term to implement other measures necessary to achieve State and federal environmental mandates.

Small Business Effect: Small business farmers are negatively affected, as the bill results in a reduction of funds for the planting of cover crops.

Additional Information

Prior Introductions: HB 1208 of 2013 received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

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

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mc/lgc

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