

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1765

(Delegate Lafferty)

Environment and Transportation

Education, Health, and Environmental Affairs

**On-Site Sewage Disposal Systems – Watershed Implementation Plan and Bay Restoration Fund Disbursements and Financial Assistance**

This bill authorizes the State or a local jurisdiction to count a reduction in nitrogen toward identified nitrogen load reductions in its respective watershed implementation plan (WIP) from (1) upgrading an on-site sewage disposal system (septic system) to the best available technology (BAT) for the removal of nitrogen if the operation and maintenance (O&M) contract is current and (2) pumping out a septic system that is subject to a local septic stewardship plan that meets specified requirements. The bill also authorizes use of the Bay Restoration Fund (BRF) Septics Account to provide (1) financial assistance to homeowners for the reasonable cost of pumping out septic systems under specified conditions and (2) in fiscal 2020 and 2021, financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan. Finally, the bill requires the Maryland Department of the Environment (MDE) to convene a specified meeting.

**Fiscal Summary**

**State Effect:** Special fund expenditures increase by \$133,100 in FY 2019 to hire staff; out-years reflect annualization and ongoing costs. Overall BRF finances are not significantly affected. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	133,100	136,300	140,100	144,900	149,900
Net Effect	(\$133,100)	(\$136,300)	(\$140,100)	(\$144,900)	(\$149,900)

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

**Local Effect:** Overall, the amount of funding provided to local governments from the Septics Account is not anticipated to be materially affected. However, some local

jurisdictions receive funding to develop septic stewardship plans, and some local jurisdictions may incur costs to monitor O&M contracts and septic system pump outs.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill expands the authorized uses of MDE's Septics Account to include funding for a local jurisdiction 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 at least once every five years, unless a more frequent pump-out schedule is recommended during an inspection. A homeowner is only eligible for this financial assistance if the homeowner (1) verifies the pump out has occurred and (2) lives in a local jurisdiction that has developed and implemented a septic stewardship plan that meets specified requirements (discussed more below). The amount of financial assistance must be based on homeowner income, and priority must be given to low-income homeowners. The assistance may be provided through grants, rebates, or low- or no-interest loans.

The bill also expands the authorized uses of the Septics Account, for fiscal 2020 and 2021 only, to provide financial assistance to a local jurisdiction for the development of a septic stewardship plan. To qualify for this financial assistance (and for a homeowner to qualify for financial assistance for septic system pump outs under the bill), a local jurisdiction's septic stewardship plan must (1) be adopted by the local jurisdiction's governing body, after consultation with the local health department; (2) state specific goals that are consistent with the nitrogen load reduction identified in the local jurisdiction's WIP; (3) specify public education and outreach measures that will be taken, as specified; (4) provide technical guidance for the siting, design, evaluation, and construction of septic systems; (5) require a residential or commercial septic system to be pumped out and inspected at least once every five years, unless a more frequent pump-out schedule is recommended during an inspection; (6) specify certification and licensing procedures for a person who pumps out and inspects septic systems; (7) specify recordkeeping requirements; (8) specify enforcement mechanisms, compliance incentives, and penalties; (9) outline specified funding mechanisms; and (10) establish a process for periodically evaluating and revising the plan.

In order for the State or a local jurisdiction to count a reduction in nitrogen from pumping out a septic system toward its respective WIP, a septic stewardship plan that meets the above requirements must be in place in the local jurisdiction where the septic system is located.

MDE must convene a meeting of specified representatives, including county environmental health directors and representatives of local government WIP programs, to (1) ensure that appropriate local personnel are given access to the Best Available Technology Management and Network (BATMN) in order to implement the bill's provisions related to WIP credit for nitrogen reductions; (2) ensure that local government personnel receive appropriate training to use and access BATMN; and (3) review and offer recommendations on improving the general accessibility, ease of use, and functionality of BATMN.

### **Current Law:**

#### *Bay Restoration Fund and Assessment of Bay Restoration Fee*

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned Wastewater Treatment Plants with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants, among other things, and Maryland Department of Agriculture's (MDA's) Cover Crop Program.

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. Of the fee 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. 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.

#### *Uses of MDE's Septics Account*

The Septics Account within MDE may be used for grants or loans for up to 100% of (1) the cost of upgrading septic systems 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 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. The Septics Account may also be used for specified administrative costs for MDE (up to 8% of funds deposited) and for certain local entities (up to 10% of funds deposited). Finally, the Septics Account may be used to provide financial assistance to qualifying low-income homeowners for up to 50% of the cost of an O&M contract of up to five years for a BAT system. MDE advises

that any system that receives funding for an upgrade receives funding for the first two years of O&M as part of that funding.

Grant awards for septic system upgrades under BRF are income based. Homeowners with an annual household income of \$300,000 or less, are eligible for up to 100% of the approved cost of replacing or repairing a septic system. Homeowners with an annual income of more than \$300,000 are eligible for up to 50% of the approved cost. In addition, Chapter 280 of 2009 created a subtraction modification against the personal income tax for the cost of upgrading a septic system, less any assistance provided.

### *Septic System Inspectors*

All individuals performing inspections of septic systems for property transfers must complete a one-time course approved by MDE in the proper inspection of septic systems. No license or certification is required.

### **Background:**

#### *BRF Funding and Progress*

According to the Comptroller's Office, through December 31, 2017, a total of \$1.01 billion in bay restoration fees collected from wastewater facility users had been deposited in MDE's Wastewater Account. In addition, of the fee revenues collected from users of septic systems and sewage holding tanks, \$145.1 million had been deposited in MDE's Septics Account and \$105.6 million had been provided to MDA to support the planting of cover crops. As of September 20, 2017, BRF has funded 8,975 BAT upgrades, of which 5,532 upgrades were completed within Maryland's Critical Areas. In addition, 310 homes have been connected to public sewerage using BRF.

#### *Chesapeake Bay Restoration and the Total Maximum Daily Load*

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. The State must establish pollution control measures by 2025 that, based on 2010 levels, will reduce nitrogen loads to the bay by 22.0%, phosphorus loads by 14.9%, and sediment loads by 1.9%.

As part of the Chesapeake Bay TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay. WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide reasonable assurance that sources of pollution will be cleaned up, which is a basic requirement of all TMDLs.

### *Best Available Technology Management and Network*

MDE advises that BATMN, which has been operational since April 2015, is the online database tool for tracking the installation of BAT septic systems and O&M visits by service providers. BATMN also allows county and State stakeholders to track various milestones. Vendors, many BAT system manufacturers, and most BAT service providers have access to BATMN. Each user can access the database remotely via assigned login usernames and passwords.

Vendors enter information when a BAT septic system is sold, including the homeowner's name, property address, date of installation, date of start-up, service contract information, type and model of BAT, and other pertinent information that is available. Local jurisdictions regularly review this information for accuracy and input any additional required information, such as whether the property is in the Critical Area and whether the septic system is funded under BRF or not. MDE then verifies the accuracy of the information.

**State Expenditures:** Special fund expenditures for MDE increase by \$133,093 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring two natural resource planners to (1) assist local jurisdictions in developing septic stewardship plans; (2) review the plans; (3) perform septic inspections; and (4) monitor compliance of O&M contracts and septic system pump outs to account for nutrient reductions for WIPs. It includes salaries, fringe benefits, one-time start-up costs (including the purchase a vehicle), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE is responsible for ensuring nutrient reductions claimed for the purposes of meeting WIP nutrient reduction requirements, which means MDE must provide oversight and monitoring of compliance to ensure that O&M contracts are in place, that pump outs are being conducted, and that all of the bill's requirements are met;
- MDE must formalize a certification and licensing process for inspectors of BAT septic systems and individuals that pump out these systems;
- MDE must review local septic stewardship plans; and
- current staff levels are insufficient to fully implement the new processes and requirements under the bill.

Positions	2
Salaries and Fringe Benefits	\$94,924
Vehicle Purchase	21,456
Other Operating Expenses	<u>16,713</u>
<b>Total FY 2019 State Expenditures</b>	<b>\$133,093</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

**Local Fiscal Effect:** Overall, the amount of funding provided to local governments from the Septics Account is not anticipated to be materially affected. However, some local jurisdictions receive funding to develop septic stewardship plans and some local jurisdictions may incur costs to monitor O&M contracts and septic system pump outs, as discussed below.

The bill authorizes the Septics Account to be used to assist local jurisdictions in developing qualifying septic stewardship plans. Costs to develop a local septic stewardship plan are unknown, but MDE anticipates that some counties may be able to complete plans with existing staff and resources. To the extent that a local jurisdiction receives BRF funding for septic stewardship plans local revenues and expenditures for this purpose increase.

The bill also authorizes the Septics Account to be used for specified pump-out costs if the county where the septic system is located has developed a qualifying septic stewardship plan. MDE advises that by having a qualifying septic stewardship plan in place, a local government has more control in prioritizing how BRF funds are spent, and a customized plan could provide solutions for problem areas or local concerns.

According to MDE, although there is not a formal crediting mechanism in place, local jurisdictions currently get credit for nutrient load reductions related from BAT septic system upgrades for the purposes of meeting WIP requirements. This credit does not hinge on whether the system has a qualifying O&M contract in place. Thus, in order to continue getting credit for these load reductions, local jurisdictions must track, monitor compliance, and enforce these O&M contracts, which may result in an increase in local expenditures.

MDE also notes that although the practice is not widespread, several jurisdictions claim credit for nutrient load reductions related to septic system pump outs for the purposes of meeting WIP requirements. This credit does not hinge on whether the system is in a jurisdiction with a qualifying septic stewardship plan. Thus, some local jurisdictions may incur expenditures to develop a qualifying plan (as discussed above) and to track and monitor septic system pump outs. Conversely, to the extent that the bill makes it more clear that a local jurisdiction is able to claim credit from septic system pump outs for the purposes of meeting WIP requirements, local jurisdictions may benefit.

**Small Business Effect:** The bill has the potential to have a meaningful impact on some small businesses in the State. Small businesses that provide pump-out services for septic systems may benefit from an increase in the demand for their services due to the bill's provision that authorizes the use of the Septics Account for this purpose under specified conditions.

To the extent that the expanded uses of the Septics Account results in less funding being used for BAT upgrades, small businesses involved in the sale and installation of BAT systems may be negatively affected.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Calvert and Montgomery counties; City of Takoma Park; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2018  
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