

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 878
Appropriations

(Delegate Chang)

Education, Health, and Environmental Affairs

Bay Restoration Fund - County Authority to Incur Indebtedness

This bill authorizes a county to borrow money and incur indebtedness through the issuance and sale of notes in anticipation of the receipt of the county's allocation of funds from the Septics Account within the Bay Restoration Fund (BRF). It also specifies the authorized uses of the net proceeds of the sale of any such notes. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: The Maryland Department of the Environment (MDE) can implement the bill with existing resources. Revenues are not affected.

Local Effect: Local revenues and corresponding expenditures (including debt service) increase to the extent a county issues notes under the bill; administrative expenditures may increase.

Small Business Effect: Minimal overall, but to the extent counties use the authority provided by the bill, small businesses involved with upgrading on-site sewage disposal (septic) systems or connecting failing septic systems to wastewater facilities benefit from an increase in funding available for those activities.

Analysis

Bill Summary: The bill authorizes a county to incur indebtedness through the issuance and sale of notes in anticipation of the receipt of the county's allocation of funds from the Septics Account within BRF. A county may expend the net proceeds of the sale of notes to (1) make grants and loans for the authorized uses under § 9-1605.2(h)(2)(i) of the Environment Article, which addresses authorized uses of the Septics Account within BRF;

(2) make grants and loans to cover engineering costs and non-best-available-technology (BAT) components, including drainfields, needed for the repair of existing septic systems or the installation of new septic systems that use BAT for nitrogen removal; or (3) refund one or more issues of notes. The principal of the notes may be paid from the county's Septics Account allocation and any other revenues that are pledged to the payment of the notes in the authorizing resolution. The interest on the notes may not be paid from the county's Septics Account allocation but may be paid from any other revenues pledged to the payment of the notes in the authorizing resolution or money made available to the county to finance upgrades to septic systems from any other source, including other State and federal programs.

A county may pledge its full faith and credit and taxing power to the payment of the principal of and interest on the notes in the authorizing resolution. If a county pledges its full faith and credit and taxing power to the payment of a note, a county must, in each fiscal year that the note is outstanding, impose *ad valorem* taxes on all assessable property in the county at a rate and amount sufficient to pay the principal and interest. If tax proceeds are inadequate for the payment, the county must impose additional taxes in the succeeding fiscal year to make up the deficiency.

The authority to borrow money and issue notes under the bill is supplemental to any other power granted to a county by any other law and is not in derogation of any other existing county borrowing power.

Current Law:

Bay Restoration Fund

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 the Maryland Department of Agriculture's (MDA) 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; Chapter 150 of 2012 doubled the fee for most users (until July 1, 2030). 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

Subject to specified conditions, with priority first given to failing systems and holding tanks located in the Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems that MDE determines are a threat to public health and water quality, the Septics Account within MDE may be used for grants or loans for up to 100% of (1) the cost of upgrading a septic system to a system using 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 an existing municipal wastewater facility that is achieving specified levels of treatment or has signed a funding agreement with MDE and is under construction to achieve specified levels of treatment.

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 at least once every five years if the homeowner lives in a local jurisdiction that has developed and implemented a qualifying septic stewardship plan, among other requirements; and (4) in fiscal 2020 and 2021, to provide financial assistance to a local jurisdiction to develop a qualifying septic stewardship plan.

Local Fiscal Effect: The bill authorizes a county to issue debt in anticipation of the receipt of the county's allocation of funds from the Septics Account to (1) make grants and loans in accordance with authorized uses of the Septics Account; (2) make grants and loans to cover engineering costs and non-BAT components, including drainfields, needed for the repair of existing septic systems or the installation of new BAT systems; and (3) refund one or more issues of notes. Revenues and corresponding expenditures (including debt service expenditures) increase to the extent a county issues notes under the bill. However, the number of counties that choose to issue notes and the total amount of debt issued as a result of the bill cannot be reliably estimated. It is unclear to what extent a county would take on the additional responsibility to issue loans as authorized under the bill. To the extent that any counties do so, county administrative costs likely increase to administer a loan program.

For context, MDE advises that it allocates \$15.0 million annually in grant funding from the Septics Account, largely in the form of block grants to county health departments.

Additional Comments: MDE advises that while the bill allows a county to incur debt in anticipation of the receipt of the county's allocation of funds from the Septics Account, grants made by MDE from the Septics Account are largely provided to *county health departments*, not the counties themselves.

MDE further advises that, since, pursuant to current law, the bay restoration fee is scheduled to be reduced by 50% after fiscal 2030, future allocations of funding from the Septics Account to counties will likewise be reduced. Accordingly, counties should anticipate this future reduction in BRF grant revenues prior to issuing debt under the bill.

Additional Information

Prior Introductions: Bills with similar provisions have been introduced in prior sessions. SB 671 of 2020 received a hearing in the Senate Education, Health, and Environmental Matters Committee, but no further action was taken. SB 851 of 2019 received a hearing in the Senate Education, Health, and Environmental Matters Committee but was subsequently withdrawn.

Designated Cross File: SB 701 (Senator West) - Education, Health, and Environmental Affairs.

Information Source(s): Harford and Montgomery counties; Maryland Department of the Environment; Department of Legislative Services

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