

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 20 (Senator Colburn)  
Education, Health, and Environmental Affairs

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Environment - Bay Restoration Fund - Authorized Uses

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This bill expands the uses of the Septics Account of the Bay Restoration Fund (BRF) to include providing grants or loans for connecting a property served by an on-site sewage disposal (septic) system to an existing municipal wastewater facility achieving enhanced nutrient removal (ENR) level treatment. The grants or loans may be for up to 100% of the cost that would be authorized under current law for repairing or replacing a failing septic system with one that uses best available technology (BAT) for nitrogen removal. Funding may only be provided if specified conditions are met.

The bill terminates September 30, 2015.

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Fiscal Summary

**State Effect:** Overall finances of the Septics Account are not affected. Maryland Department of the Environment (MDE) workloads increase beginning in FY 2011 to implement the bill but can be handled with existing resources.

**Local Effect:** Potential minimal operational impact on local governments to document specified funding criteria. Although local expenditures may increase to provide sewerage service to additional customers, it is assumed that any such increase is offset by user fees and any assistance provided under the bill.

**Small Business Effect:** Potential minimal beneficial impact to small businesses eligible for funding under the bill.

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## Analysis

**Bill Summary:** Funding under the bill may only be provided if (1) the environmental impact of the septic system is documented by the local government and confirmed by MDE; (2) it can be demonstrated that the replacement of the septic system with service to a wastewater facility with ENR is more cost effective for nitrogen removal than upgrading an individual septic system *or* the individual replacement of the septic system is not feasible; (3) the project is consistent with the appropriate county's comprehensive plan; and (4) the septic system was installed on or before October 1, 2008, and the property it serves is located in a priority funding area (PFA).

**Current Law:** Chapter 428 of 2004 established the BRF, which is administered by the Water Quality Financing Administration within MDE. The main goal of the fund is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading them with ENR technology.

Of the BRF 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 to provide grants and loans to septic system owners for the upgrade of their septic systems, and to implement an education and outreach program. During the 2009 session budget reconciliation legislation altered this allocation, such that for fiscal 2010, only 22.4% of the revenue is deposited in the Septics Account. The remaining funds collected from users of septic systems and sewage holding tanks (typically 40%) must be transferred to the Maryland Agricultural Water Quality Cost Share Program within the Maryland Department of Agriculture (MDA) to provide financial assistance to farmers for planting cover crops.

Statutory priority for funding from the Septics Account is given to failing systems in the Critical Area and then to failing systems that MDE determines are a threat to public health or water quality. Originally, grants and loans made from funds within the Septics Account were used to cover up to 100% of the cost of repairing, replacing, or upgrading a septic system to a system utilizing BAT, or for covering the difference in cost between a new conventional system and one utilizing BAT. Chapters 225 and 226 of 2008 expanded the uses of the Septics Account to include covering 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. Chapter 280 of 2009 prohibited the new installation or replacement of a septic system in the Critical Area unless it utilizes BAT; persons affected by the law may receive assistance from the Septics Account if sufficient funds are available.

State law requires each county to develop a comprehensive county plan for the adequate provision of sewerage systems. Each plan, which is required to cover a 10-year period and

be adopted by the county governing body, should anticipate the wastewater infrastructure needs of the county and identify any geographic extension of this infrastructure necessary in accordance with the jurisdiction's growth management objectives. The plan must be reviewed and amended as needed every three years and submitted to MDE for approval. No State or local building permit may be issued, or subdivision plat approved, unless the county plan accommodates the needs of the proposed building, and MDE may not issue a permit for a sewerage system in a county that does not have an approved plan.

PFAs were established by Chapter 759 of 1997 (commonly known as the Priority Funding Areas Act) to control sprawl, enhance land use, and control pollution. This Act capitalized on the influence of State expenditures on economic growth and development by directing spending to PFAs in order to make the most use of existing infrastructure and preserve open spaces.

**Background:** ENR upgrades of the State's 67 major publicly owned WWTPs are currently underway. According to the most recent information from the Bay Restoration Fund Advisory Committee, 12 ENR facilities are operating; 14 are under construction; 25 are in design; and 16 are in planning. As of December 2009, the Comptroller had deposited approximately \$260.8 million into the BRF as a result of fees collected from WWTP users. With respect to fees collected from septic system users, the Comptroller had deposited approximately \$32.8 million into MDE's Septics Account and had transferred approximately \$26.9 million to MDA's Cover Crop Program.

Recently there has been a significant increase in the demand for funds from MDE's Septic Account. As of September 2008, the account had funded the upgrade of 375 systems; as of December 2009, the account had funded the upgrade of 1,955 systems. MDE advises that it continues to provide grants for failing systems in the Critical Area, and that 2,800 nonfailing systems are on a waiting list. MDE's priority for funding is as follows: (1) failing systems in the Critical Area; (2) other failing systems; (3) new or replacement systems in the Critical Area; and (4) other new or replacement systems. Due to the increase in demand for funding, effective January 1, 2010, MDE is also implementing income-based grant criteria.

**State Fiscal Effect:** There are at least 420,000 septic systems in the State. However, only a small fraction of septic systems are likely to qualify for funding by satisfying each of the bill's four criteria. For example, it may be instructive to note that, according to MDE, under similar criteria used to consider providing assistance for the replacement of septic systems with a new community sewerage system under Chapters 225 and 226 of 2008, not a single grant has been approved to date. Further, some septic system owners who do qualify under the bill may not avail themselves of the available grant or loan if it is less than the total cost to the owner of extending sewer system coverage. MDE advises that the cost of connecting a property to a sewer system varies widely but averages about

\$20,000. By contrast, the award authorized in the bill is capped at an amount equal to what would be authorized for repairing or replacing a failing septic system with one that uses BAT; this amount averages about \$19,000. Finally, Legislative Services advises that the bill does not establish the use of funds under the bill as a priority relative to other uses of Septics Account funding; thus it appears that MDE would have some discretion as to how much funding would be redirected.

To the extent there is any additional expenditure from the Septics Account under the bill, it will only accelerate the depletion of any remaining account balance in fiscal 2011. Since its establishment, Septics Account revenues have significantly exceeded expenditures, creating excess funding capacity. More recently, however, as noted above, expenditures for septic upgrades have increased dramatically, such that expenditures now exceed revenues, and the account balance may be depleted by the end of calendar 2010.

**Local Fiscal Effect:** In addition to the minimal operational impact on a local government to document the environmental impact of a septic system on request from an applicant under the bill, as well as any expenditures and offsetting revenues to connect a property to sewer lines, there is the potential for a more substantial impact on a local government that is able to secure Septics Account assistance under the bill to support financing for a larger sewer connection project. For example, Harford County advises that it has plans to connect all existing developed properties within the PFA to sewer lines discharging to a WWTP that is scheduled to be retrofitted with ENR technology by 2015. While there are about 3,300 septic systems within the Harford County PFA, it is unknown how many of these systems would be failing at the time that the sewer connection project begins, to what extent any of the properties would qualify under the bill, or whether any funds will be available in the Septics Account at that time. In any event, assistance for this project would not be available under the bill until the ENR retrofit is complete in 2015, the same year that the bill terminates.

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### **Additional Information**

**Prior Introductions:** SB 967 of 2009 passed in the Senate with amendments and received a hearing in the House Environmental Matters Committee, but no further action was taken. Its cross file, HB 1362, received a hearing in the House Environmental Matters Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Maryland Department of Planning; Maryland Department of the Environment; Harford, Montgomery, Queen Anne's, and St. Mary's counties; Baltimore

City; Maryland Association of Counties; Maryland Municipal League; Washington Suburban Sanitary Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - January 25, 2010  
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