

May 19, 2009

The Honorable Thomas V. Mike Miller Jr.
President of the Senate
State House
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 721 – *Private Wastewater Treatment Act of 2009*. Senate Bill 721 is a cross file of House Bill 1105, which I intend to sign. Both Senate Bill 721 and House Bill 1105 prohibit the installation of an individual sewerage system for residential use except upon the Department of Environment’s approval when an existing on-site sewage disposal system fails and cannot be repaired or replaced by any means. “Individual sewerage system” is defined under both bills as a privately owned system of sewers, piping and treatment tanks that serves a single lot and discharges to the surface waters of the State. Senate Bill 721 specifies that the term “individual sewerage system” does not include a “septic tank disposal system.” House Bill 1105 does not include this same language. “Septic tank disposal system” is not a defined term under the bill, nor in current Maryland statute or regulation.

The language in Senate Bill 721 specifying that the term “individual sewerage system” does not include a “septic tank disposal system” was added to the bill by floor amendment in the House of Delegates. According to a review of the discussion on the floor of the House when the amended language was offered, there was a desire for clarification that the new prohibition on an “individual sewerage system” did not include private septic systems.

The exchange on the House floor occurred as follows:

Delegate Walkup: *Does this restrict private septic systems?*

Delegate McIntosh: *The answer is no, it does not. As a matter of fact, we’re going to accept an amendment from your colleague to clarify that.*

Delegate Haddaway: *I have an amendment at the desk. This amendment clarifies that this legislation applies only to individual sewerage systems and does not apply to septic tank disposal systems. It is just a clarifying amendment that allows us all to feel comfortable with this legislation.*

Delegate McIntosh: *We had a chance to review this amendment and the Environmental Matters Committee voted unanimously to accept it.*

Speaker Busch: *So this is a friendly amendment.*

The amendment was then adopted without a recorded vote and the bill went on to pass 137–0.

Based upon the above–referenced exchange on the House floor, it is clear that the legislature’s intent was to exclude private septic systems from the definition of “individual sewerage system.” However, the terminology it used to do so – “septic tank disposal system” – is not defined anywhere in Maryland statute or regulation. Instead, the correct terminology to refer to what is popularly known as a private septic system is “on–site sewage disposal system.” See COMAR § 26.04.02.01 (2009) and 2009 Md. Laws Chapter 280 (Senate Bill 554).

Although I believe it is clear that the legislature did not intend that an on–site sewage disposal system (as defined by Maryland law) be considered an “individual sewerage system,” the legislature did not use that term. In an attempt to clarify that the provisions of the bill did not apply to “private septic systems,” the use of an undefined term in fact created uncertainty regarding the meaning of the final provisions of Senate Bill 721. Therefore, because of the uncertainty and the conflicting interpretations that could result from adding the undefined term “septic tank disposal system” to Maryland law and the passage of House Bill 1105, which meets the policy objectives of the original bill, I am hereby vetoing Senate Bill 721.

Sincerely,

Martin O’Malley
Governor