

Chapter 80

(House Bill 11)

AN ACT concerning

Environment – Bay Restoration Fund – Authorized Uses

FOR the purpose of authorizing certain fee revenue collected for the Bay Restoration Fund to pay certain debt issued by a local government for the cost of connecting properties served by on-site sewage disposal systems to certain existing municipal wastewater facilities under certain circumstances; altering certain conditions for certain funding of certain costs; requiring the Department of the Environment to adopt certain regulations; providing for the application of certain regulations; requiring the Department to consider certain information as a part of a certain review process; requiring certain information to be included in a certain notice for, and discussed at certain hearings on, certain projects; requiring the Department to submit a certain annual report to certain committees of the General Assembly beginning on a certain date; and generally relating to authorized uses of the Bay Restoration Fund.

BY repealing and reenacting, with amendments,
 Article – Environment
 Section 9–1605.2(h)
 Annotated Code of Maryland
 (2007 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–1605.2.

(h) (1) With regard to the funds collected under subsection (b)(1)(i)1, from users of an onsite sewage disposal system or holding tank that receive a water bill, (i)2, and (i)3 of this section, beginning in fiscal year 2006, the Comptroller shall:

(i) Establish a separate account within the Bay Restoration Fund; and

(ii) Disburse the funds as provided under paragraph (2) of this subsection.

(2) The Comptroller shall:

(i) Deposit 60% of the funds in the separate account to be used for:

1. Subject to ~~paragraph (3)~~ **PARAGRAPHS (3), (4), (5), AND (6)** of this subsection, 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 the Department determines are a threat to public health or water quality, grants or loans for up to 100% of:

A. The costs attributable to upgrading an onsite sewage disposal system to the best available technology for the removal of nitrogen;

B. The cost difference between a conventional onsite sewage disposal system and a system that utilizes the best available technology for the removal of nitrogen;

C. The cost of repairing or replacing a failing onsite sewage disposal system with a system that uses the best available technology for nitrogen removal;

D. The cost, up to the sum of the costs authorized under item B of this item for each individual system, of replacing multiple onsite sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards; or

E. The cost, up to the sum of the costs authorized under item C of this item for each individual system, of connecting a property using an onsite sewage disposal system to an existing municipal wastewater facility that is achieving enhanced nutrient removal **OR BIOLOGICAL NUTRIENT REMOVAL** level treatment, **INCLUDING PAYMENT OF THE PRINCIPAL, BUT NOT INTEREST, OF DEBT ISSUED BY A LOCAL GOVERNMENT FOR SUCH CONNECTION COSTS;** and

2. The reasonable costs of the Department, not to exceed 8% of the funds deposited into the separate account, to:

A. Implement an education, outreach, and upgrade program to advise owners of onsite sewage disposal systems and holding tanks on the proper maintenance of the systems and tanks and the availability of grants and loans under item 1 of this item;

B. Review and approve the design and construction of onsite sewage disposal system or holding tank upgrades;

C. Issue grants or loans as provided under item 1 of this item; and

D. Provide technical support for owners of upgraded onsite sewage disposal systems or holding tanks to operate and maintain the upgraded systems; and

(ii) Transfer 40% of the funds to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture in order to fund cover crop activities.

(3) ~~(i)~~ Funding for the costs identified in paragraph (2)(i)1 of this subsection shall be provided in the following order of priority:

~~1.~~ **(I)** For owners of all levels of income, the costs identified in paragraph (2)(i)1A and B of this subsection; and

~~2.~~ **(II)** For low-income owners, as defined by the Department, the costs identified in paragraph (2)(i)1C of this subsection:

~~A.~~ **1.** First, for best available technologies for nitrogen removal; and

~~B.~~ **2.** Second, for other wastewater treatment systems.

~~(ii)~~ **(4)** Funding for the costs identified in paragraph (2)(i)1D of this subsection may be provided if:

~~1.~~ **(I)** The environmental impact of the onsite sewage disposal system is documented by the local government and confirmed by the Department;

~~2.~~ **(II)** It can be demonstrated that:

~~A.~~ **1.** The replacement of the onsite sewage disposal system with a new community sewerage system is more cost effective for nitrogen removal than upgrading each individual onsite sewage disposal system; or

~~B.~~ **2.** The individual replacement of the onsite sewage disposal system is not feasible; and

~~3.~~ **(III)** The new community sewerage system will only serve lots that have received a certificate of occupancy, or equivalent certificate, on or before October 1, 2008.

~~(iii)~~ **(5)** Funding for the costs identified in paragraph (2)(i)1E of this subsection may be provided only if all of the following conditions are met:

~~1.~~ **(I)** The environmental impact of the onsite sewage disposal system is documented by the local government and confirmed by the Department;

~~2.~~ ~~(III)~~ **(II)** It can be demonstrated that:

~~A.~~ **1.** The replacement of the onsite sewage disposal system with service to an existing municipal wastewater facility that is achieving enhanced nutrient removal OR BIOLOGICAL NUTRIENT REMOVAL level treatment is more cost-effective for nitrogen removal than upgrading the individual onsite sewage disposal system; or

~~B.~~ **2.** The individual replacement of the onsite sewage disposal system is not feasible;

~~3.~~ **(III)** The project is consistent with the county's comprehensive plan and water and sewer master plan; ~~AND~~

~~4.~~ ~~A.~~ **(IV)** **1.** The onsite sewage disposal system was installed as of October 1, 2008, and the property the system serves is located in a priority funding area, in accordance with § 5-7B-02 of the State Finance and Procurement Article]; and

5. The local government has adopted a policy or procedure that will guarantee that any future connection to an existing municipal wastewater facility that is funded under paragraph (2)(i)1E of this subsection will meet all of the requirements under this subparagraph]; **OR**

~~B.~~ **2.** **THE ON-SITE SEWAGE DISPOSAL SYSTEM WAS INSTALLED AS OF OCTOBER 1, 2008, THE PROPERTY THE SYSTEM SERVES IS NOT LOCATED IN A PRIORITY FUNDING AREA, AND THE PROJECT MEETS THE REQUIREMENTS UNDER § 5-7B-06 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND IS CONSISTENT WITH A PUBLIC HEALTH AREA OF CONCERN IDENTIFIED:**

A. IDENTIFIED IN THE COUNTY WATER AND SEWER PLAN; OR

B. CERTIFIED BY A COUNTY ENVIRONMENTAL HEALTH DIRECTOR WITH CONCURRENCE BY THE DEPARTMENT AND, IF FUNDING IS APPROVED, SUBSEQUENTLY ADDED TO THE COUNTY WATER AND

SEWER PLAN WITHIN A TIME FRAME JOINTLY AGREED ON BY THE DEPARTMENT AND THE COUNTY THAT TAKES INTO CONSIDERATION THE COUNTY'S WATER AND SEWER PLAN UPDATE AND AMENDMENT PROCESS; AND

(v) THE FUNDING AGREEMENT FOR A PROJECT THAT MEETS THE CONDITIONS FOR FUNDING UNDER SUBPARAGRAPH (IV)2 OF THIS PARAGRAPH INCLUDES PROVISIONS TO ENSURE:

1. DENIAL OF ACCESS FOR ANY FUTURE CONNECTIONS THAT ARE NOT INCLUDED IN THE PROJECT'S PROPOSED SERVICE AREA; AND

2. THAT THE PROJECT WILL NOT UNDULY IMPEDE ACCESS TO FUNDING FOR UPGRADING INDIVIDUAL ON-SITE SEWAGE DISPOSAL SYSTEMS IN THE COUNTY WITH BEST AVAILABLE TECHNOLOGY FOR NITROGEN REMOVAL.

~~(4)~~ **(6)** The Comptroller, in consultation with the Administration, may establish any other accounts and subaccounts within the Bay Restoration Fund as necessary to:

- (i) Effectuate the purposes of this subtitle;
- (ii) Comply with the provisions of any bond resolution;
- (iii) Meet the requirements of any federal or State law or of any grant or award to the Bay Restoration Fund; and
- (iv) Meet any rules or program directives established by the Secretary or the Board.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Except as provided in subsection (c) of this section and subject to subsection (b) of this section, the Department of the Environment shall adopt regulations establishing procedures for the review and public notice of, and the opportunity to request a public hearing on, projects receiving preliminary approval for funding under § 9-1605.2(h)(5)(iv)2 of the Environment Article, as enacted by Section 1 of this Act.

(b) (1) As a part of its review of a project receiving preliminary approval for funding under § 9-1605.2(h)(5)(iv)2 of the Environment Article, the Department shall consider:

(i) information about the public health issues the project addresses;

(ii) the potential infill development resulting from the project, as identified in the funding agreement;

(iii) any measures taken to mitigate the potential impacts of new growth resulting from the project; and

(iv) the total net nitrogen reduction resulting from the project, including a consideration of additional loading from potential new growth.

(2) The information considered by the Department under paragraph (1) of this subsection shall be included:

(i) in the public notification of the project; and

(ii) if a hearing is requested, discussed at the public hearing on the project.

(c) The regulations adopted under this section do not apply to a project:

(1) that will be served by an existing municipal wastewater treatment facility that is achieving enhanced nutrient removal level treatment;

(2) for which an application for funding from the Department ~~has been~~ was submitted on or before February 15, 2014;

(3) that ~~has undergone~~ was the subject of a public notification ~~and hearing~~ process *initiated* on or before February 15, 2014; ~~and~~

~~(4) that has been, and~~ certified by the Department as substantially meeting the public notice and hearing requirements established under this section addressing the considerations specified in subsection (b)(1) of this section;

(4) that, after February 15, 2014, was the subject of a public hearing held by the governing body for the county where the project will be installed after giving at least 2 weeks' advance notice of the hearing to the public; and

(5) that has been approved by a majority of the members of the governing body after the public hearing described in item (4) of this subsection.

SECTION 3. AND BE IT FURTHER ENACTED, That beginning December 1, 2015, the Department of the Environment shall submit a report each year, in accordance with § 2-1246 of the State Government Article, to the House

Environmental Matters Committee and the Senate Education, Health, and Environmental Affairs Committee, on:

(1) each project funded under § 9-1605.2(h)(5)(iv)2 of the Environment Article, as enacted by Section 1 of this Act; and

(2) a summary of any impacts that the funding used for these projects had on overall funding for upgrading individual on-site sewage disposal systems with best available technology for nitrogen removal.

SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2014.

Approved by the Governor, April 8, 2014.