



# Maryland

## Department of the Environment

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Ben Grumbles  
Secretary

February 19, 2020

The Honorable Senator Paul G. Pinsky, Chair  
Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: Senate Bill 671 – Bay Restoration Fund – Allocation of Fees, Authorized Uses, and County Authority to Incur Indebtedness**

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 671, entitled *Bay Restoration Fund – Allocation of Fees, Authorized Uses, and County Authority to Incur Indebtedness* and we would like to provide a letter of concern.

Senate Bill 671 diverts \$25 million annually, beginning in fiscal year 2021, from the Wastewater Account of the Bay Restoration Fund (BRF) into the Septic Account of the BRF (60% of revenues in the Septic Account go toward septic upgrades and connections; 40% of the revenues in the Septic Account go toward the Cover Crop Program at MDA). The legislation also expands the authorized uses of the Septics Account to *include all costs* associated with the installation of a new septic system with a system that utilizes best available technology (BAT) for nitrogen removal, including engineering costs. Finally, the 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 annual allocation of BRF septic funds.

The Department's first concern is regarding the impact that the diversion of wastewater user fees to the septic fund of the BRF may have on existing bonds that MDE has issued to secure funding to upgrade the state's 67 largest waste water treatment plants (WWTPs) to meet the Chesapeake Bay TMDL 2025 deadline. Diverting fee revenue from the BRF Wastewater Account while bonds are outstanding would impact the terms of those bonds and could potentially jeopardize the BRF bond rating in the future.

The second concern is the impact that the fund diversion proposed in the bill would have on project demand. MDE does an annual solicitation for projects every year, during which there are significantly more request for funding assistance for BRF Wastewater Funds than can be met with the current level of funding. The uses of the Wastewater Account include major and minor WWTP upgrades, sewer overflow corrections, septic system connections to public sewer, and stormwater retrofits. These projects that can be funded with the Wastewater Account tend to be more cost-effective in reducing nutrients than septic system upgrades as provided for under the BRF Septics Account. Additionally, fiscal 2021 fee revenues that are to be deposited into the Wastewater Account have already been budgeted for as part of the Department's proposed fiscal 2021 capital budget. Diverting \$25 million in BRF Wastewater Revenues would mean the Department would not have adequate revenues to fund all the projects slated for funding in fiscal 2021.

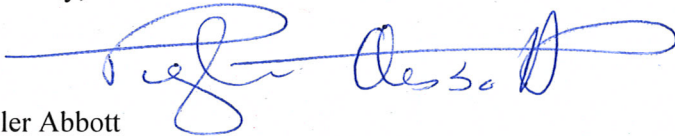
The third concern is that the bill amends (h)(2)(i)1C, which currently provides for grants and loans up to 100% of the cost of repairing or replacing a failing septic system with a system that uses BAT for nitrogen removal. The bill expands the use to include "*all costs associated with the installation of a new on-site sewage disposal system that uses BAT for the removal of nitrogen, or the repair or replacement of a failing septic system with a*

*new system that utilizes BAT for nitrogen removal, including engineering costs and costs associated with the installation or replacement of a disposal system.”* If the intent of funding *all costs* is to provide all costs for all systems, this would reduce the amount of funding available for septic BAT upgrades. Currently the Department provides approximately \$14,500 for BAT. To provide all costs could average \$26,500 per installation, which includes an average cost of \$10,000 for a drain field and up to 7% for engineering. Depending on site conditions, the cost could be significantly higher. For example, some systems can cost as much as \$80,000 when accounting for more expensive sand mound drain fields which can cost as much as \$60,000, as well as including engineering costs. Providing all costs for all systems would lower the amount of funding available for BATs, and therefore could lessen the number of BAT systems installed annually.

The fourth concern is regarding the authority of counties to incur debt in anticipation of the BRF Septic Grants made to counties. MDE previously made grants from the BRF septic fund directly to owners of septic systems to upgrade their systems to BAT. In 2010 MDE started making grants annually to county health departments, counties, and/or designated non-profit organizations to administer the program on a county-by-county basis. It may be problematic for a county to incur debt in anticipation of BRF septic revenue that can fluctuate from year to year based on demand and competition among counties and is not guaranteed at a certain level. Also, the BRF fee is set to revert to half of the current amount in 2030, making the revenue stream for any debt incurred even more uncertain.

Thank you for your consideration. We will continue to monitor Senate Bill 671 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,



Tyler Abbott

cc: The Honorable Chris West