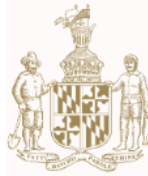


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Committee on Education, Energy,
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

The Honorable Chair Feldman
The Honorable Vice Chair Kagan
Education, Energy, and the Environment Committee
Miller Senate Office Building
Annapolis, MD

February 20th, 2024

**Testimony in favor of SB0726 Bay Restoration Fund – Authorized Uses –
Decommissioning of Wastewater Treatment Lagoon**

Chair Feldman, Vice Chair Kagan, and esteemed members of this committee,

SB0726 clarifies the grant allocation language in the Bay Restoration Fund (BRF). Maryland's Department of the Environment (MDE) recently notified the Town of Middletown that their wastewater treatment lagoon will not comply with the updated wastewater treatment and climate change resiliency requirements and their permit will not be renewed unless significant Enhanced Nutrient Removal (ENR) upgrades are completed at considerable expense to the Town. These expenses are uniquely elevated for Middletown, as its wastewater treatment lagoon is located in a high-risk floodplain, and decommissioning will necessitate the relocation of half the town's wastewater flows to a second town-owned facility, that must subsequently undergo an ENR upgrade and capacity increase. The unique circumstances have resulted in complex engineering, operational, and safety upgrades, and have exacerbated the already exorbitant cost of upgrades.

Maryland's Department of the Environment has released BRF ENR grant eligibility criteria, indicating that the BRF grant would cover 50 percent of costs for decommissioning the lagoon, leaving the Town with the remaining 50 percent of costs. However, in studying MD Env Code § 9-1605.2 (2018) with regard to the applicability to publicly owned wastewater facilities, it appears that BRF grants are applicable to 100 percent of costs for planning, design, construction, and upgrades, necessary to achieve enhanced nutrient removal standards. In Middletown's case, the decommissioning of the

lagoon and the building of infrastructure to redirect its intake to a second facility is part of the planning, design, construction, and ENR upgrade of that second facility.

Certainly the spirit of the statute suggests that for systems that MDE determines to be a threat to public health or water quality, grants or loans for up to 100% of cost are available. It is this last criterion, “public health or water quality,” that is particularly pertinent to wastewater treatment lagoons situated within a floodplain. In the case of Middletown, it would seem that the threat to public health or water quality would be pressing, if not urgent.

Finally, while the statute clearly states that “the eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department”, the Code of Maryland Regulations is silent on the ENR eligibility criteria of funds for decommissioning a wastewater treatment lagoon located in a floodplain.

For these reasons, the BRF statute must be clarified with regard to establishing 100 percent funding eligibility criteria for a wastewater treatment lagoon located in a floodplain. SB0726 will do exactly that. I urge a favorable report.

Sincerely,



Senator Karen Lewis Young