

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of the Environment**  
(DLS Control No. 14-269)

---

**Overview and Legal and Fiscal Impact**

This regulation updates an existing regulation to make it consistent with statutory changes made as a result of the passage of House Bill 11 and House Bill 12 during the 2014 legislative session. Generally, House Bill 11 and House Bill 12 expanded the uses of the Bay Restoration Fund (BRF).

The regulation presents no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Department of the Environment:**

Water Supply, Sewerage, Solid Waste, and Pollution Control Planning and Funding: Bay Restoration Fund Implementation: COMAR 26.03.13.04

---

**Legal Analysis**

**Background**

The main goal of BRF is to provide grants to owners of wastewater treatment plants to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology and to support septic system upgrades and the planting of cover crops. Originally, grants and loans made from funds within the Septics Account of BRF were used to cover the cost of repairing, replacing, or upgrading a septic system, or for covering the difference in cost between a new conventional system and one utilizing the best available technology for nitrogen removal. Legislation enacted in 2008 and 2011 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 and providing grants or loans for connecting a property served by a septic system to an existing ENR facility. The Maryland Department of the Environment indicates that these and other former provisions of law relating to the use of the Septics Account were too restrictive to accommodate the demand for various legitimate projects that could achieve the same environmental benefits as septic system upgrades. As a result of these concerns, the General Assembly passed House Bill 11 and House Bill 12 during the 2014 legislative session.

House Bill 11 (Chapter 80) of 2014 gives local governments more flexibility in using Septics Account funds to address their septic system needs. The Act expands the uses of the

Septics Account by (1) providing grants or loans for connecting a property served by an onsite sewage disposal (septic) system to an existing biological nutrient removal facility; (2) covering the cost of the principal on debt issued by a local government for specified sewer connection projects; and (3) providing assistance for specified sewer connection projects located outside of a priority funding area. The Act became effective June 1, 2014.

House Bill 12 (Chapter 379) of 2014 alleviates some of the burden on local governments for additional plan review, construction inspection, and operation and maintenance tracking duties. In 2010, the department completed its phase out of the administration of septic system grants, leaving administration of the program to local governments instead. Thus, grant funds are provided by the department to county health departments and other delegated entities, which, in turn, implement a local grant program for eligible property owners. Regulations adopted in September 2012 further increased the administrative burden on local health departments by requiring that septic systems utilizing best available technology be maintained and operated for the life of the system. The Act requires that up to 10% of the funds in the Septics Account be distributed to the local public entities delegated administration authority by the department in order to cover reasonable administrative costs. The Act became effective July 1, 2014.

### **Summary of Regulation**

The department proposes to amend COMAR 26.03.13.04 to be consistent with the provisions of § 9-1605.2 of the Environment Article, as amended by House Bill 11 and House Bill 12 during the 2014 legislative session. The regulation also adds procedures governing public hearings for specified sewer connection projects not in priority funding areas.

### **Legal Issue**

The regulation presents no legal issue of concern.

### **Statutory Authority and Legislative Intent**

The department cites § 9-1605.2 of the Environment Article as authority for the regulation. This section established BRF. Specifically, the department has broad regulatory authority under § 9-1605.2(1), which requires the department to adopt regulations that are necessary to carry out the provisions of this section of law (including amendments established by Chapters 80 and 379 of 2014). Additionally, the department has been advised to cite as authority Chapter 80 of 2014, which includes uncodified provisions requiring the department to adopt regulations concerning public hearings of specified projects. With the addition of Chapter 80, this authority is correct and complete. The regulation complies with the legislative intent of the law.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulation merely implements Chapters 80 and 379 of 2014. Thus, any impact of the regulation on State or local governments has already been accounted for in the fiscal and policy notes for House Bill 11 (Chapter 80) and House Bill 12 (Chapter 379) of 2014.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

**Legal Analysis:** Ryane M. Necessary – (410) 946/(301) 970-5350

**Fiscal Analysis:** Evan M. Isaacson – (410) 946/(301) 970-5510