

CHAPTER 225

(Senate Bill 831)

AN ACT concerning

Environment – Bay Restoration Fund – Authorized Uses of Fund

FOR the purpose of authorizing certain fee revenue collected for the Bay Restoration Fund to be used to award grants ~~to local governments for the costs of connecting certain existing communities to~~ or loans for certain costs related to certain community sewerage systems under certain circumstances; defining a certain term; and generally relating to the Bay Restoration Fund.

BY renumbering

Article – Environment

Section 9–1601(i) through (ii), respectively

to be Section 9–1601(j) through (jj), respectively

Annotated Code of Maryland

(2007 Replacement Volume and 2007 Supplement)

BY adding to

Article – Environment

Section 9–1601(i)

Annotated Code of Maryland

(2007 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 9–1605.2(a), (f), (h), ~~and (i)~~

Annotated Code of Maryland

(2007 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,

Article – Environment

Section 9–1605.2(l)

Annotated Code of Maryland

(2007 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 9–1601(i) through (ii), respectively, of Article – Environment of the Annotated Code of Maryland be renumbered to be Section(s) 9–1601(j) through (jj), respectively.

SECTION ~~1. BE IT~~ 2. AND BE IT FURTHER ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Environment

9-1601.

(I) "COMMUNITY SEWERAGE SYSTEM" MEANS A PUBLICLY OR PRIVATELY OWNED SEWERAGE SYSTEM THAT SERVES AT LEAST TWO LOTS.

9-1605.2.

~~(a) (1) There is a Bay Restoration Fund.~~

~~(2) It is the intent of the General Assembly that the Bay Restoration Fund be:~~

~~(i) Used, in part, to provide the funding necessary to upgrade any of the wastewater treatment facilities that are located in the State or used by citizens of the State in order to achieve enhanced nutrient removal where it is cost effective to do so; [and]~~

~~(ii) Available for treatment facilities discharging into the Atlantic Coastal Bays or other waters of the State, but that priority be given to treatment facilities discharging into the Chesapeake Bay; AND~~

~~(III) USED, IN PART, TO AWARD GRANTS TO LOCAL GOVERNMENTS FOR THE PURPOSE OF CONNECTING SEWERAGE SYSTEMS TO EXISTING COMMUNITIES THAT:~~

~~1. ARE LOCATED IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA; AND~~

~~2. HAVE FAILING ONSITE SEWAGE DISPOSAL SYSTEMS OR HOLDING TANKS.~~

~~(3) The Bay Restoration Fund shall be maintained and administered by the Administration in accordance with the provisions of this section and any rules or program directives as the Secretary or the Board may prescribe.~~

~~(4) There is established a Bay Restoration Fee to be paid by any user of a wastewater facility, an onsite sewage disposal system, or a holding tank that:~~

~~(i) Is located in the State; or~~

~~(ii) Serves a Maryland user and is eligible for funding under this subtitle.~~

~~(f) (1) (i) The Bay Restoration Fund is a special, continuing, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article and shall be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this section.~~

~~(ii) Money in the Fund may not revert or be transferred to the General Fund of the State.~~

~~(2) The Bay Restoration Fund shall be available for the purpose of providing financial assistance in accordance with the provisions of this section for:~~

~~(i) Eligible costs of projects relating to planning, design, construction, and upgrades of wastewater facilities to achieve enhanced nutrient removal as required by the conditions of a grant agreement and a discharge permit; [and]~~

~~(H) COSTS INCURRED BY LOCAL GOVERNMENTS RELATING TO CONNECTING SEWERAGE SYSTEMS TO EXISTING COMMUNITIES THAT:~~

~~1. ARE LOCATED IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA; AND~~

~~2. HAVE FAILING ONSITE SEWAGE DISPOSAL SYSTEMS OR HOLDING TANKS; AND~~

~~[(ii)](III) All projects identified in subsections (h) and (i) of this section.~~

~~(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Bay Restoration Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Bay Restoration Fund.~~

~~(4) Subject to the provisions of any applicable bond resolution governing the investment of amounts in the Bay Restoration Fund, the Bay Restoration Fund shall be invested and reinvested in the same manner as other State funds.~~

~~(5) Any investment earnings shall be retained to the credit of the Bay Restoration Fund.~~

~~(6) The Bay Restoration Fund shall be subject to audit by the Office of Legislative Audits as provided under § 2-1220 of the State Government Article.~~

~~(7) The Administration shall operate the Bay Restoration Fund in accordance with §§ 9-1616 through 9-1621 of this subtitle.~~

(h) (1) With regard to the funds collected under subsection (b)(1)(i), from users of an onsite sewage disposal system or holding tank that receive a water bill, (ii), and (iii) 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) 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; ~~or~~

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 ~~or another wastewater treatment system; and~~

~~2. GRANTS TO LOCAL GOVERNMENTS FOR THE COST OF CONNECTING SEWERAGE SYSTEMS TO EXISTING COMMUNITIES THAT:~~

~~A. ARE LOCATED IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA; AND~~

~~B. HAVE FAILING ONSITE SEWAGE DISPOSAL SYSTEMS OR HOLDING TANKS; AND; OR~~

D. THE COST, UP TO THE SUM OF THE COSTS AUTHORIZED UNDER ITEM 1B OF THIS ITEM FOR EACH INDIVIDUAL SYSTEM, OF REPLACING MULTIPLE ON-SITE 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.

~~2.~~ ~~3.~~ 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:

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

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

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

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

(II) FUNDING FOR THE COSTS IDENTIFIED IN PARAGRAPH (2)(I)1D OF THIS SUBSECTION MAY BE PROVIDED IF:

1. THE ENVIRONMENTAL IMPACT OF THE ON-SITE SEWAGE DISPOSAL SYSTEM IS DOCUMENTED BY THE LOCAL GOVERNMENT AND CONFIRMED BY THE DEPARTMENT;

2. IT CAN BE DEMONSTRATED THAT:

A. THE REPLACEMENT OF THE ON-SITE SEWAGE DISPOSAL SYSTEM WITH A NEW COMMUNITY SEWERAGE SYSTEM IS MORE COST EFFECTIVE FOR NITROGEN REMOVAL THAN UPGRADING EACH INDIVIDUAL ON-SITE SEWAGE DISPOSAL SYSTEM; OR

B. THE INDIVIDUAL REPLACEMENT OF THE ON-SITE SEWAGE DISPOSAL SYSTEM IS NOT FEASIBLE; AND

3. 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.

(4) 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.

~~(i) (1) In this subsection, "eligible costs" means the additional costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal, as determined by the Department.~~

~~(2) Funds in the Bay Restoration Fund shall be used only:~~

~~(i) To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the~~

~~Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;~~

~~(ii) 1. In fiscal years 2005 through 2009, inclusive, for a portion of the costs of projects relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations, not to exceed an annual total of \$5,000,000; and~~

~~2. In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;~~

~~(iii) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;~~

~~(iv) To earn interest on Bay Restoration Fund accounts;~~

~~(v) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;~~

~~(vi) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;~~

~~(vii) For future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;~~

~~(viii) For costs associated with the issuance of bonds; [and]~~

~~(ix) Subject to the conditions under subsection (h) of this section, projects related to the removal of nitrogen from onsite sewage disposal systems and cover crop activities; AND~~

~~(X) TO AWARD GRANTS TO LOCAL GOVERNMENTS FOR COSTS RELATING TO CONNECTING SEWERAGE SYSTEMS TO EXISTING COMMUNITIES THAT:~~

~~1. ARE LOCATED IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA; AND~~

~~2. HAVE FAILING ONSITE SEWAGE DISPOSAL SYSTEMS OR HOLDING TANKS.~~

~~(3) The grant agreement and State discharge permit, if applicable, shall require an owner of a wastewater facility to operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.~~

~~(4) (i) All wastewater facilities serving Maryland users that have contributed to the Bay Restoration Fund are eligible for grants under this section, including the Blue Plains Wastewater Treatment Plant in the District of Columbia.~~

~~(ii) Grants issued under paragraph (2)(i) of this subsection for upgrades to the Blue Plains Wastewater Treatment Plant may be awarded only if each party to the Blue Plains Intermunicipal Agreement of 1985 contributes a proportional share of the upgrade costs in accordance with the Blue Plains Intermunicipal Agreement of 1985, as revised and updated.~~

~~(5) Priority for funding an upgrade of a wastewater facility shall be given to enhanced nutrient removal upgrades at wastewater facilities with a design capacity of 500,000 gallons or more per day.~~

~~(6) (i) The eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department, in accordance with subsection (k) of this section.~~

~~(ii) The criteria adopted by the Department shall include, as appropriate, consideration of:~~

- ~~1. The cost effectiveness in providing water quality benefit;~~
- ~~2. The water quality benefit to a body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;~~
- ~~3. The readiness of a wastewater facility to proceed to construction; and~~
- ~~4. The nitrogen and phosphorus loads discharged by a wastewater facility.~~

~~(7) A wastewater facility that has not been offered or has not received funds from the Department under this section or from any other fund in the Department may not be required to upgrade to enhanced nutrient removal levels, except as otherwise required under federal or State law.~~

(1) The Department shall adopt regulations that are necessary or appropriate to carry out the provisions of this section.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 24, 2008.