

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 155

(Senator Colburn)

Education, Health, and Environmental Affairs and Judicial Proceedings    Environmental Matters

---

**Dorchester County - Bay Restoration Fee - Lien Against Property**

---

This bill provides that in Dorchester County an unpaid bay restoration fee is a lien against the property on which the wastewater facility, onsite sewage disposal (septic) system, or holding tank is located. A notice of lien must be recorded in the county's land records.

---

**Fiscal Summary**

**State Effect:** Potential minimal increase in special fund revenues to the extent the bill results in the collection of any unpaid bay restoration fees in Dorchester County. Expenditures would not be materially affected.

**Local Effect:** Although the bill would improve the ability of billing authorities in Dorchester County to recover unpaid bay restoration fees, the bill is not anticipated to have a significant impact on local operations or finances.

**Small Business Effect:** Minimal.

---

**Analysis**

**Current Law:** Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Water Quality Financing Administration within the Maryland Department of the Environment. The main goal of the fund 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 technology. As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks. The applicable fee varies for different classes of users. Except for a wastewater facility without a billing authority, the

fee must be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State. With respect to users who receive a water or sewer bill, the fee is to be listed as a separate charge on the bill. For users of septic systems or holding tanks that do not receive a water or sewer bill, current law requires that the county collect the fee, although the county may negotiate with a municipality to assume responsibility for collection within the municipal limits.

Fee revenues are required to be remitted by the billing authorities to the Comptroller who administers, collects, and enforces the fee. The Comptroller and the Central Collection Unit are authorized to collect from billing agencies revenues that should have been credited to the fund. Current law authorizes a local government, billing authority for a water or wastewater facility, or any other authorized collection agency to use all its existing procedures and authority for collecting a water or sewer bill, a septic system bill, or a holding tank bill in order to enforce the collection of the fee.

**Background:** In a letter written to the Honorable Pamela R. Howard, Cecil County Treasurer, dated June 14, 2007, Attorney General Gansler and Assistant Attorney General Varga addressed whether an unpaid bay restoration fee is a lien on real property that may be collected through the tax sale process. The letter noted that an unpaid tax or fee does not constitute a lien on real property unless the lien is expressly provided by law. The statute establishing the bay restoration fee does not itself create a statutory lien; rather, it authorizes local governments and other billing authorities to use their existing procedures for collecting water and sewer bills to collect the fee. In some jurisdictions, current law may provide for a lien that would encompass other charges that may appear on a water and sewer bill, such as the bay restoration fee. However, the letter concluded that a local law simply making unpaid water and sewer charges themselves a lien would be insufficient to create a lien for other unpaid charges. The letter indicated that absent a statutory lien, an unpaid charge may not be collected through the tax sale process. The letter recommended that the General Assembly consider the merits of creating a statutory lien for unpaid charges to provide a more uniform enforcement mechanism for collection of the bay restoration fee.

**State Revenues:** By increasing the ability of billing authorities in Dorchester County to recover unpaid bay restoration fees, special fund revenues to the Bay Restoration Fund could increase minimally. Although the exact dollar amount of outstanding bay restoration fees in Dorchester County is unknown, based on information provided by the county and the Comptroller's Office, it is not anticipated to be significant. Dorchester County advises that it is the largest billing authority in the county and as of June 30, 2007, outstanding bay restoration fees from the 2005-2006 and 2006-2007 tax years totaled approximately \$20,300.

For contextual purposes, through January 31, 2008, approximately \$200.1 million had been collected in bay restoration fees statewide. Of this total, an estimated \$1.8 million had been collected in Dorchester County.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Dorchester County, Maryland Department of the Environment, Comptroller's Office, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:**     First Reader - January 31, 2008  
mcp/hlb                     Revised - Senate Third Reader - March 18, 2008

---

Analysis by: Lesley G. Cook

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510