

# HOUSE BILL 90

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By: **Chair, Environmental Matters Committee (By Request – Departmental – Environment)**

Introduced and read first time: January 20, 2009

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment – Bay Restoration Fund and Bay**  
3 **Restoration Fee**

4 FOR the purpose of curing a previous Act of the General Assembly with a possible title  
5 defect (Chapter 666 of the Acts of 2008) by repealing and reenacting, without  
6 amendments, provisions of law to provide that the Bay Restoration Fee may not  
7 be reduced as long as certain bonds are outstanding, that money in the Bay  
8 Restoration Fund may not revert or be transferred to a special fund, that a  
9 certain committee is required to make a certain recommendation regarding the  
10 restoration fee, and that the Fund may be used for projects related to the  
11 removal of nitrogen from onsite sewage disposal systems and cover crop  
12 activities, subject to a certain condition; and generally relating to the Bay  
13 Restoration Fund and the Bay Restoration Fee.

14 BY repealing and reenacting, without amendments,  
15 Article – Environment  
16 Section 9–1605.2(b), (f), (i), and (j)  
17 Annotated Code of Maryland  
18 (2007 Replacement Volume and 2008 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Environment**

22 9–1605.2.

23 (b) (1) The Bay Restoration Fee is:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) Beginning January 1, 2005, for each residential dwelling  
2 that receives an individual sewer bill and each user of an onsite sewage disposal  
3 system or a holding tank that receives a water bill, \$2.50 per month;

4 (ii) Beginning October 1, 2005, for each user of an onsite sewage  
5 disposal system that does not receive a water bill, \$30 per year;

6 (iii) Beginning October 1, 2005, for each user of a sewage holding  
7 tank that does not receive a water bill, \$30 per year; and

8 (iv) Beginning January 1, 2005, for a building or group of  
9 buildings under single ownership or management that receives a sewer bill and that  
10 contains multiple residential dwellings that do not receive an individual sewer bill or  
11 for a nonresidential user:

12 1. For each equivalent dwelling unit not exceeding 3,000  
13 equivalent dwelling units, \$2.50 per month;

14 2. For each equivalent dwelling unit exceeding 3,000  
15 equivalent dwelling units and not exceeding 5,000 equivalent dwelling units, \$1.25 per  
16 month; and

17 3. For each equivalent dwelling unit exceeding 5,000  
18 equivalent dwelling units, zero.

19 (2) (i) For a residential dwelling that receives an individual sewer  
20 bill, a user of an onsite sewage disposal system or a holding tank that receives a water  
21 bill, a building or group of buildings under single ownership or management that  
22 receives a water and sewer bill and that contains multiple residential dwellings that  
23 do not receive an individual sewer bill, and a nonresidential user, the restoration fee  
24 shall be:

25 1. Stated in a separate line on the sewer or water bill, as  
26 appropriate, that is labeled "Bay Restoration Fee"; and

27 2. Collected for each calendar quarter, unless a local  
28 government or billing authority for a water or wastewater facility established some  
29 other billing period on or before January 1, 2004.

30 (ii) 1. A. If the user does not receive a water bill, for  
31 users of an onsite sewage disposal system and for users of a sewage holding tank, the  
32 county in which the onsite sewage disposal system or holding tank is located shall be  
33 responsible for collecting the restoration fee.

34 B. A county may negotiate with a municipal corporation  
35 located within the county for the municipal corporation to collect the restoration fee  
36 from onsite sewage disposal systems and holding tanks located in the municipal  
37 corporation.

1                               2.     The governing body of each county, in consultation  
2 with the Bay Restoration Fund Advisory Committee, shall determine the method and  
3 frequency of collecting the restoration fee under subsubparagraph 1 of this  
4 subparagraph.

5                               (3)    The total fee imposed under paragraph (1) of this subsection may  
6 not exceed \$120,000 annually for a single site.

7                               (4)    (i)     For purposes of measuring average daily wastewater flow,  
8 the local government or billing authority for a wastewater facility shall use existing  
9 methods of measurement, which may include water usage or other estimation  
10 methods.

11                               (ii)    The averaging period is:

12                               1.     The billing period established by the local government  
13 or billing authority; or

14                               2.     If a billing period is not established by the local  
15 government or billing authority, a quarter of a calendar year.

16                               (5)    The Bay Restoration Fee under this subsection may not be reduced  
17 as long as bonds are outstanding.

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

22                               (ii)    Money in the Fund may not revert or be transferred to the  
23 General Fund or a special fund of the State.

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

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

30                               (ii)    All projects identified in subsections (h) and (i) of this  
31 section.

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

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

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

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

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

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

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

15                   (i) To award grants for up to 100% of eligible costs of projects  
16 relating to planning, design, construction, and upgrade of a wastewater facility for  
17 flows up to the design capacity of the wastewater facility, as approved by the  
18 Department, to achieve enhanced nutrient removal in accordance with paragraph (3)  
19 of this subsection;

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

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

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

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

32                   (v) For the reasonable costs of administering the Bay  
33 Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on  
34 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 allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from onsite sewage disposal systems and cover crop activities.

(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) The grant agreement shall require a grantee to demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(i) Placing qualified small business enterprises, minority business enterprises, and women's business enterprises on solicitation lists;

(ii) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(v) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(5) If the steps required under paragraph (4) of this subsection are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

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

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

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

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

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

17                               1.   The cost-effectiveness in providing water quality  
18 benefit;

19                               2.   The water quality benefit to a body of water identified  
20 by the Department as impaired under Section 303(d) of the Clean Water Act;

21                               3.   The readiness of a wastewater facility to proceed to  
22 construction; and

23                               4.   The nitrogen and phosphorus loads discharged by a  
24 wastewater facility.

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

29                  (j)   (1)   There is a Bay Restoration Fund Advisory Committee.

30                  (2)   The Committee consists of the following members:

31                               (i)   The Secretaries of the Environment, Agriculture, Planning,  
32 Natural Resources, and Budget and Management, or their designees;

33                               (ii)   One member of the Senate, appointed by the President of  
34 the Senate;

(iii) One member of the House of Delegates, appointed by the Speaker of the House of Delegates;

(iv) Two individuals representing publicly owned wastewater facilities, appointed by the Governor;

(v) Two individuals representing environmental organizations, appointed by the Governor;

(vi) One individual each from the Maryland Association of Counties and the Maryland Municipal League, appointed by the Governor;

(vii) Two individuals representing the business community, appointed by the Governor;

(viii) Two individuals representing local health departments who have expertise in onsite sewage disposal systems, appointed by the Governor; and

(ix) One individual representing a university or research institute who has expertise in nutrient pollution, appointed by the Governor.

(3) The Governor shall appoint the chairman of the Committee from the designated members of the Committee.

(4) The Committee may consult with any stakeholder group as it deems necessary.

(5) (i) The term of a member is 4 years.

(ii) A member continues to serve until a successor is appointed.

(iii) The terms of the members appointed by the Governor are staggered as required by the terms provided for members of the Committee on October 1, 2004.

(iv) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(v) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(6) The Committee shall:

(i) Perform an analysis of the cost of nutrient removal from wastewater facilities;

(ii) Identify additional sources for funding the Bay Restoration Fund;

(iii) Make recommendations to improve the effectiveness of the Bay Restoration Fund in reducing nutrient loadings to the waters of the State;

(iv) Make recommendations regarding the appropriate increase in the restoration fee to be assessed in fiscal year 2008 and subsequent years as necessary to meet the financing needs of the Bay Restoration Fund;

(v) In consultation with the governing body of each county:

1. Identify users of onsite sewage disposal systems and holding tanks; and

2. Make recommendations to the governing body of each county on the best method of collecting the Bay Restoration Fee from the users of onsite sewage disposal systems and holding tanks that do not receive water bills;

(vi) Advise the Department on the components of an education, outreach, and upgrade program established within the Department under subsection (h)(2)(i)2 of this section;

(vii) Study the availability of money from the Fund for the supplemental assistance program within the Department to provide grants to smaller, economically disadvantaged communities in the State to upgrade their wastewater collection and treatment facilities;

(viii) Advise the Secretary concerning the adoption of regulations as described in subsection (k) of this section; and

(ix) Beginning January 1, 2006, and every year thereafter, report to the Governor and, subject to § 2-1246 of the State Government Article, the General Assembly on its findings and recommendations.

(7) Members of the Committee:

(i) May not receive compensation; but

(ii) Are entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(8) The Department of the Environment, Department of Agriculture, Department of Planning, Department of Natural Resources, and Department of Budget and Management shall provide staff support for the Committee.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.