

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 977 (Senator Colburn)
Education, Health, and Environmental Affairs

Caroline County - Bay Restoration Fee - Lien Against Property

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

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances. The Comptroller advises that, by authorizing the creation of a lien on the property of an individual with unpaid bay restoration fees, most, if not all, such unpaid fees will be paid. According to Caroline County, however, the estimated total amount of unpaid fees to date is only \$165.

Local Effect: Although the bill improves the ability of billing authorities in Caroline County to recover unpaid bay restoration fees, the bill is not anticipated to have a material impact on local operations or finances. As noted above, Caroline County advises that the estimated total amount of unpaid fees to date is only \$165.

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 revenues that should have been credited to the fund from billing agencies. Current law authorizes a local government, billing authority for a water or wastewater facility, or any other authorized collection agency to use any existing 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 2007, the Office of the Attorney General issued an opinion 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 opinion 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 opinion indicated that, absent a statutory lien, an unpaid charge may not be collected through the tax sale process. The opinion 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.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 1109 (Caroline County Delegation – Environmental Matters) is identical.

Information Source(s): Caroline County, Comptroller's Office, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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