

HOUSE BILL 446

M3

2lr0106
CF SB 240

By: **The Speaker (By Request – Administration) and Delegates Beidle, Bobo, Clippinger, Feldman, Frush, Gaines, Glenn, Hucker, McIntosh, Mitchell, Niemann, S. Robinson, and Rosenberg**

Introduced and read first time: February 1, 2012

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2012

CHAPTER _____

1 AN ACT concerning

2 **Environment – Bay Restoration Fund – Fees and Uses**

3 FOR the purpose of ~~increasing~~ altering certain Bay Restoration Fees paid by users of
4 wastewater facilities, onsite sewage disposal systems, and sewage holding tanks
5 beginning on a certain date; ~~providing for the collection of the fees by certain~~
6 ~~billing authorities under certain circumstances~~ altering certain Bay Restoration
7 Fees for certain buildings, groups of buildings, or nonresidential users
8 beginning on a certain date; altering the manner in which the Bay Restoration
9 Fee is calculated for certain buildings, groups of buildings, and nonresidential
10 users; authorizing the Bay Restoration Fee to be calculated in a certain manner
11 for a nonresidential user under certain circumstances; prohibiting a change in
12 the manner of determining the Bay Restoration Fee that will reduce the amount
13 of funds available for a certain purpose; requiring a local government or a
14 certain billing authority to establish a certain hardship program, subject to
15 approval by the Maryland Water Quality Financing Administration;
16 establishing a maximum amount of funds that may be transferred to the
17 Maryland Agriculture Water Quality Cost Share Program in the Department of
18 Agriculture for certain activities beginning in a certain fiscal year; requiring
19 certain funds remaining after certain distributions are made to be deposited in
20 a certain account; requiring the Bay Restoration Fund to be used for grants to
21 local governments for a certain purpose and in accordance with certain
22 requirements in certain fiscal years; providing for a delayed effective date for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



certain provisions of this Act; repealing certain obsolete language; and generally relating to ~~increasing~~ Bay Restoration Fees.

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–1605.2(a)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(b), (d), and (i)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(h)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Chapter 428 of the Acts of the General Assembly of 2004)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(b)(1)(i)
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Section 1 of this Act)

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

Article – Environment

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.

(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.

(b) (1) (I) [The] **BEGINNING ON JULY 1, 2012, THE** Bay Restoration Fee is:

~~(i)~~ 1. [Beginning January 1, 2005, for] **FOR** each ~~[residential dwelling] USER~~ that receives an individual sewer bill and each user of an onsite sewage disposal system or a holding tank that receives a water bill, ~~[\$2.50]~~ **\$5.00** per month;

~~1. A. \$0.90 PER 1,000 GALLONS OF WATER USAGE FOR THE FIRST 2,000 GALLONS PER MONTH; AND~~

~~B. \$1.25 PER 1,000 GALLONS OF WATER THAT EXCEEDS 2,000 GALLONS OF WATER USAGE PER MONTH; OR~~

~~2. \$5.00 PER MONTH FOR EACH EQUIVALENT DWELLING UNIT IF THE BILLING AUTHORITY DOES NOT HAVE A WATER USAGE BASED BILLING SYSTEM;~~

~~(ii)~~ 2. [Beginning October 1, 2005, for] **FOR** each user of an onsite sewage disposal system that does not receive a water bill, ~~[\$30]~~ **\$60** per year; **AND**

~~(iii)~~ 3. [Beginning October 1, 2005, for] **FOR** each user of a sewage holding tank that does not receive a water bill, ~~[\$30]~~ **\$60** per year; and

~~(iv)~~ 4. ~~Beginning January 1, 2005, for~~ **FOR** a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill or for a nonresidential user:

1 ~~1. A.~~ For each equivalent dwelling unit not exceeding ~~3,000~~
2 **2,000** equivalent dwelling units, ~~\$2.50~~ **\$5.00** per month; **AND**

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

6 ~~3. B.~~ For each equivalent dwelling unit exceeding ~~5,000~~
7 **2,000** equivalent dwelling units, zero~~1.~~

8 **(II) FOR A NONRESIDENTIAL USER, THE BAY RESTORATION**
9 **FEE MAY BE CALCULATED BASED ON AN ESTIMATE OF EQUIVALENT DWELLING**
10 **UNITS OF WASTEWATER EFFLUENT GENERATED, IF THE NONRESIDENTIAL**
11 **USER'S WASTEWATER BILL IS BASED ON WASTEWATER GENERATED AND NOT ON**
12 **WATER USAGE.**

13 (2) (i) For a residential dwelling that receives an individual sewer
14 bill, a user of an onsite sewage disposal system or a holding tank that receives a water
15 bill, a building or group of buildings under single ownership or management that
16 receives a water and sewer bill and that contains multiple residential dwellings that
17 do not receive an individual sewer bill, and a nonresidential user, the restoration fee
18 shall be:

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

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

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

28 B. A county may negotiate with a municipal corporation
29 located within the county for the municipal corporation to collect the restoration fee
30 from onsite sewage disposal systems and holding tanks located in the municipal
31 corporation.

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

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

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

7 (ii) The averaging period is:

8 1. The billing period established by the local government
9 or billing authority; or

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

12 (5) **(I)** The Bay Restoration Fee under this subsection may not be
13 reduced as long as bonds are outstanding.

14 **(II) ANY CHANGE IN THE MANNER OF DETERMINING THE**
15 **BAY RESTORATION FEE MAY NOT REDUCE THE AMOUNT OF FUNDS AVAILABLE**
16 **FOR THE PAYMENT OF OUTSTANDING BONDS.**

17 (d) (1) Subject to the approval of the Administration, a local government
18 or a billing authority for a water or wastewater facility [may] SHALL establish a
19 program to exempt from the requirements of this section a residential dwelling able to
20 demonstrate substantial financial hardship as a result of the restoration fee.

21 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
22 the Bay Restoration Fee shall be collected by the local government or the billing
23 authority for the water or wastewater facility, as appropriate, on behalf of the State.

24 (ii) For a wastewater facility without a billing authority, the
25 Comptroller may collect the restoration fee from the facility owner.

26 (3) A local government, billing authority for a water or wastewater
27 facility, or any other authorized collecting agency:

28 (i) May use all of its existing procedures and authority for
29 collecting a water or sewer bill, an onsite sewage disposal system bill, or a holding
30 tank bill in order to enforce the collection of the Bay Restoration Fee; and

31 (ii) Shall establish a segregated account for the deposit of funds
32 collected under this section.

1 (4) (i) In Dorchester County, an unpaid Bay Restoration Fee shall
2 be a lien against the property served by a wastewater facility, onsite sewage disposal
3 system, or holding tank.

4 (ii) A notice of lien shall be recorded in the land records of
5 Dorchester County.

6 (5) (i) In Caroline County, an unpaid Bay Restoration Fee shall be
7 a lien against the property served by a wastewater facility, onsite sewage disposal
8 system, or holding tank.

9 (ii) A notice of lien shall be recorded in the land records of
10 Caroline County.

11 (h) (1) With regard to the funds collected under subsection [(b)(1)(i)]
12 (B)(1)(I)1, from users of an onsite sewage disposal system or holding tank that
13 receive a water bill, [(ii)] (I)2, and [(iii)] (I)3 of this section, beginning in fiscal year
14 2006, the Comptroller shall:

15 (i) Establish a separate account within the Bay Restoration
16 Fund; and

17 (ii) Disburse the funds as provided under paragraph (2) of this
18 subsection.

19 (2) The Comptroller shall:

20 (i) Deposit 60% of the funds in the separate account to be used
21 for:

22 1. Subject to paragraph (3) of this subsection, with
23 priority first given to failing systems and holding tanks located in the Chesapeake and
24 Atlantic Coastal Bays Critical Area and then to failing systems that the Department
25 determines are a threat to public health or water quality, grants or loans for up to
26 100% of:

27 A. The costs attributable to upgrading an onsite sewage
28 disposal system to the best available technology for the removal of nitrogen;

29 B. The cost difference between a conventional onsite
30 sewage disposal system and a system that utilizes the best available technology for the
31 removal of nitrogen;

32 C. The cost of repairing or replacing a failing onsite
33 sewage disposal system with a system that uses the best available technology for
34 nitrogen removal;

1 D. The cost, up to the sum of the costs authorized under
2 item 1B of this item for each individual system, of replacing multiple onsite sewage
3 disposal systems located in the same community with a new community sewerage
4 system that is owned by a local government and that meets enhanced nutrient
5 removal standards; or

6 E. The cost, up to the sum of the costs authorized under
7 item 1C of this item for each individual system, of connecting a property using an
8 onsite sewage disposal system to an existing municipal wastewater facility that is
9 achieving enhanced nutrient removal level treatment.

10 2. The reasonable costs of the Department, not to exceed
11 8% of the funds deposited into the separate account, to:

12 A. Implement an education, outreach, and upgrade
13 program to advise owners of onsite sewage disposal systems and holding tanks on the
14 proper maintenance of the systems and tanks and the availability of grants and loans
15 under item 1 of this item;

16 B. Review and approve the design and construction of
17 onsite sewage disposal system or holding tank upgrades;

18 C. Issue grants or loans as provided under item 1 of this
19 item; and

20 D. Provide technical support for owners of upgraded
21 onsite sewage disposal systems or holding tanks to operate and maintain the upgraded
22 systems; and

23 (ii) Transfer 40% of the funds to the Maryland Agriculture
24 Water Quality Cost Share Program in the Department of Agriculture in order to fund
25 cover crop activities.

26 (3) (i) Funding for the costs identified in paragraph (2)(i)1 of this
27 subsection shall be provided in the following order of priority:

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

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

32 A. First, for best available technologies for nitrogen
33 removal; and

34 B. Second, for other wastewater treatment systems.

1 (ii) Funding for the costs identified in paragraph (2)(i)1D of this
2 subsection may be provided if:

3 1. The environmental impact of the onsite sewage
4 disposal system is documented by the local government and confirmed by the
5 Department;

6 2. It can be demonstrated that:

7 A. The replacement of the onsite sewage disposal system
8 with a new community sewerage system is more cost effective for nitrogen removal
9 than upgrading each individual onsite sewage disposal system; or

10 B. The individual replacement of the onsite sewage
11 disposal system is not feasible; and

12 3. The new community sewerage system will only serve
13 lots that have received a certificate of occupancy, or equivalent certificate, on or before
14 October 1, 2008.

15 (iii) Funding for the costs identified in paragraph (2)(i)1E of this
16 subsection may be provided only if all of the following conditions are met:

17 1. The environmental impact of the onsite sewage
18 disposal system is documented by the local government and confirmed by the
19 Department;

20 2. It can be demonstrated that:

21 A. The replacement of the onsite sewage disposal system
22 with service to an existing municipal wastewater facility that is achieving enhanced
23 nutrient removal level treatment is more cost-effective for nitrogen removal than
24 upgrading the individual onsite sewage disposal system; or

25 B. The individual replacement of the onsite sewage
26 disposal system is not feasible;

27 3. The project is consistent with the county's
28 comprehensive plan and water and sewer master plan;

29 4. The onsite sewage disposal system was installed as of
30 October 1, 2008, and the property the system serves is located in a priority funding
31 area, in accordance with § 5-7B-02 of the State Finance and Procurement Article; and

32 5. The local government has adopted a policy or
33 procedure that will guarantee that any future connection to an existing municipal

1 wastewater facility that is funded under paragraph (2)(i)1E of this subsection will
2 meet all of the requirements under this subparagraph.

3 (4) The Comptroller, in consultation with the Administration, may
4 establish any other accounts and subaccounts within the Bay Restoration Fund as
5 necessary to:

6 (i) Effectuate the purposes of this subtitle;

7 (ii) Comply with the provisions of any bond resolution;

8 (iii) Meet the requirements of any federal or State law or of any
9 grant or award to the Bay Restoration Fund; and

10 (iv) Meet any rules or program directives established by the
11 Secretary or the Board.

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

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

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

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

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

29 3. **IN FISCAL YEARS 2018 AND THEREAFTER, AFTER**
30 **PAYMENT OF OUTSTANDING BONDS AND THE ALLOCATION OF FUNDS TO OTHER**
31 **REQUIRED USES OF THE BAY RESTORATION FUND FOR FUNDING IN THE**
32 **FOLLOWING ORDER OF PRIORITY:**

1 A. FOR FUNDING AN UPGRADE OF A WASTEWATER
2 FACILITY TO ENHANCED NUTRIENT REMOVAL AT WASTEWATER FACILITIES
3 WITH A DESIGN CAPACITY OF 500,000 GALLONS OR MORE PER DAY;

4 B. FOR FUNDING FOR THE MOST COST-EFFECTIVE
5 ENHANCED NUTRIENT REMOVAL UPGRADES AT WASTEWATER FACILITIES WITH
6 A DESIGN CAPACITY OF LESS THAN 500,000 GALLONS PER DAY;

7 C. FOR COSTS IDENTIFIED UNDER SUBSECTION
8 (H)(2)(I)1 OF THIS SECTION; AND

9 D. WITH RESPECT TO A LOCAL GOVERNMENT THAT
10 HAS ENACTED AND IMPLEMENTED A SYSTEM OF CHARGES UNDER § 4-204 OF
11 THIS ARTICLE TO FULLY FUND THE IMPLEMENTATION OF A STORMWATER
12 MANAGEMENT PROGRAM, FOR GRANTS TO THE LOCAL GOVERNMENT FOR A
13 PORTION OF THE COSTS OF THE MOST COST-EFFECTIVE AND EFFICIENT
14 STORMWATER CONTROL MEASURES, AS DETERMINED AND APPROVED BY THE
15 DEPARTMENT, FROM THE RESTORATION FEES COLLECTED ANNUALLY BY THE
16 COMPTROLLER FROM USERS OF WASTEWATER FACILITIES UNDER THIS
17 SECTION;

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

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

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

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

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

32 (viii) For costs associated with the issuance of bonds; and

33 (ix) Subject to the allocation of funds and the conditions under
34 subsection (h) of this section, for projects related to the removal of nitrogen from onsite
35 sewage disposal systems and cover crop activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 1. The cost-effectiveness in providing water quality
7 benefit;

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

10 3. The readiness of a wastewater facility to proceed to
11 construction; and

12 4. The nitrogen and phosphorus loads discharged by a
13 wastewater facility.

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That ~~this Act shall take effect~~
19 ~~July 1, 2012~~ the Laws of Maryland read as follows:

20 Article – Environment

21 9-1605.2.

22 (b) (1) (i) Beginning on [July 1, 2012] **JULY 1, 2030**, the Bay
23 Restoration Fee is:

24 1. For each residential dwelling that receives an
25 individual sewer bill and each user of an onsite sewage disposal system or a holding
26 tank that receives a water bill, [\$5.00] **\$2.50** per month;

27 2. For each user of an onsite sewage disposal system
28 that does not receive a water bill, [\$60] **\$30** per year;

29 3. For each user of a sewage holding tank that does not
30 receive a water bill, [\$60] **\$30** per year; and

31 4. For a building or group of buildings under single
32 ownership or management that receives a sewer bill and that contains multiple

1 residential dwellings that do not receive an individual sewer bill or for a
2 nonresidential user:

3 A. For each equivalent dwelling unit not exceeding
4 [2,000] 3,000 equivalent dwelling units, [\$5.00] \$2.50 per month; [and]

5 B. FOR EACH EQUIVALENT DWELLING UNIT
6 EXCEEDING 3,000 EQUIVALENT DWELLING UNITS AND NOT EXCEEDING 5,000
7 EQUIVALENT DWELLING UNITS, \$1.25 PER MONTH; AND

8 [B.] C. For each equivalent dwelling unit exceeding
9 [2,000] 5,000 equivalent dwelling units, zero.

10 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
11 take effect July 1, 2012.

12 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
13 take effect July 1, 2030.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.