

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 47 (Delegate Smigiel, *et al.*)
Environmental Matters

Environment - County Plans - Authority

This bill repeals specified provisions relating to the authority of the Maryland Department of the Environment (MDE) to regulate private and county water supply, sewerage, and solid waste systems.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Although the bill decreases MDE's responsibilities associated with private and county water supply, sewerage, and solid waste systems, it is not expected to have an overall effect on State expenditures. It is assumed that MDE special fund expenditures and positions are redirected to address other existing statutory and programmatic requirements. Revenues are not materially affected.

Local Effect: Local expenditures may increase to approve financial management plans; file civil actions; and, potentially, develop proper water, sewer, and solid waste plans. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill repeals MDE's authority to:

- order plans and specifications related to installation of water supply and sewerage service systems for land platted for subdivision;

- order installation of water supply or sewerage systems for land platted for subdivision;
- approve county water, sewerage, and solid waste plans and set the schedule for reviewing the plans every three years;
- approve, disapprove, or modify, in part or whole, proposed county plans or revisions or amendments to the plans; and
- approve financial management plans developed by counties for community or multiuse sewerage systems.

The bill repeals provisions requiring MDE to submit county plans, revisions, and amendments to other State agencies for specified advice. The bill also repeals provisions requiring that county plan revisions or amendments be submitted to, and approved by, MDE. Also, MDE is authorized to only recommend, not specify, a location for any sewerage treatment facility discharge point that is included in any county plan.

The bill shifts authority from MDE to counties for (1) approving financial management plans associated with specified privately owned community water supply systems; and (2) filing civil actions associated with violating statutory and regulatory provisions concerning those financial management plans.

Current Law:

Water Supply Systems and Sewerage Systems

Land platted for subdivision may not be offered for sale or development, or developed with a permanent building, unless a plat of the subdivision, a statement of the proposed water and sewerage service for the subdivision, and other information MDE deems necessary is submitted to MDE. On the basis of this information, MDE may order:

- preparation and submission of any plans and specifications that MDE considers necessary to provide for adequate water supply and sewerage service to the subdivision; and
- installation of a whole or partial water supply system or sewerage system for the subdivision that (1) conforms to the plans submitted to MDE and to any revision of the plans MDE approves; and (2) is necessary to preserve public health.

MDE is authorized to (1) conduct surveys and research to carry out specified water supply, sewerage, and refuse disposal system provisions; and (2) specify the location for any sewerage treatment facility discharge point that is included in any county plan. MDE must adopt rules and regulations to, among other things:

- carry out specified water supply, sewerage, and refuse disposal system provisions;
- control, limit, or prohibit the installation and use of water supply and sewerage systems;
- require that consideration be given to specified issues prior to installation of individual water supply or sewerage systems; and
- require an area to be served by community water supply, sewerage, or solid waste facilities.

Prior to issuance of a permit for construction of a community or multiuse sewerage system or a specified privately owned community water supply system, development of a financial management plan sufficient to ensure the dependable and safe operation of the system is required, and MDE must approve the plan. Violators are liable for a civil penalty of up to \$500 per violation that must be collected in a civil action filed by MDE in county circuit court.

County Water and Sewerage Plans

Each county must have a county plan or a plan with adjoining counties that is (1) approved by MDE; (2) covers at least a 10-year period; and (3) addresses water supply systems, sewerage systems, solid waste disposal systems, solid waste acceptance facilities, and the systematic collection and disposal of solid waste, including litter. Counties must review these plans at least once every three years in accordance with a schedule set by MDE. A county must adopt and submit to MDE any revision or amendment to its plan that the county governing body or MDE requires. A “proposed county plan” is a county plan that has been adopted by the county governing body, has not been approved by MDE, and includes any proposed amendment or revision to the plan.

Before approving or disapproving, in whole or part, a proposed county plan or a proposed revision or amendment to a plan, MDE must submit the proposal to the Department of Natural Resources, the Maryland Department of Planning (MDP), and the Maryland Department of Agriculture for specified advice. MDE must render a decision on a proposed county plan within 90 days after it is submitted. If a plan is not approved, MDE must give a county written notice that states the reasons for disapproval. A county may ask MDE to reconsider the decision for up to six months after receiving notice.

Background: Over the past year, the State has been engaged in several substantial efforts to determine how Maryland should grow and develop in the future. State plans, processes, and policies concerning water, sewerage, and waste have been an important part of these efforts. Some of these efforts are summarized below.

The Task Force on Sustainable Growth and Wastewater Disposal

The Task Force on Sustainable Growth and Wastewater Disposal was established by Governor O'Malley on April 18, 2011, via Executive Order 01.01.2011.05. The task force met throughout the 2011 interim and reviewed and studied such issues as what impact septic systems and shared community systems have on water quality and land use patterns and whether they constitute any barriers to smart growth. Further, the task force considered if existing growth areas that have central sewerage systems would be able to accommodate projected growth in terms of development capacity, increased flow to wastewater treatment plants, and funding for system upgrades. On December 20, 2011, the task force submitted a report containing numerous recommendations, including:

- designate areas within the land use plan of a local government's comprehensive plan into tiers that specify the appropriate level and type of development;
- require septic systems to include best available technology when they (1) are associated with new construction in the Chesapeake and Atlantic Coastal Bay watersheds or in other nitrogen impaired watersheds; or (2) replace existing systems in the Chesapeake and Atlantic Coastal Bays critical area; and
- allow the use of shared and community sewerage systems for new subdivisions if there is a controlling authority approved by MDE.

Two Administration bills have been introduced that implement recommendations contained in the task force's final report. First, the Sustainable Growth and Agricultural Preservation Act of 2012 (SB 236) establishes a tiered framework for inclusion in local comprehensive plans to guide growth on central sewerage and septic systems. Second, Environment – Bay Restoration Fund – Fees (SB 240) increases the bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks to generate additional revenue for upgrading wastewater treatment plants and septic systems and for planting cover crops.

State Development Plan

Over the past four years, MDP has worked with State agencies, local governments, private industry, and the general public to develop the State's first comprehensive development plan, known as PlanMaryland. PlanMaryland is a policy framework for growth and preservation in the State and a blueprint to help guide State agencies in their decision making on programs and funding for growth and preservation. MDP released a draft plan in April 2011 and subsequently sought public input through open houses, targeted meetings, and an online comment tool. MDP released a revised draft plan in September 2011 that reflected public feedback and established an additional public comment period. The final PlanMaryland document was submitted to Governor O'Malley in December 2011. On December 19, 2011, the Governor accepted

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PlanMaryland and filed Executive Order 01.01.2011.22, which outlines a process for implementing the plan.

PlanMaryland proposes focusing State financial assistance in specific geographic areas and aligning State regulations and procedures. The plan calls for targeting State financial assistance to specific places that are designated for growth, revitalization, land preservation and resource conservation, and maintaining public services and quality of life. The plan anticipates a future local-State effort to identify planning areas that reflect local feedback and data from existing State mapping tools. To streamline State regulations and procedures, the plan proposes that (1) State capital spending and noncapital plans, programs, and procedures be realigned and focused to achieve the objectives; and (2) MDP collaborate with other State agencies to incorporate PlanMaryland into other strategic State plans for major needs, such as transportation.

Meeting Chesapeake Bay Restoration Requirements

In December 2010, the U.S. Environmental Protection Agency (EPA) established the first baywide Total Maximum Daily Load (TMDL) that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

Exhibit 1 **Maryland's Pollution Reduction Goals in the Bay TMDL** **(Million Pounds Per Year)**

<u>Pollutant</u>	<u>2009 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.88	41.17	22.1%
Phosphorus	3.20	2.81	12.2%
Sediment	1,395	1,350	3.2%

TMDL: Total Maximum Daily Load

Note: Historical load estimates and target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

In 2010, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the TMDL. The Phase I WIP focuses on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017;

(2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the TMDL is to be met. On December 15, 2011, Maryland provided EPA with a preliminary draft of the State's Phase II WIP, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin).

State Expenditures: MDE's fiscal 2012 budget includes \$335,344 in special funds and 3.75 full-time equivalent positions to conduct work associated with the subdivision of land and the approval of county water, sewer, and solid waste management plans. The bill eliminates MDE's authority to implement this work. Since MDE currently lacks the resources to meet all of its existing land and water management program requirements, however, this analysis assumes that these special fund expenditures and positions are redirected to meet existing statutory and programmatic requirements. In addition, to the extent the bill's changes require MDE to interact more with counties on water, sewer, or solid waste facility permits, those expenditures and positions may shift to address any increased permitting workload.

Local Expenditures: Since the bill shifts responsibilities to local governments, local expenditures are anticipated to increase in fiscal 2013 and future years; however, the magnitude of the impact cannot be quantified. While local governments are no longer required to dedicate staff time to ensuring State level review of water, sewer, and solid waste plans and plan amendments, the lack of State review may prompt some local governments to dedicate more staff time and consultant resources to ensuring proper plans are developed. Also, without State feedback, local governments may rezone land and initiate the design of facilities that subsequently fail to meet State permit requirements or financial assistance eligibility requirements. Local expenditures increase to the extent counties (1) are required to review financial plans for new water and sewer facilities; and (2) file civil actions associated with financial management plans violations.

Legislative Services contacted several counties and other entities for their perspective on the bill's potential impacts. The responses are summarized below.

- The Maryland Association of Counties advises that local expenditures decrease to the extent a county must do less work on plans and sewerage treatment facility sites.
- Charles County advises that expenditures increase by approximately \$9,000 annually for staffing costs associated with reviewing financial plans for new water and sewer facilities.

- Frederick County advises that administrative expenditures may increase, but some cost savings and efficiencies may be realized as well.
- Montgomery County advises that the bill does not materially affect local finances.

Additional Information

Prior Introductions: HB 9/SB 26 of the 2011 special session were referred to the House Rules and Executive Nominations Committee and the Senate Rules Committee, respectively, but no further action was taken on either bill.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Planning; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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mc/lgc

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