

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 358 (Senator Ready, *et al.*)  
Education, Health, and Environmental Affairs

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Environment - Bay Restoration Fee - Unimproved Property

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This bill clarifies that a local government, billing authority for a water or wastewater facility, or any other authorized collection agency is prohibited from imposing the bay restoration fee on unimproved property.

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Fiscal Summary

**State Effect:** None. The bill clarifies current law.

**Local Effect:** None. The bill clarifies current law.

**Small Business Effect:** None.

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Analysis

**Current Law:** Chapter 428 of 2004 established the Bay Restoration Fund (BRF), which is administered by the Water Quality Financing Administration within the Maryland Department of the Environment (MDE). The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned Wastewater Treatment Plants (WWTPs) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants and the Cover Crop Program within the Maryland Department of Agriculture (MDA).

*Assessment of BRF Fee*

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, and Chapter 150 of 2012

doubled the fee for most users. Fee revenue generated from users of wastewater facilities is deposited into MDE's Wastewater Account and used, among other specified uses, to provide grants for up to 100% of the eligible costs to upgrade WWTPs to ENR. The local government, billing authority, owner of a privately owned WWTP, or a municipal corporation in which a septic system or sewage holding tank is located may collect the fee.

Of the fee revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account, commonly referred to as the Septics Account, to provide grants and loans to septic system owners for the upgrade of their septic systems with the best available technology for nitrogen removal (BAT) and to implement an education and outreach program. The remaining funds collected from users of septic systems and sewage holding tanks (40%) must be transferred to the Maryland Agricultural Water Quality Cost Share Program within MDA to provide financial assistance to farmers for planting cover crops.

### *Exemptions*

A user of a WWTP is exempt from paying the fee if the WWTP meets one of three conditions:

- the user's WWTP's average reported annual effluent nitrogen and phosphorus concentrations must demonstrate that the WWTP is achieving ENR, or MDE must determine that the WWTP does not discharge nitrogen or phosphorus and is not required to monitor for either of these pollutants in its discharge permit;
- the user's WWTP discharges to groundwater and the annual average nutrient concentrations in the wastewater before discharge are below specified amounts; or
- the user's WWTP discharges noncontact cooling water, water from dewatering operations, or reclaimed wastewater from a facility whose users pay into BRF, and the discharge does not result in a net increase in loading of nutrients compared to the intake of water.

In order for a user of a WWTP to be exempt from paying the fee under either of the first two conditions noted above, the user's WWTP must not have received a State or federal grant for the facility. In addition to these exemptions, a local government or billing authority for a WWTP must create a program to exempt a residential dwelling that is able to demonstrate a substantial financial hardship as a result of the fee. Finally, a county, a municipal corporation, the Maryland-National Capital Park and Planning Commission, the Washington Suburban Sanitary Commission, a local housing authority, a school board, a community college, a local career or volunteer fire department, or any other unit of a county or municipal corporation are exempt from the requirement to pay the fee.

Because the bay restoration fee is only charged to “users” of wastewater facilities, septic systems, and sewage holding tanks, if a property does not have water/sewer service or is not connected to a septic system/sewage holding tank, the property owner is not responsible for paying the fee under current law. MDE advises that if an owner of unimproved property is incorrectly charged, the owner is able to work through the local billing authority to have the charge removed.

**Background:** According to the Comptroller’s Office, through December 31, 2017, a total of \$1.01 billion in bay restoration fees collected from wastewater facility users had been deposited in MDE’s Wastewater Account. In addition, of the fee revenues collected from users of septic systems and sewage holding tanks, \$145.1 million had been deposited in MDE’s Septics Account, and \$105.6 million had been provided to MDA to support the planting of cover crops.

As of January 2018, BRF has supported ENR upgrades to 56 major wastewater facilities, with 8 other facilities under construction and 3 in the planning or design stages. As of September 20, 2017, BRF has also supported the installation of 8,975 BAT septic systems, of which 5,532 upgrades were completed within Maryland’s Critical Areas. In addition, 214 homes were connected to public sewerage using BRF. Further, BRF has supported the planting of more than three million acres of cover crops.

**Additional Comments:** Because “unimproved property” is not defined, it is assumed for the purposes of this fiscal and policy note that the term means property that does not have water/sewer service or a septic system/sewage holding tank.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Calvert, Carroll, and Montgomery counties; City of Takoma Park; Comptroller’s Office; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

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