

SENATE BILL 354

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By: **Senators Elfreth and Pinsky**

Introduced and read first time: January 21, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Bay Restoration Fund – Intended Use Plans and Privately Owned Wastewater**
3 **Facilities**

4 FOR the purpose of requiring the Department of the Environment to provide a certain
5 intended use plan to the General Assembly within a certain period of time; altering
6 the definition of “privately owned wastewater facility” as it relates to the awarding
7 of grants from the Bay Restoration Fund; requiring the Department of the
8 Environment and the Department of Planning to report on and the Department of
9 the Environment to provide certain information regarding funding for privately
10 owned wastewater facilities to the General Assembly and the Department of Budget
11 and Management; prohibiting the Department of the Environment from providing
12 funding from the Bay Restoration Fund’s Clean Water Commerce Account to
13 privately owned wastewater facilities if a determination is made that the facility was
14 not in compliance with a certain discharge permit for a certain period of time; and
15 generally relating to funding from the Bay Restoration Fund, intended use plans,
16 and privately owned wastewater facilities.

17 BY repealing and reenacting, with amendments,
18 Article – Environment
19 Section 9–1605(a)(1), 9–1605.2(i)(1) and (k), and 9–1605.4(q)
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2021 Supplement)

22 BY adding to
23 Article – Environment
24 Section 9–1605(f)
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2021 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article – Environment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 9–1605.2(i)(2)(i)
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2021 Supplement)

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

6 **Article – Environment**

7 9–1605.

8 (a) (1) **(I)** There is a Maryland Water Quality Revolving Loan Fund.

9 **(II)** The Water Quality Fund shall be maintained and administered
10 by the Administration in accordance with the provisions of this subtitle and such rules or
11 program directives as the Secretary or the Board may from time to time prescribe.

12 **(F) THE DEPARTMENT SHALL PROVIDE TO THE GENERAL ASSEMBLY, IN**
13 **ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, A COPY OF**
14 **EACH INTENDED USE PLAN THAT THE DEPARTMENT SUBMITS TO THE U.S.**
15 **ENVIRONMENTAL PROTECTION AGENCY TO REQUEST FEDERAL CAPITALIZATION**
16 **GRANTS AND AWARDS IN ACCORDANCE WITH TITLE VI OF THE FEDERAL WATER**
17 **POLLUTION CONTROL ACT FOR USE IN THE WATER QUALITY FUND WITHIN 5 DAYS**
18 **AFTER THE DEPARTMENT PUBLISHES THE PLAN FOR PUBLIC COMMENT.**

19 9–1605.2.

20 (i) (1) (i) In this subsection the following words have the meanings
21 indicated.

22 (ii) “Eligible costs” means the additional costs that would be
23 attributable to upgrading a wastewater facility to enhanced nutrient removal, as
24 determined by the Department.

25 (iii) “Privately owned wastewater facility” means a wastewater
26 facility that is owned by a private entity **AND PROVIDES WASTEWATER TREATMENT OR**
27 **DISPOSAL SERVICES TO MULTIPLE RESIDENTIAL DWELLING UNITS.**

28 (iv) “Publicly owned wastewater facility” means a wastewater facility
29 that is owned by this State or a political subdivision, municipal corporation, or other public
30 entity.

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

32 (i) 1. To award grants for up to 100% of eligible costs of projects
33 relating to planning, design, construction, and upgrade of a publicly owned wastewater

1 facility for flows up to the design capacity of the wastewater facility, as approved by the
2 Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this
3 subsection; and

4 2. To award grants for up to 50% of eligible costs of projects
5 relating to planning, design, construction, and upgrade of a privately owned wastewater
6 facility for flows up to the design capacity of the wastewater facility, as approved by the
7 Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this
8 subsection;

9 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
10 as follows:

11 **Article – Environment**

12 9–1605.2.

13 (k) (1) [Beginning January 1, 2009, and every year thereafter,] **EACH YEAR**
14 the Department and the Department of Planning shall jointly report on [the]:

15 **(I) THE** impact that a wastewater treatment facility that was
16 upgraded to enhanced nutrient removal during the calendar year before the previous
17 calendar year with funds from the Bay Restoration Fund had on growth within the
18 municipality or county in which the wastewater treatment facility is located; **AND**

19 **(II) EACH PRIVATELY OWNED WASTEWATER FACILITY TO**
20 **WHICH THE DEPARTMENT PROVIDED FUNDING UNDER § 9–1605.4(Q)(3)(II) OF THIS**
21 **SUBTITLE IN THE IMMEDIATELY PRECEDING 12 MONTHS AND THE REASONS FOR**
22 **PROVIDING THE FUNDING.**

23 (2) (i) In preparing the report required under paragraph (1) of this
24 subsection, the Department of the Environment and the Department of Planning shall:

25 1. Include the number of permits issued for residential and
26 commercial development to be served by the upgraded wastewater treatment facility; and

27 2. Determine what other appropriate information is to be
28 included in the report.

29 (ii) In determining the information that should be included in the
30 report under subparagraph (i) of this paragraph, the Department of the Environment and
31 the Department of Planning shall act:

32 1. In consultation with the Bay Restoration Fund Advisory
33 Committee; and

1 2. With the assistance of the municipality and county in
2 which an upgraded wastewater treatment facility is located.

3 (3) The Department and the Department of Planning shall submit the
4 report required under paragraph (1) of this subsection to the President of the Senate, the
5 Speaker of the House, the Senate Budget and Taxation Committee, the Senate Education,
6 Health, and Environmental Affairs Committee, the House Appropriations Committee, the
7 House Environment and Transportation Committee, and the Governor, in accordance with
8 § 2–1257 of the State Government Article.

9 9–1605.4.

10 (q) (1) (i) Subject to subparagraph (ii) of this paragraph, a project or
11 practice that is partially financed with another source of State funds may be funded under
12 this section.

13 (ii) Funding provided to a project or practice under this subsection
14 shall be prorated to cover only the portion of the environmental benefit not funded by
15 another State source.

16 (2) (i) An environmental outcome that is funded entirely with public
17 funds is not eligible to be purchased with funds from the Account.

18 (ii) If an environmental outcome is partially funded with public
19 funds and is verified under subsection (l) of this section, funds from the Account may be
20 used to purchase the remaining portion of the environmental outcome that is not funded
21 with public funds.

22 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
23 **PARAGRAPH, THE DEPARTMENT MAY NOT PROVIDE FUNDING UNDER THIS SECTION**
24 **TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY, AS DEFINED IN §**
25 **9–1605.2(I) OF THIS SUBTITLE, IF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL**
26 **PROTECTION AGENCY HAS DETERMINED IN THE 2 YEARS IMMEDIATELY PRECEDING**
27 **THE DATE ON WHICH THE OWNER OF THE FACILITY SUBMITTED A FUNDING**
28 **PROPOSAL UNDER THIS SECTION THAT THE FACILITY DID NOT COMPLY WITH A**
29 **DISCHARGE PERMIT ISSUED BY THE DEPARTMENT UNDER THIS TITLE.**

30 **(II) THE DEPARTMENT MAY PROVIDE FUNDING UNDER THIS**
31 **SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY THAT**
32 **WOULD NOT BE ELIGIBLE FOR FUNDING UNDER SUBPARAGRAPH (I) OF THIS**
33 **PARAGRAPH IF THE DEPARTMENT DETERMINES, BASED ON PROOF SUBMITTED BY**
34 **THE OWNER OF THE FACILITY WHEN SUBMITTING A FUNDING PROPOSAL UNDER**
35 **THIS SECTION, THAT:**

1 **1. THE OWNER OF THE FACILITY LACKS THE FINANCIAL**
2 **CAPACITY TO PURCHASE OR UPGRADE A WASTEWATER TREATMENT SYSTEM THAT**
3 **WOULD BRING THE FACILITY INTO COMPLIANCE WITH THE DISCHARGE PERMIT**
4 **ISSUED BY THE DEPARTMENT;**

5 **2. THE FACILITY IS INDEPENDENTLY OWNED AND**
6 **OPERATED; AND**

7 **3. THE OWNER OF THE FACILITY IS NOT A SUBSIDIARY**
8 **OF ANOTHER BUSINESS.**

9 **(iii) 1. THE DEPARTMENT SHALL INCLUDE WITH ITS ANNUAL**
10 **OPERATING BUDGET PROPOSAL SUBMITTED TO THE DEPARTMENT OF BUDGET AND**
11 **MANAGEMENT A LIST OF EACH FACILITY TO WHICH THE DEPARTMENT PROVIDED**
12 **FUNDING UNDER SUBPARAGRAPH (ii) OF THIS PARAGRAPH IN THE IMMEDIATELY**
13 **PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.**

14 **2. IF THE DEPARTMENT PROVIDES THE LIST UNDER**
15 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH TO THE DEPARTMENT OF BUDGET**
16 **AND MANAGEMENT, THE DEPARTMENT SHALL IMMEDIATELY PROVIDE THE LIST TO**
17 **THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1257 OF THE STATE**
18 **GOVERNMENT ARTICLE.**

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
20 1, 2022. Section 2 of this Act shall remain effective until the taking effect of the termination
21 provision specified in Section 3 of Chapters 694 and 695 of the Acts of the General Assembly
22 of 2021. If that termination provision takes effect, Section 2 of this Act shall be abrogated
23 and of no further force and effect. This Act may not be interpreted to have any effect on
24 that termination provision.