

SENATE BILL 354

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CF HB 714

By: Senators Elfreth and Pinsky

Introduced and read first time: January 21, 2022

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 27, 2022

Returned to second reading: March 4, 2022

Senate action: Adopted with floor amendments

Read second time: March 4, 2022

CHAPTER _____

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~~ Fund 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(a)(1) and 9-1605.2(i)(1) and (2)(i) and ~~(k)~~, ~~and~~20 ~~9-1605.4(c)~~ (k)

21 Annotated Code of Maryland

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.

1 (2014 Replacement Volume and 2021 Supplement)

2 BY adding to

3 Article – Environment

4 Section 9–1605(f) and 9–1605.2(i)(12)

5 Annotated Code of Maryland

6 (2014 Replacement Volume and 2021 Supplement)

7 ~~BY repealing and reenacting, without amendments,~~

8 ~~Article – Environment~~

9 ~~Section 9–1605.2(i)(2)(i)~~

10 ~~Annotated Code of Maryland~~

11 ~~(2014 Replacement Volume and 2021 Supplement)~~

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

14 **Article – Environment**

15 9–1605.

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

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

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

27 9–1605.2.

28 (i) (1) (i) In this subsection the following words have the meanings
29 indicated.

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

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

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

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

8 (i) 1. To award grants for up to 100% of eligible costs of projects
9 relating to planning, design, construction, and upgrade of a publicly owned wastewater
10 facility for flows up to the design capacity of the wastewater facility, as approved by the
11 Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this
12 subsection; and

13 2. ~~To~~ **SUBJECT TO PARAGRAPH (12) OF THIS**
14 **SUBSECTION, TO** award grants for up to 50% of eligible costs of projects relating to
15 planning, design, construction, and upgrade of a privately owned wastewater facility for
16 flows up to the design capacity of the wastewater facility, as approved by the Department,
17 to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

18 **(12) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
19 **PARAGRAPH, THE DEPARTMENT MAY NOT PROVIDE FUNDING UNDER THIS SECTION**
20 **TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY IF THE**
21 **DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS**
22 **DETERMINED IN THE 2 YEARS IMMEDIATELY PRECEDING THE DATE ON WHICH THE**
23 **OWNER APPLIED FOR FUNDING UNDER THIS SECTION THAT THE FACILITY DID NOT**
24 **COMPLY WITH A DISCHARGE PERMIT ISSUED BY THE DEPARTMENT UNDER THIS**
25 **TITLE.**

26 **(II) THE DEPARTMENT MAY PROVIDE FUNDING UNDER THIS**
27 **SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY THAT**
28 **WOULD NOT BE ELIGIBLE FOR FUNDING UNDER SUBPARAGRAPH (I) OF THIS**
29 **PARAGRAPH IF ~~THE~~:**

30 **1. THE DEPARTMENT DETERMINES, BASED ON PROOF**
31 **SUBMITTED BY THE OWNER OF THE FACILITY WHEN APPLYING FOR FUNDING UNDER**
32 **THIS SECTION, THAT:**

33 **~~1.~~ A. THE OWNER OF THE FACILITY LACKS THE FINANCIAL**
34 **CAPACITY TO PURCHASE OR UPGRADE A WASTEWATER TREATMENT SYSTEM THAT**
35 **WOULD BRING THE FACILITY INTO COMPLIANCE WITH THE DISCHARGE PERMIT**
36 **ISSUED BY THE DEPARTMENT;**

~~2.~~ B. THE FACILITY IS INDEPENDENTLY OWNED AND OPERATED; AND

~~3.~~ C. THE OWNER OF THE FACILITY IS NOT A SUBSIDIARY OF ANOTHER BUSINESS; OR

2. A. THE PROJECT FOR THE PRIVATELY OWNED WASTEWATER FACILITY HAS RECEIVED FUNDING FROM THE BAY RESTORATION FUND UNDER THIS SUBSECTION IN THE FISCAL YEAR 2023 CAPITAL BUDGET OR ANY PRECEDING FISCAL YEAR; AND

B. THE FUNDING IS PROVIDED FOR A PERCENT OF ELIGIBLE COSTS OF THE PROJECT THAT DOES NOT EXCEED THE PERCENT OF ELIGIBLE COSTS OF THE PROJECT PROVIDED IN THE FISCAL YEAR 2023 CAPITAL BUDGET OR ANY PRECEDING FISCAL YEAR.

(III) 1. THE DEPARTMENT SHALL INCLUDE WITH ITS ANNUAL OPERATING BUDGET PROPOSAL SUBMITTED TO THE DEPARTMENT OF BUDGET AND MANAGEMENT A LIST OF EACH FACILITY TO WHICH THE DEPARTMENT PROVIDED FUNDING UNDER SUBPARAGRAPH ~~(H)~~ (II)1 OF THIS PARAGRAPH IN THE IMMEDIATELY PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.

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

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

~~Article — Environment~~

~~9-1605.2.~~

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

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

1 (II) EACH PRIVATELY OWNED WASTEWATER FACILITY TO
2 WHICH THE DEPARTMENT PROVIDED FUNDING UNDER ~~§ 9-1605.4(Q)(3)(II) OF THIS~~
3 ~~SUBTITLE SUBSECTION (I)(12) OF THIS SECTION IN THE IMMEDIATELY PRECEDING~~
4 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.

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

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

9 2. Determine what other appropriate information is to be
10 included in the report.

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

14 1. In consultation with the Bay Restoration Fund Advisory
15 Committee; and

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

18 (3) The Department and the Department of Planning shall submit the
19 report required under paragraph (1) of this subsection to the President of the Senate, the
20 Speaker of the House, the Senate Budget and Taxation Committee, the Senate Education,
21 Health, and Environmental Affairs Committee, the House Appropriations Committee, the
22 House Environment and Transportation Committee, and the Governor, in accordance with
23 § 2-1257 of the State Government Article.

24 ~~9-1605.4.~~

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

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

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

33 ~~(ii) If an environmental outcome is partially funded with public~~
34 ~~funds and is verified under subsection (1) of this section, funds from the Account may be~~

1 ~~used to purchase the remaining portion of the environmental outcome that is not funded~~
 2 ~~with public funds.~~

3 ~~(3) (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii) OF THIS~~
 4 ~~PARAGRAPH, THE DEPARTMENT MAY NOT PROVIDE FUNDING UNDER THIS SECTION~~
 5 ~~TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY, AS DEFINED IN §~~
 6 ~~9-1605.2(i) OF THIS SUBTITLE, IF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL~~
 7 ~~PROTECTION AGENCY HAS DETERMINED IN THE 2 YEARS IMMEDIATELY PRECEDING~~
 8 ~~THE DATE ON WHICH THE OWNER OF THE FACILITY SUBMITTED A FUNDING~~
 9 ~~PROPOSAL UNDER THIS SECTION THAT THE FACILITY DID NOT COMPLY WITH A~~
 10 ~~DISCHARGE PERMIT ISSUED BY THE DEPARTMENT UNDER THIS TITLE.~~

11 ~~(ii) THE DEPARTMENT MAY PROVIDE FUNDING UNDER THIS~~
 12 ~~SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY THAT~~
 13 ~~WOULD NOT BE ELIGIBLE FOR FUNDING UNDER SUBPARAGRAPH (i) OF THIS~~
 14 ~~PARAGRAPH IF THE DEPARTMENT DETERMINES, BASED ON PROOF SUBMITTED BY~~
 15 ~~THE OWNER OF THE FACILITY WHEN SUBMITTING A FUNDING PROPOSAL UNDER~~
 16 ~~THIS SECTION, THAT:~~

17 ~~1. THE OWNER OF THE FACILITY LACKS THE FINANCIAL~~
 18 ~~CAPACITY TO PURCHASE OR UPGRADE A WASTEWATER TREATMENT SYSTEM THAT~~
 19 ~~WOULD BRING THE FACILITY INTO COMPLIANCE WITH THE DISCHARGE PERMIT~~
 20 ~~ISSUED BY THE DEPARTMENT;~~

21 ~~2. THE FACILITY IS INDEPENDENTLY OWNED AND~~
 22 ~~OPERATED; AND~~

23 ~~3. THE OWNER OF THE FACILITY IS NOT A SUBSIDIARY~~
 24 ~~OF ANOTHER BUSINESS.~~

25 ~~(iii) 1. THE DEPARTMENT SHALL INCLUDE WITH ITS ANNUAL~~
 26 ~~OPERATING BUDGET PROPOSAL SUBMITTED TO THE DEPARTMENT OF BUDGET AND~~
 27 ~~MANAGEMENT A LIST OF EACH FACILITY TO WHICH THE DEPARTMENT PROVIDED~~
 28 ~~FUNDING UNDER SUBPARAGRAPH (ii) OF THIS PARAGRAPH IN THE IMMEDIATELY~~
 29 ~~PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.~~

30 ~~2. IF THE DEPARTMENT PROVIDES THE LIST UNDER~~
 31 ~~SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH TO THE DEPARTMENT OF BUDGET~~
 32 ~~AND MANAGEMENT, THE DEPARTMENT SHALL IMMEDIATELY PROVIDE THE LIST TO~~
 33 ~~THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1257 OF THE STATE~~
 34 ~~GOVERNMENT ARTICLE.~~

35 SECTION ~~2~~ 2 AND BE IT FURTHER ENACTED, That this Act shall take effect
 36 July 1, 2022. Section ~~2~~ of this Act shall remain effective until the taking effect of the

1 ~~termination provision specified in Section 3 of Chapters 694 and 695 of the Acts of the~~
2 ~~General Assembly of 2021. If that termination provision takes effect, Section 2 of this Act~~
3 ~~shall be abrogated and of no further force and effect. This Act may not be interpreted to~~
4 ~~have any effect on that termination provision.~~

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.