



# Maryland

## Department of the Environment

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Ben Grumbles  
Secretary

March 30, 2022

The Honorable Kumar P. Barve, Chair  
Environment & Transportation Committee  
House Office Building, Room 251  
Annapolis, Maryland 21401

### **Re: Senate Bill 354 – Bay Restoration Fund – Intended Use Plans and Privately Owned Wastewater Facilities**

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed SB 354, entitled *Bay Restoration Fund – Intended Use Plans and Privately Owned Wastewater Facilities*, and would like to provide some information concerning this bill.

SB 354, as amended, establishes new reporting requirements for the Department. MDE must provide the Maryland General Assembly (MGA) a copy of each Intended Use Plan (IUP) the Department submits to the U.S. Environmental Protection Agency (EPA) to request our annual federal capitalization grant for the Water Quality Revolving Loan Fund within 5 days of the Department submitting the IUP to EPA. The Water Quality Revolving Loan Fund is the federal funding that MDE uses to provide loans and loan forgiveness to local jurisdictions for water quality capital projects. Currently, MDE is required under federal law to publish its list of projects the Department intends to fund with its annual capitalization grant from EPA prior to submitting the grant application to have the funding awarded. This list of projects that is published is called an “Intended Use Plan” and must be open for 30 days of public comment. The new reporting requirement in this bill would also require MDE to submit its IUP to the MGA within 5 days of the IUP being published for public comment.

SB 354 also changes the definition of “privately owned wastewater facility” in the Bay Restoration Fund (BRF) portion of MDE’s statute. Last year, the BRF was amended to limit grant funding to privately owned wastewater facilities to 50% of the eligible costs to upgrade a wastewater facility to Enhanced Nutrient Removal (ENR). By changing the definition of “privately owned wastewater facility,” this legislation would further limit BRF grant funding to only privately owned facilities that provide residential wastewater treatment and disposal. This would disallow BRF funding to privately owned commercial or industrial wastewater facilities.

The amendments adopted would further restrict BRF grant funding for privately owned residential wastewater facilities by eliminating any BRF grant funding to a private wastewater facility that has been determined by MDE or EPA to be out of compliance with its discharge permit in the two years immediately preceding its application for funding. There is an exception to this prohibition if MDE determines that the facility lacks the financial capacity to purchase or upgrade their system to bring it into compliance, the facility is independently owned and operated, and the owner of the facility is not a subsidiary of another business. Again, this section only applies to privately owned residential facilities. Privately owned commercial or industrial facilities remain ineligible for any BRF funding. MDE is aware of several privately owned residential wastewater facilities that would potentially be impacted by this amendment, most notably many mobile home parks that

have compliance issues and are not independently owned and operated. This amendment would prohibit any BRF grant funding from being provided to these facilities.

Another amendment adopted would allow the Department to provide BRF grant funding for a privately owned wastewater facility that is out of compliance with its discharge permit if the project has received funding from the BRF in FY23 or earlier, and the funding is provided as a percent of the eligible costs of the project that does not exceed the percent of eligible costs of the project provided in FY23 or earlier. The Department's understanding of this amendment is that it was intended to capture two projects that are underway and have been funded in FY23 or prior. However, since both projects are connecting privately owned industrial wastewater facilities to publicly owned wastewater facilities, this amendment would not capture either project, as neither of the privately owned facilities meet the definition of a privately owned facility in the legislation.

Finally, the legislation requires MDE to include in its annual operating budget proposal, submitted to the Maryland Department of Budget and Management, a list of each private wastewater facility that MDE has provided funding for under the financial hardship provisions included in the first set of Senate amendments described in this letter, including the reasons the project was funded. That list would also have to be provided to the MGA and included in the BRF Advisory Committee Annual Report.

Thank you for your consideration. We will continue to monitor SB 354 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Sarah K. Elfreth