

HOUSE BILL 177

M3

0lr0136

By: **Chair, Environment and Transportation Committee**

Introduced and read first time: January 15, 2020

Assigned to: Environment and Transportation and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Water Infrastructure Assets – Authorization of Emergency**
3 **Actions and Establishment of Emergency Reserve**

4 FOR the purpose of authorizing the Department of the Environment to take certain
5 emergency actions to protect life, property, or the environment against risks arising
6 from dams, reservoirs, and similar waterway constructions that are in imminent
7 danger of failure; authorizing the Department or its agents to enter certain property
8 without prior notice to the owner of the property under certain circumstances;
9 requiring the Department to remain in charge and control of a certain water
10 infrastructure asset until a certain occurrence; authorizing the Department to obtain
11 certain resources for emergency actions taken under this Act through certain means;
12 requiring the Department to charge a certain asset owner for certain costs incurred
13 by the Department, regardless of the asset owner's ability to pay; providing for the
14 reimbursement of certain costs incurred by the Department; authorizing the
15 establishment and enforcement of a lien on a certain water infrastructure asset in a
16 certain manner and under certain circumstances; providing for the priority of the
17 lien; prohibiting a certain legal action from being brought against the State, the
18 Department, or their respective agents or employees on certain grounds; establishing
19 a separate account in the Bay Restoration Fund designated as the Water
20 Infrastructure Emergency Reserve; requiring the Comptroller to deposit a certain
21 portion of Bay Restoration Fund revenues into the Water Infrastructure Emergency
22 Reserve; requiring funds in the Water Infrastructure Emergency Reserve to be used
23 for certain purposes; defining certain terms; providing for the construction of certain
24 provisions of this Act; making certain stylistic and technical changes; and generally
25 relating to emergency actions related to water infrastructure assets and the
26 establishment of the Water Infrastructure Emergency Reserve.

27 BY repealing and reenacting, with amendments,
28 Article – Environment
29 Section 5–509
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1605.2(a), (h), and (i)(2)
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

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

Article – Environment

5–509.

(a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(2) “ASSET OWNER” MEANS THE OWNER OR PERSON HAVING
CONTROL OF A WATER INFRASTRUCTURE ASSET.

(3) “ASSOCIATION” MEANS:

(I) A HOMEOWNERS ASSOCIATION, AS DEFINED IN § 11B–101
OF THE REAL PROPERTY ARTICLE;

(II) A COUNCIL OF UNIT OWNERS, AS DEFINED IN § 11–101 OF
THE REAL PROPERTY ARTICLE; OR

(III) ANY OTHER ENTITY OWNING OR CONTROLLING A WATER
INFRASTRUCTURE ASSET, THE OWNERS OR MEMBERS OF WHICH ARE OWNERS OF
PROPERTY ADJACENT TO OR BENEFITED BY THE WATER INFRASTRUCTURE ASSET.

(4) “ASSOCIATION MEMBER” MEANS AN OWNER OR A MEMBER OF AN
ASSOCIATION.

(5) “WATER INFRASTRUCTURE ASSET” MEANS A RESERVOIR, A DAM,
OR ANY OTHER WATERWAY CONSTRUCTION.

(B) (1) On complaint or the Department’s own initiative, the Department may
investigate or examine any [reservoir, dam, or similar waterway construction] WATER
INFRASTRUCTURE ASSET.

(2) If the Department determines that the [reservoir, dam, or similar
waterway construction] WATER INFRASTRUCTURE ASSET is unsafe, needs repair, or

1 should be removed because the [reservoir, dam, or similar waterway construction] **WATER**
2 **INFRASTRUCTURE ASSET** is unsafe and not repairable, the Department shall notify the
3 **ASSET** owner in writing to repair or remove the [object] **WATER INFRASTRUCTURE**
4 **ASSET**, as the situation warrants.

5 **(3)** The repair or removal work shall be completed within a reasonable
6 time, which time shall be prescribed in the Department's notice.

7 **[(b)] (C)** If the work is not completed in the time prescribed in the notice:

8 **(1)** The Department may have the work completed at the expense of the
9 **ASSET** owner;

10 **(2)** [Unless the owner demonstrates an inability to pay, as determined by
11 the Department, the] **THE** Department shall charge the **ASSET** owner for the [expense]
12 **COSTS** to complete the work; and

13 **(3)** If repayment is not made within 30 days after written demand, the
14 Department may bring an action in the proper court to recover the [expense] **COSTS** to
15 complete the work.

16 **(D) (1) THE DEPARTMENT MAY TAKE EMERGENCY ACTIONS NECESSARY**
17 **TO PROTECT LIFE, PROPERTY, OR THE ENVIRONMENT IF:**

18 **(I) 1. THE DEPARTMENT DETERMINES THAT A WATER**
19 **INFRASTRUCTURE ASSET IS IN IMMINENT DANGER OF FAILURE; AND**

20 **2. THE ASSET OWNER HAS BEEN ISSUED A NOTICE BY**
21 **THE DEPARTMENT UNDER SUBSECTION (B) OF THIS SECTION AND HAS NOT**
22 **COMPLETED THE WORK IN ACCORDANCE WITH THE TIME PRESCRIBED IN THE**
23 **NOTICE; OR**

24 **(II) THE DEPARTMENT DETERMINES THAT:**

25 **1. A WATER INFRASTRUCTURE ASSET IS FAILING; AND**

26 **2. THE ASSET OWNER IS NOT TAKING ADEQUATE**
27 **ACTIONS TO PROTECT LIFE, PROPERTY, OR THE ENVIRONMENT.**

28 **(2) EMERGENCY ACTIONS TAKEN BY THE DEPARTMENT UNDER THIS**
29 **SUBSECTION MAY INCLUDE:**

30 **(I) TAKING CONTROL OF THE WATER INFRASTRUCTURE ASSET;**

(II) LOWERING THE LEVEL OF WATER IMPOUNDED BY THE WATER INFRASTRUCTURE ASSET BY RELEASING THE IMPOUNDED WATER OR BY OTHER MEANS;

(III) COMPLETELY RELEASING ALL WATER IMPOUNDED BY THE WATER INFRASTRUCTURE ASSET;

(IV) PERFORMING ANY NECESSARY REMEDIAL OR PROTECTIVE WORK AT THE SITE OF THE WATER INFRASTRUCTURE ASSET, INCLUDING BREACHING THE WATER INFRASTRUCTURE ASSET; AND

(V) TAKING ANY OTHER STEPS THE DEPARTMENT DEEMS NECESSARY TO SAFEGUARD LIFE, PROPERTY, OR THE ENVIRONMENT.

(3) THE DEPARTMENT OR ITS AGENTS MAY ENTER ANY PROPERTY, WITHOUT PRIOR NOTICE TO THE OWNER OF THE PROPERTY, IF THE ENTRY IS NECESSARY TO CARRY OUT EMERGENCY ACTIONS UNDER THIS SUBSECTION.

(4) IF THE DEPARTMENT TAKES CONTROL OF A WATER INFRASTRUCTURE ASSET UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION, THE DEPARTMENT SHALL REMAIN IN CHARGE AND CONTROL OF THE WATER INFRASTRUCTURE ASSET UNTIL THE DEPARTMENT HAS DETERMINED THAT THE WATER INFRASTRUCTURE ASSET HAS BEEN RENDERED SAFE OR THE CIRCUMSTANCES REQUIRING THE EMERGENCY ACTIONS HAVE CEASED.

(5) THE DEPARTMENT MAY OBTAIN EQUIPMENT, PERSONNEL, AND OTHER RESOURCES FOR EMERGENCY ACTIONS TAKEN UNDER THIS SUBSECTION THROUGH ANY APPROPRIATE MEANS, INCLUDING EMERGENCY PROCUREMENTS UNDER § 13-108 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) (1) COSTS INCURRED BY THE DEPARTMENT UNDER THIS SECTION SHALL BE PAID OUT OF THE WATER INFRASTRUCTURE EMERGENCY RESERVE.

(2) THE DEPARTMENT SHALL REMIT TO THE WATER INFRASTRUCTURE EMERGENCY RESERVE ALL REIMBURSEMENTS OF COSTS RECEIVED BY THE DEPARTMENT.

(F) (1) COSTS INCURRED BY THE DEPARTMENT UNDER THIS SECTION SHALL:

(I) CONSTITUTE A DEBT OWED TO THE STATE; AND

(II) BE REIMBURSED TO THE DEPARTMENT BY THE ASSET

1 OWNER.

2 (2) IF ANY SUCH COST REMAINS UNREIMBURSED 30 DAYS AFTER THE
3 DEPARTMENT MAKES A DEMAND FOR REIMBURSEMENT FROM THE ASSET OWNER,
4 THE WATER INFRASTRUCTURE ASSET SHALL BE SUBJECT TO THE ESTABLISHMENT
5 OF A LIEN IN ACCORDANCE WITH THIS SECTION FOR THE PAYMENT OF THE
6 UNREIMBURSED AMOUNT.

7 (G) (1) WITH RESPECT TO COSTS INCURRED BY THE DEPARTMENT
8 UNDER THIS SECTION RELATING TO A WATER INFRASTRUCTURE ASSET FOR WHICH
9 AN ASSOCIATION IS THE ASSET OWNER, IF ANY SUCH COST REMAINS UNREIMBURSED
10 30 DAYS AFTER THE DEPARTMENT MAKES A DEMAND FOR REIMBURSEMENT FROM
11 THE ASSOCIATION, SUCH COSTS SHALL BE A DEBT TO THE STATE OWED, AND SHALL
12 BE REIMBURSED TO THE DEPARTMENT, BY THE ASSOCIATION MEMBERS, JOINTLY
13 AND SEVERALLY, NOTWITHSTANDING ANY PROVISION OF LAW THAT WOULD
14 OTHERWISE RELIEVE THE ASSOCIATION MEMBERS OF SUCH LIABILITY.

15 (2) IF ANY SUCH COST REMAINS UNREIMBURSED 30 DAYS AFTER THE
16 DEPARTMENT MAKES A DEMAND FOR REIMBURSEMENT FROM THE ASSOCIATION
17 MEMBERS, THE LOTS, CONDOMINIUM UNITS, OR OTHER PROPERTY OWNED BY THE
18 ASSOCIATION MEMBERS THAT IS ADJACENT TO OR BENEFITED BY THE WATER
19 INFRASTRUCTURE ASSET SHALL BE SUBJECT TO THE ESTABLISHMENT OF A LIEN IN
20 ACCORDANCE WITH THIS SECTION FOR THE PAYMENT OF THE UNREIMBURSED
21 AMOUNT.

22 (H) (1) ANY LIEN ARISING UNDER SUBSECTION (F) OR (G) OF THIS
23 SECTION SHALL, TO THE EXTENT NOT OTHERWISE EXPRESSLY PROHIBITED BY LAW,
24 HAVE PRIORITY OVER ALL OTHER LIENS AND ENCUMBRANCES PERFECTED AFTER
25 JULY 1, 2020, ON THE WATER INFRASTRUCTURE ASSET, OR THE LOTS,
26 CONDOMINIUM UNITS, OR OTHER PROPERTY OWNED BY THE ASSOCIATION
27 MEMBERS THAT IS ADJACENT TO OR BENEFITED BY THE WATER INFRASTRUCTURE
28 ASSET.

29 (2) THE ESTABLISHMENT AND ENFORCEMENT OF LIENS ARISING
30 UNDER SUBSECTION (F) OR (G) OF THIS SECTION SHALL BE GOVERNED BY THE
31 RULES SET FORTH IN TITLE 12, CHAPTER 300 OF THE MARYLAND RULES.

32 (I) NO ACTION MAY BE BROUGHT AGAINST THE STATE, THE DEPARTMENT,
33 OR THEIR RESPECTIVE AGENTS OR EMPLOYEES FOR THE RECOVERY OF DAMAGES
34 CAUSED BY THE PARTIAL OR TOTAL FAILURE OF ANY WATER INFRASTRUCTURE
35 ASSET, OR THE CONTROL OR OPERATION OF ANY WATER INFRASTRUCTURE ASSET,
36 ON THE GROUND THAT THE STATE, THE DEPARTMENT, OR THEIR RESPECTIVE
37 AGENTS OR EMPLOYEES ARE LIABLE BY VIRTUE OF ANY OF THE FOLLOWING:

1 **(1) THE APPROVAL OR PERMITTING OF THE WATER**
2 **INFRASTRUCTURE ASSET;**

3 **(2) THE ISSUANCE OR ENFORCEMENT OF ORDERS RELATIVE TO**
4 **MAINTENANCE OR OPERATION OF THE WATER INFRASTRUCTURE ASSET;**

5 **(3) CONTROL OR REGULATION OF THE WATER INFRASTRUCTURE**
6 **ASSET;**

7 **(4) ACTIONS TAKEN TO PROTECT AGAINST FAILURE DURING AN**
8 **EMERGENCY, INCLUDING ANY ACTIONS TAKEN UNDER THIS SUBSECTION;**

9 **(5) THE USE OF DESIGN AND CONSTRUCTION CRITERIA PREPARED,**
10 **APPROVED, OR PROMULGATED BY THE DEPARTMENT; OR**

11 **(6) THE FAILURE TO ISSUE OR ENFORCE ORDERS, TO CONTROL OR**
12 **REGULATE WATER INFRASTRUCTURE ASSETS, TO TAKE MEASURES TO PROTECT**
13 **AGAINST ANY FAILURE THEREOF, OR TO TAKE ANY EMERGENCY ACTIONS**
14 **CONTEMPLATED BY THIS SUBSECTION.**

15 **(J) NOTHING IN THIS SECTION, AND NO ACT OR OMISSION OF THE**
16 **DEPARTMENT UNDER THIS SECTION, SHALL BE CONSTRUED TO RELIEVE AN ASSET**
17 **OWNER OF:**

18 **(1) THE LEGAL DUTIES, OBLIGATIONS, OR LIABILITIES INCIDENT TO**
19 **THE OWNERSHIP OR OPERATION OF A WATER INFRASTRUCTURE ASSET; OR**

20 **(2) ANY LIABILITY FOR ACTS OR OMISSIONS OF THE ASSET OWNER**
21 **THAT CAUSE INJURY OR DEATH TO ANY PERSON, DAMAGE TO ANY PROPERTY OR THE**
22 **ENVIRONMENT, OR VIOLATION OF ANY LAW, REGULATION, OR PERMIT, EVEN IF ACTS**
23 **OR OMISSIONS OF THE DEPARTMENT UNDER THIS SECTION COULD BE DEEMED AN**
24 **INTERVENING CAUSE OF SUCH INJURY, DEATH, DAMAGE, OR VIOLATION.**

25 **[(c)] (K)** This section does not apply to farm ponds used for agricultural purposes.

26 9-1605.2.

27 (a) (1) There is a Bay Restoration Fund.

28 (2) It is the intent of the General Assembly that the Bay Restoration Fund
29 be:

30 (i) Used, in part, to provide the funding necessary to upgrade any of

the wastewater treatment facilities that are located in the State or used by citizens of the State in order to achieve enhanced nutrient removal where it is cost-effective to do so; [and]

(ii) Available for treatment facilities discharging into the Atlantic Coastal Bays or other waters of the State, but that priority be given to treatment facilities discharging into the Chesapeake Bay; AND

(III) USED, IN PART, TO ESTABLISH AN EMERGENCY RESERVE ACCOUNT TO PROVIDE A SOURCE OF FUNDS FOR PREVENTING AND RESPONDING TO EMERGENCIES RELATED TO DAMS, RESERVOIRS, AND SIMILAR WATERWAY CONSTRUCTIONS IN THE STATE.

(3) The Bay Restoration Fund shall be maintained and administered by the Administration in accordance with the provisions of this section and any rules or program directives as the Secretary or the Board may prescribe.

(4) There is established a Bay Restoration Fee to be paid by any user of a wastewater facility, an on-site sewage disposal system, or a holding tank that:

(i) Is located in the State; or

(ii) Serves a Maryland user and is eligible for funding under this subtitle.

(h) (1) (I) THE COMPTROLLER SHALL:

1. ESTABLISH A SEPARATE ACCOUNT WITHIN THE BAY RESTORATION FUND, WHICH SHALL BE DESIGNATED AS THE WATER INFRASTRUCTURE EMERGENCY RESERVE; AND

2. SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH, DEPOSIT THE FIRST 1% OF ALL FUNDS COLLECTED UNDER SUBSECTION (B) OF THIS SECTION INTO THE WATER INFRASTRUCTURE EMERGENCY RESERVE, UP TO THE MAXIMUM BALANCE ESTABLISHED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

(II) 1. THE INITIAL MAXIMUM BALANCE OF THE WATER INFRASTRUCTURE EMERGENCY RESERVE SHALL BE \$10,000,000.

2. THE SECRETARY MAY NOTIFY THE COMPTROLLER AS TO THE AMOUNT OF FUNDS THE SECRETARY HAS DETERMINED, IN CONSULTATION WITH THE BAY RESTORATION FUND ADVISORY COMMITTEE, THAT IS NEEDED IN THE WATER INFRASTRUCTURE EMERGENCY RESERVE, WHICH AMOUNT SHALL BECOME THE NEW MAXIMUM BALANCE OF THE WATER INFRASTRUCTURE EMERGENCY RESERVE ON THE DELIVERY OF SUCH NOTICE TO THE COMPTROLLER.

(III) IF AT ANY TIME THE BALANCE IN THE WATER INFRASTRUCTURE EMERGENCY RESERVE EXCEEDS THE MAXIMUM BALANCE ESTABLISHED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COMPTROLLER SHALL TRANSFER THE EXCESS FUNDS TO THE BAY RESTORATION FUND.

(IV) THE COMPTROLLER:

1. SHALL, BEFORE DEPOSITING ANY FUNDS COLLECTED UNDER SUBSECTION (B) OF THIS SECTION INTO THE WATER INFRASTRUCTURE EMERGENCY RESERVE, FIRST SET ASIDE ANY FUNDS THAT ARE REQUIRED TO BE SET ASIDE BY THE TERMS AND CONDITIONS GOVERNING ANY BONDS ISSUED BY THE ADMINISTRATION; AND

2. MAY NOT DEPOSIT FUNDS INTO THE WATER INFRASTRUCTURE EMERGENCY RESERVE TO THE EXTENT THAT DOING SO WOULD REASONABLY BE EXPECTED TO CAUSE AN EVENT OF DEFAULT UNDER ANY BONDS ISSUED BY THE ADMINISTRATION.

(V) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, FUNDS IN THE WATER INFRASTRUCTURE EMERGENCY RESERVE SHALL BE USED ONLY FOR:

1. COSTS INCURRED BY THE DEPARTMENT UNDER § 5-509 OF THIS ARTICLE;

2. COSTS ASSOCIATED WITH DETERMINING THE MAXIMUM BALANCE OF THE WATER INFRASTRUCTURE EMERGENCY RESERVE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, INCLUDING THE COST OF ACTUARIAL AND OTHER APPROPRIATE CONSULTANTS; AND

3. THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS ISSUED BY THE ADMINISTRATION, TO AVOID AN EVENT OF DEFAULT UNDER ANY BONDS ISSUED BY THE ADMINISTRATION, IF NO OTHER FUNDS ARE AVAILABLE IN THE BAY RESTORATION FUND.

[(1)] (2) [With] AFTER DEPOSITING THE FUNDS REQUIRED TO BE DEPOSITED INTO THE WATER INFRASTRUCTURE EMERGENCY RESERVE UNDER PARAGRAPH (1)(I)2 OF THIS SUBSECTION, WITH regard to the funds collected under subsection (b)(1)(i)1 of this section from users of an on-site sewage disposal system or holding tank that receive a water bill and subsection (b)(1)(i)2 and 3 of this section, beginning in fiscal year 2006, the Comptroller shall:

1 (i) Establish a separate account within the Bay Restoration Fund;
2 and

3 (ii) Disburse the funds as provided under paragraph ~~[(2)] (3)~~ of this
4 subsection.

5 ~~[(2)] (3)~~ The Comptroller shall:

6 (i) Deposit 60% of the funds in the separate account to be used for:

7 1. Subject to paragraphs ~~[(3),]~~ (4), (5), ~~(6)~~, and ~~[(6)] (7)~~ of
8 this subsection, with priority first given to failing systems and holding tanks located in the
9 Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems that the
10 Department determines are a threat to public health or water quality, grants or loans for
11 up to 100% of:

12 A. The costs attributable to upgrading an on-site sewage
13 disposal system to the best available technology for the removal of nitrogen;

14 B. The cost difference between a conventional on-site sewage
15 disposal system and a system that utilizes the best available technology for the removal of
16 nitrogen;

17 C. The cost of repairing or replacing a failing on-site sewage
18 disposal system with a system that uses the best available technology for nitrogen removal;

19 D. The cost, up to the sum of the costs authorized under item
20 B of this item for each individual system, of replacing multiple on-site sewage disposal
21 systems located in the same community with a new community sewerage system that is
22 owned by a local government and that meets enhanced nutrient removal standards; or

23 E. The cost, up to the sum of the costs authorized under item
24 C of this item for each individual system, of connecting a property using an on-site sewage
25 disposal system to an existing municipal wastewater facility that is achieving enhanced
26 nutrient removal or biological nutrient removal level treatment, including payment of the
27 principal, but not interest, of debt issued by a local government for such connection costs;

28 2. The reasonable costs of the Department, not to exceed 8%
29 of the funds deposited into the separate account, to:

30 A. Implement an education, outreach, and upgrade program
31 to advise owners of on-site sewage disposal systems and holding tanks on the proper
32 maintenance of the systems and tanks and the availability of grants and loans under item
33 1 of this item;

34 B. Review and approve the design and construction of on-site
35 sewage disposal system or holding tank upgrades;

C. Issue grants or loans as provided under item 1 of this item;

and

D. Provide technical support for owners of upgraded on-site sewage disposal systems or holding tanks to operate and maintain the upgraded systems;

3. A portion of the reasonable costs of a local public entity that has been delegated by the Department under § 1-301(b) of this article to administer and enforce environmental laws, not to exceed 10% of the funds deposited into the separate account, to implement regulations adopted by the Department for on-site sewage disposal systems that utilize the best available technology for the removal of nitrogen;

4. Subject to paragraph [(7)] (8) of this subsection, financial assistance to low-income homeowners, as defined by the Department, for up to 50% of the cost of an operation and maintenance contract of up to 5 years for an on-site sewage disposal system that utilizes nitrogen removal technology;

5. Subject to paragraph [(8)] (9) of this subsection, a local jurisdiction to provide financial assistance to eligible homeowners for the reasonable cost of pumping out an on-site sewage disposal system, at least once every 5 years, unless a more frequent pump out schedule is recommended during an inspection, not to exceed 10% of the funds allocated to the local jurisdiction; and

6. In fiscal years 2020 and 2021, financial assistance to a local jurisdiction for the development of a septic stewardship plan that meets the requirements under paragraph [(8)(iii)2] (9)(III)2 of this subsection; and

(ii) Transfer 40% of the funds to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture in order to fund cover crop activities.

[(3)] (4) Funding for the costs identified in paragraph [(2)(i)1] (3)(I)1 of this subsection shall be provided in the following order of priority:

(i) For owners of all levels of income, the costs identified in paragraph [(2)(i)1A] (3)(I)1A and B of this subsection; and

(ii) For low-income owners, as defined by the Department, the costs identified in paragraph [(2)(i)1C] (3)(I)1C of this subsection:

1. First, for best available technologies for nitrogen removal;

and

2. Second, for other wastewater treatment systems.

[(4)] (5) Funding for the costs identified in paragraph [(2)(i)1D] (3)(I)1D

1 of this subsection may be provided if:

2 (i) The environmental impact of the on-site sewage disposal system
3 is documented by the local government and confirmed by the Department;

4 (ii) It can be demonstrated that:

5 1. The replacement of the on-site sewage disposal system
6 with a new community sewerage system is more cost effective for nitrogen removal than
7 upgrading each individual on-site sewage disposal system; or

8 2. The individual replacement of the on-site sewage disposal
9 system is not feasible; and

10 (iii) The new community sewerage system will only serve lots that
11 have received a certificate of occupancy, or equivalent certificate, on or before October 1,
12 2008.

13 **[(5)] (6)** Funding for the costs identified in paragraph **[(2)(i)1E] (3)(1)1E**
14 of this subsection may be provided only if all of the following conditions are met:

15 (i) The environmental impact of the on-site sewage disposal system
16 is documented by the local government and confirmed by the Department;

17 (ii) It can be demonstrated that:

18 1. The replacement of the on-site sewage disposal system
19 with service to an existing municipal wastewater facility that is achieving enhanced
20 nutrient removal or biological nutrient removal level treatment is more cost-effective for
21 nitrogen removal than upgrading the individual on-site sewage disposal system; or

22 2. The individual replacement of the on-site sewage disposal
23 system is not feasible;

24 (iii) The project is consistent with the county's comprehensive plan
25 and water and sewer master plan;

26 (iv) 1. The on-site sewage disposal system was installed as of
27 October 1, 2008, and the property the system serves is located in a priority funding area,
28 in accordance with § 5-7B-02 of the State Finance and Procurement Article; or

29 2. The on-site sewage disposal system was installed as of
30 October 1, 2008, the property the system serves is not located in a priority funding area,
31 and the project meets the requirements under § 5-7B-06 of the State Finance and
32 Procurement Article and is consistent with a public health area of concern:

33 A. Identified in the county water and sewer plan; or

1 B. Certified by a county environmental health director with
2 concurrence by the Department and, if funding is approved, subsequently added to the
3 county water and sewer plan within a time frame jointly agreed on by the Department and
4 the county that takes into consideration the county's water and sewer plan update and
5 amendment process; and

6 (v) The funding agreement for a project that meets the conditions for
7 funding under subparagraph (iv)2 of this paragraph includes provisions to ensure:

8 1. Denial of access for any future connections that are not
9 included in the project's proposed service area; and

10 2. That the project will not unduly impede access to funding
11 for upgrading individual on-site sewage disposal systems in the county with best available
12 technology for nitrogen removal.

13 **[(6)] (7)** The Comptroller, in consultation with the Administration, may
14 establish any other accounts and subaccounts within the Bay Restoration Fund as
15 necessary to:

16 (i) Effectuate the purposes of this subtitle;

17 (ii) Comply with the provisions of any bond resolution;

18 (iii) Meet the requirements of any federal or State law or of any grant
19 or award to the Bay Restoration Fund; and

20 (iv) Meet any rules or program directives established by the
21 Secretary or the Board.

22 **[(7)] (8)** The Department or a local government shall determine:

23 (i) Whether an applicant is eligible for financial assistance under
24 paragraph **[(2)(i)4] (3)(I)4** of this subsection; and

25 (ii) The amount of financial assistance to be provided for each
26 applicant based on the average cost of an operation and maintenance contract of up to 5
27 years provided by vendors, as defined in § 9-1108.1 of this title, in the applicant's area.

28 **[(8)] (9)** (i) The amount of financial assistance under paragraph
29 **[(2)(i)5] (3)(I)5** of this subsection shall be based on homeowner income, with priority given
30 to low-income homeowners.

31 (ii) Financial assistance under paragraph **[(2)(i)5] (3)(I)5** of this
32 subsection may be provided through grants, rebates, or low- or no-interest loans.

(iii) Financial assistance under paragraph [(2)(i)5] **(3)(I)5** of this subsection may be provided only if:

1. The homeowner verifies the pump out has occurred; and

2. The homeowner resides in a local jurisdiction that has developed and implemented a septic stewardship plan that:

A. Has been adopted by the local governing body of the jurisdiction, after consultation with the jurisdiction's local health department;

B. States specific goals consistent with the nitrogen load reduction identified in the local jurisdiction's watershed implementation plan;

C. Specifies public education and outreach measures that will be taken, including education and outreach on best management practices, legal requirements, and existing support and financial assistance;

D. Provides technical guidance for the siting, design, evaluation, and construction of an on-site sewage disposal system;

E. Requires an on-site sewage disposal system located on residential property to be pumped out and inspected at least once every 5 years, unless a more frequent pump out schedule is recommended during an inspection;

F. Requires an on-site sewage disposal system located on commercial property to be pumped out and inspected at least once every 5 years, unless a more frequent pump out schedule is recommended during an inspection;

G. Specifies certification and licensing procedures for a person that pumps out and inspects on-site sewage disposal systems;

H. Specifies enforcement mechanisms, compliance incentives, and penalties;

I. Outlines funding mechanisms to support the plan and expand education, demonstration projects, and inspections;

J. Specifies requirements for record keeping; and

K. Establishes a process for periodically evaluating and revising the plan.

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

(i) To award grants for up to 100% of eligible costs of projects

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

(ii) In fiscal years 2016 and thereafter, for up to 87.5% of the total cost of projects, as approved by the Department, relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations;

(iii) In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;

(iv) In fiscal years 2018 and thereafter, after payment of outstanding bonds and the allocation of funds to other required uses of the Bay Restoration Fund for funding in the following order of priority:

1. For funding the eligible costs to upgrade a wastewater facility to enhanced nutrient removal at wastewater facilities with a design capacity of 500,000 gallons or more per day;

2. For funding the eligible costs of the most cost-effective enhanced nutrient removal upgrades at wastewater facilities with a design capacity of less than 500,000 gallons per day; and

3. As determined by the Department and based on water quality and public health benefits, for the following:

A. For costs identified under item (ii) of this paragraph;

B. For costs identified under subsection [(h)(2)(i)1] **(H)(3)(I)1** of this section; and

C. With respect to a local government that has enacted and implemented a system of charges to fully fund the implementation of a stormwater management program, for grants to the local government for a portion of the costs of the most cost-effective and efficient stormwater control measures, as determined and approved by the Department, from the restoration fees collected annually by the Comptroller from users of wastewater facilities under this section;

(v) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;

(vi) To earn interest on Bay Restoration Fund accounts;

(vii) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;

(viii) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;

(ix) For future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;

(x) For costs associated with the issuance of bonds;

(xi) Subject to the allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from on-site sewage disposal systems and cover crop activities;

(xii) For costs associated with the implementation of alternate compliance plans authorized in § 4–202.1(k)(3) of this article; and

(xiii) After funding any eligible costs identified under item (iv)1 and 2 of this paragraph, for costs associated with the purchase of cost-effective nitrogen, phosphorus, or sediment load reductions in support of the State's efforts to restore the health of the Chesapeake Bay, not to exceed \$4,000,000 in fiscal year 2018, \$6,000,000 in fiscal year 2019, and \$10,000,000 per year in fiscal years 2020 and 2021.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.