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House Bill 445

Sustainable Growth and Agricultural Preservation Act of 2012

House Environmental Matters Committee

Testimony by

Governor Martin O'Malley

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In order to restore the health of the Chesapeake Bay, we must *reduce* our discharges of nutrients and *maintain* the reduced level. Every new household adds to the pollution load and makes that job harder, but not all households are created equal – houses on sewer systems pollute less than houses on septic system. We must be mindful of the proliferation of new development on septic systems, as it slows down our ability to make progress on Bay restoration.

All of our progress to date in reducing nitrogen pollution by retrofitting existing septic systems, including the State's investment of \$32 million, has been completely *negated* by new septic system installation. From 1985-2009, while total nitrogen load *decreased* in Maryland by 37% as a result of everyone's efforts, nitrogen load from septic systems *increased* by 32%.

There are many different ways of estimating the impact of development on septic; let me mention a few.

- **Septic development has a disproportionate impact on the water quality of our aquifers, rivers, streams and estuaries.** Septic development generates 10 times the amount of nitrogen pollution (wastewater and stormwater impacts combined) to the environment, including to groundwater, compared to development served by Enhanced Nutrient Removal (ENR) sewer systems. ENR systems account for more than 95 percent of wastewater plant flow in Maryland and serve many of our small rural towns.
- **Septic development is a major factor contributing to the continued loss of our agricultural heritage and our natural resources.** In Maryland, septic development consumes 8 times the amount of land per new household than development within sewer areas. Historically in Maryland, development outside of PFAs (which generally

are sewerred areas) has averaged 2 acres per new household while development within PFAs has averaged ¼-acre. This reduces the amount of land for agricultural production and the amount of forested land.

- **Septic development undermines the efforts by State and local government to implement smart growth and to revitalize our cities and towns.** After 10 years of smart growth efforts in Maryland, despite some significant successes, there is widespread recognition that much more needs to be done to succeed by focusing growth inside our growth areas rather than allowing new residential growth on septic systems in our rural and agricultural areas.

We created the Task Force on Sustainable Growth and Wastewater Disposal in recognition that action is needed to address the significant unwanted impacts from septic development. House Bill 445 embodies the nearly unanimous recommendations of the Task Force on planning for growth served by septic tanks and where major subdivisions served by septic tanks and shared facilities can be located. Shared facilities, although having better treatment technology than septic tanks, can allow for increased development outside of County growth areas and municipalities, undermining smart growth efforts. The Task Force recognized that protective measures are needed now to minimize the land use and pollution impact of new development in Maryland. Doing so will give us the greatest chance of success in restoring the Chesapeake Bay and protecting our rural landscape.

WHAT GOALS DOES HOUSE BILL 445 ACHIEVE?

House Bill 445 achieves the following goals by limiting the growth a septic systems:

- Limits water quality impacts from new development on septic systems in rural resource, agricultural preservation, and forest conservation areas
- Protects our drinking water because nitrogen from even well-functioning septic systems can raise the nitrate level in groundwater
- Protects existing agricultural and rural landscapes by limiting the areas where sprawl development on septic systems can occur
- Provides greater clarity to the public, elected officials, farmers, developers, government and other stakeholders where major development on septic systems will be allowed and where it will not be allowed by using mapped tiered growth areas
- Works within existing planning frameworks for establishing the growth tiers and recommending the approval of major subdivisions on septic systems
- Ensures that septic development is minimized in areas targeted by local and State government for resource protection and minimizes septic development in areas targeted for future growth to allow public sewer to serve the area

- Recognizes local government choice for designation of growth areas, rural resource protection areas and large lot septic development areas in local comprehensive plans.

To achieve these goals, the bill uses established planning processes -- the local comprehensive plans and subdivision plat approvals. Rather than limit all septic growth to minor subdivisions, the bill allows for a local comprehensive plan amendment for growth tiers, that meet the statutory requirements, so that in Tier III some limited growth on septic systems for major subdivisions can occur.

House Bill 445 also achieves an important goal of providing environmental and governmental oversight over shared and community systems to (1) ensure the long-term operation and maintenance of these types of systems; (2) prevent local governments from taking over failed systems by requiring governments, if they choose to do so, to agree to operate these systems before they are designed and built; and (3) ensure compliance with environmental standards.

SUMMARY OF HOUSE BILL 445

A. Planning Provisions

House Bill 445 authorizes the adoption of local comprehensive plan amendments in charter and non-charter counties and municipalities for growth. These mapped growth tiers, which would have to meet certain criteria for classification, would then correspond with specific types of residential subdivisions and wastewater treatment systems:

- Tier I : Priority Funding Areas (PFAs) that are on public sewer or planned to be on public sewer
- Tier II: Locally designated growth areas that are needed to satisfy development demand or PFA Comment area planned to be served by public sewer
- Tier III: PFAs (some municipalities and rural villages that are on septic systems), locally designated growth areas, and areas zoned for large lot rural development that are NOT planned for public sewer and the areas are dominated by existing low density development, are not zoned for protection and not dominated by farmland or forest land
- Tier IV: Areas planned or zoned for preservation, areas dominated by agricultural lands, forest lands or other natural areas, Rural Legacy or Priority Preservation Areas, areas mapped for ecological and agricultural preservation and NOT planned for public sewer

The adoption of growth tiers in the comprehensive plan is not mandatory but the failure of a jurisdiction to adopt the tiers results in only minor subdivisions on septic systems being approved in the jurisdiction by the Maryland Department of the Environment (MDE). Subdivisions on public sewer may still be approved.

The Maryland Department of Planning is required to receive the comprehensive plan amendment 60 days prior to the adoption of the comprehensive plan amendment and information on the areas, including maps. MDP is then charged with producing those maps to state agencies and providing any comments by MDP on the areas.

A local planning board or commission must also recommend the approval of a major subdivision on septic systems, after a public hearing, a community system or a shared facility in a Tier III area after considering the cost of local government services, environment impact, and any nutrient offset.

B. Environmental Provisions

1. Approval of Subdivisions

House Bill 445 links the growth tiers, if adopted, to MDP's existing statutory authority to approve subdivision plats. The bill requires MDE or MDE's designee to approve residential subdivision plats served by certain wastewater treatment systems differentiated by whether they are a major or minor subdivision as described by the local jurisdiction as follows:

- Tier I - Major and minor subdivisions on public sewer
- Tier II - Major and minor subdivisions on public sewer, minor subdivisions on septic systems
- Tier III – With one exception, major and minor subdivisions on individual septic or shared facilities
- Tier IV – Minor subdivisions on septic

For those jurisdiction that have zoning within Tier IV that results in a verified 1 unit per 25 acres yield, the limitation on minor residential subdivisions does not apply. MDP would verify that yield, after a written request from a local jurisdiction, and in consultation with the Maryland Sustainable Growth Commission.

For MDE to approve an initial subdivision on septic or a shared facility in Tier III the following must occur:

- Local planning board or commission has recommended approval
- MDE has determined, after consultation with MDP, that Tier III and Tier IV meet the requirements of Article 66B and are consistent with other specific elements of the local comprehensive plan.

If the growth tiers in a local comprehensive plan have changed then the next initial subdivision plat post-growth tier amendment would then be reevaluated by MDE, after consultation with MDP, as noted above.

In order to prevent remainder parcels from being resubdivided again and again, to skirt any minor subdivision limitation, the bill prohibits the subdivision or resubdivision of that remainder parcel or tract with two exceptions. The exceptions are that:

(1) minor subdivision of lots can occur over time (for those who want to create lots as needed for family member for example) if the plat states the number of lots left and when the total lot number is reached that no resubdivision is allowed; and

(2) areas within a PFA and designated for public sewer service within the 10 year water and sewer plan may be further subdivided.

The prohibition on resubdivision only applies to residential subdivision and bill states that land may be resubdivided for agricultural purposes. The resubdivision for agricultural does not create, however, a right to use the resubdivided land for other residential purposes.

2. Requirements for Shared, Community and Multi-Use Facilities

To prevent the risk of failure of these types of facilities (smaller wastewater treatment systems sometimes called package plants), House Bill 445 requires a controlling authority to manage, operate and maintain such facilities. The controlling authority is defined as “a unit of government, body public and corporate, or an intercounty agency authorized by the State, and county, or a municipal corporation to provide for the management, operation and maintenance of a community sewerage system, shared facility or multiuse sewerage system.” This provision does not require a local government to agree to be a controlling authority and local government may choose not be a controlling authority for these systems.