



# Maryland Farm Bureau, Inc.

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## **The Septic Bills – 2012** **Analysis by Maryland Farm Bureau 2/2/12**

### **Background:**

Last year, legislation was introduced to limit the use of septic systems in future development. The 2011 bill limited subdivisions to 5 units on septic systems and required any larger subdivisions to use community sewage systems or be hooked to waste water treatment plants. Maryland Farm Bureau opposed the bill based on the significant negative impact it was expected to have on landowner equity, rural development and future ag-related subdivisions. After a great deal of concern and opposition was voiced by many stakeholders, the bill was not adopted and the issue was referred to the Governor's Task Force on Sustainable Growth and Wastewater Disposal, which met during the summer and fall of 2011, filing its final report in December.

### **2012 Legislation:**

SB 235/HB 445, implements many of the growth control recommendations of the Governor's Task Force. Separate legislation was introduced to increase the Bay Restoration Fee (SB 240/HB 446). Neither bill includes a mandate to use nitrogen removal septic systems or "best available technology, BAT" in future development. Farm Bureau understands that the Maryland Department of Environment will pursue that mandate through a separate regulatory process.

### **SB 236 - Sustainable Growth and Agricultural Preservation Act of 2012**

The President & The Speaker by request of the Administration

Senate: *Education Health and Environmental Affairs* - Hearing scheduled: 2/14/12 at 1pm

House: *Environmental Matters Committee* – Hearing scheduled 2/15/12 at 1pm

**Maryland Farm Bureau Position: Pending**

SB 235/HB 445 creates a new state-level approval process for development and pressures local governments to adopt land use maps divided into 4-Tiers for future growth. The bill significantly restricts the resubdivision and further subdivision of parcels and tracts in all but priority funding areas (PFAs).

**4-Tier Planning Maps** - The bill requires state approval (MDE) for the first time for subdivisions on septic systems similar to current law requirements for approval of developments using sewer systems. Under the bill, MDE would only be allowed to approve "minor" subdivisions on septic unless a county has adopted the 4-Tier system. (A chart outlining the 4-Tier system is printed below.) If a local government adopts a 4-Tier system, it will have some flexibility to request a major subdivision on septic with considerable additional review and state oversight.

### Tier System Framework

The bill seeks to achieve limited growth on septic systems by requiring local jurisdictions to adopt a "4 tier system" of designated growth overlay zones established in their comprehensive plan. Unless a local government adopts the 4 tier system as established in the bill by the end of 2012, MDE may only approve minor subdivisions on septic or any subdivision on public sewer.

**Tier I:** Consists of Priority Funding Areas (PFAs) that the MD Department of Planning has not 'commented' on (disputed) and is served by water and sewer. Think incorporated cities and towns. Future subdivisions in this Tier cannot utilize septic systems, only sewer.

**Tier II:** Consists of PFAs that may have been commented on by MDP and locally designated areas for growth. Minor subdivisions on septic systems are allowed.

**Tier III:** Consists of areas that are not planned for future sewerage service and PFAs, locally designated growth areas, or areas planned for large lot residential development that:

- a) Are not planned/zoned for agricultural, rural, or resource protection, or similar type zones whose primary purpose is land preservation;
- b) Are dominated by existing low density development (undefined); or
- c) Are areas not dominated by farmland.

Minor subdivisions on septic systems are allowed. Major subdivisions on septic systems may be granted if: a) it has been approved by a local planning board – having determined the cost of local government services, environmental impact, and any nutrient offsets required; and b) the subdivision has been the subject of at least one public hearing conducted by the planning board.

**Tier IV:** Consists of areas that are not planned for sewerage service and are: areas planned or zoned for land preservation, ag preservation, or resource conservation; areas dominated by agricultural lands, forest lands, or other natural areas; or Rural Legacy Areas, Priority Preservation Areas, areas designated by DNR for ecological preservation, or areas mapped by MDP for agricultural preservation. Minor subdivisions are allowed on septic. Major subdivisions are only allowed if the cumulative zoning within the Tier IV mapped area allows no more than 1 dwelling unit per 25 acres. The cumulative zoning threshold will be determined by MDP and the Governor's Sustainable Growth Commission.

MDP and MDE must sign off on a local jurisdiction's Tier III and Tier IV area designations prior to allowing the first subdivision approval in those Tiers. They will determine consistency with the local comp plan, particularly the Priority Preservation element, water resources element, and the municipal growth element.

**Major/Minor Subdivisions** - The bill codifies for state use the definitions of “minor” and “major” subdivision that existed at each local level as of December 31, 2011. Most local jurisdictions define a “minor” subdivision somewhere between 5 and 11 units. There is no opportunity in the bill for a local jurisdiction to reconsider the definition of “minor” and change it now that the term is being used to determine how many units may be built on septic.

**Grandfathering provisions** – The bill grandfathers projects already “in the pipeline” that apply for subdivision before July 1, 2012 and have a recorded plat by December 31, 2012 OR that request subdivision after July 1, 2012 and have a recorded plat by December 31, 2013.

**Major Subdivisions on Septic – Exceptions** – The bill provides an exception that will allow a “major” subdivision on septic in Tier III & Tier IV if a local jurisdiction has subdivision and zoning requirements in their cumulative Tier IV areas that result in an actual overall yield of not more than one dwelling per 25 acres (1:25). At this time, it is believed that 4 counties qualify for this exception: Baltimore, Kent, Montgomery & Worcester.

**Subdivision Over-Time vs. All-at-Once** - The 2012 bill address one concern identified by the farm community in the 2011 bill. This bill allows a tract or parcel to be subdivided into a residential “minor” subdivision on septic over time rather than requiring the landowner to declare all lots at once. The bill requires that when each new lot or parcel is created, the subdivision plat must state the number of new lots, plats, building sites or other subdivisions of land that remain in the “minor” subdivision for future use.

**Resubdivision for Nonresidential Agricultural Purposes** – Under the bill, after a “minor” subdivision is created using septic in Tiers II, III & IV, there is no opportunity to further divide the parcel and create a “major” subdivision. There is an exception, however, that allows the remainder of a parcel or tract of land to be subdivided for “nonresidential agricultural purposes”. This provision is presumed to allow future value-added structures to enhance the agricultural purposes of the land.

#### **Questions and Concerns from the Farm Community:**

1. How is landowner equity impacted? Can adjacent parcels each be approved as “minor” subdivisions or will there be an overall limit on the number of “minor” subdivisions within a Tier?
2. When phrases like “dominated by” or “not dominated by” a particular land use are expressed, how is that determined? Is it a spatial determination, etc.?
3. Is a county required to map all 4 Tiers?
4. Does a resubdivision of a parcel for Ag purposes include the ability to install well and septic?
5. What recourse exists for a county/individual to appeal an MDE or MDP denial of a major/minor subdivision?
6. Once established, what latitude will a local government have to change the dimensions of a particular Tier as demand from the local community for economic or residential development changes over time?
7. What kind of process/expense/approval will be required for subdivision-over-time and additional non-residential agricultural subdivisions?
8. What are the various jurisdiction definitions of major and minor? Do all jurisdictions have a definition? Shouldn't a jurisdiction be able to amend that definition in light of the new use?
9. What are the specific benefits of 1:25 Tier IV zoning? What is the impact on “major” and “minor” subdivisions in all Tiers?

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**SB 240/HB 446 - Environment - Bay Restoration Fund - Fees**

The President & The Speaker by request of the Administration

Senate: *Education Health and Environmental Affairs* – Hearing scheduled 2/14/12 at  
1:00pm

House: *Environmental Matters* - Hearing scheduled 2/15/12 at 1:00pm

This bill essentially doubles the Bay Restoration Fee beginning July 1, 2012.

For a water/sewer user that receives an individual monthly or quarterly bill the new fee will be \$0.90 per 1000 gallons of water usage for the first 2000 gallons per month and \$1.25 per 1000 gallons of water that exceeds 2000 gallons. The fee will be \$5.00 per month for each equivalent dwelling unit if the billing authority does not have a water usage based billing system.

For each user of a septic system, the fee will be \$60 per year, which will continue to be added to the annual property tax bill.

Under current law, the Bay Restoration Fees are deposit into the Fund. The Fund is divided into two uses. Fees paid by residents on wastewater treatment systems go into the pot of money used to upgrade wastewater treatment plants to include Biological Nutrient Reduction systems. Fees paid by residents on septic systems go into the pot of money used to upgrade failing septic systems (60% of the money) and fund the cover crop program (40% of the money). Under the current fee structure, about \$5.6 million per year is deposited into the cover crop program at MDA. This would double if the fee increases to \$60 per year.

Maryland Farm Bureau policy supports maintaining the cover crop portion of the Bay Restoration Fund at no less than 40% of all funds collected from septic users.

**POSITION: MARYLAND FARM BUREAU SUPPORTS SB 240 AND SUPPORTS  
MAINTAINING AT LEAST 40% OF ALL FUNDS COLLECTED FROM SEPTIC USERS FOR  
USE IN THE STATE COVER CROP PROGRAM.**