

# SENATE BILL 846

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CF HB 1107

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By: **Senators Pinsky, Benson, Ferguson, Frosh, Kelley, Madaleno, Manno, Montgomery, Raskin, and Rosapepe**  
Introduced and read first time: February 14, 2011  
Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Sustainable Growth and Agricultural Preservation Act of 2011**

3 FOR the purpose of prohibiting, with certain exceptions, the State or a local authority,  
4 after a certain date, from recording or approving a certain residential major  
5 subdivision that will be served by an on-site sewage disposal system;  
6 authorizing the State or a local authority, after a certain date, to record or  
7 approve a certain residential major subdivision that will be served by a publicly  
8 owned sewerage system or a certain community sewerage system, shared  
9 facility, or multiuse sewerage system that meets certain criteria; prohibiting,  
10 with certain exceptions, the State or a local authority, after a certain date, from  
11 recording or approving a certain residential minor subdivision that will be  
12 served by an on-site sewage disposal system unless a certain condition is met;  
13 prohibiting, after a certain date, further subdivision of certain subdivisions;  
14 providing for the application of certain provisions of this Act; defining certain  
15 terms; altering certain definitions; and generally relating to the subdivision of  
16 land.

17 BY repealing and reenacting, with amendments,  
18 Article – Environment  
19 Section 9-501 and 9-512  
20 Annotated Code of Maryland  
21 (2007 Replacement Volume and 2010 Supplement)

22 Preamble

23 WHEREAS, Maryland has approximately 430,000 on-site sewage disposal  
24 systems, commonly known as “septic systems”, on developed parcels and roughly  
25 420,000 of these are on residential parcels; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 WHEREAS, On-site sewage disposal systems release pollutants such as  
2 nitrogen into ground waters that feed surface waters, creating a pathway for  
3 pollutants to the Chesapeake Bay and Coastal Bays; and

4 WHEREAS, An estimated 8% (4 million pounds per year) of the State's total  
5 nitrogen load to the Chesapeake Bay comes from on-site sewage disposal systems.  
6 Based on current growth trends, the Maryland Department of Planning estimates that  
7 145,000 new on-site sewage disposal systems will be added over the next 25 years,  
8 resulting in a 34% increase in the State's total nitrogen load from on-site sewage  
9 disposal systems; and

10 WHEREAS, The number of new households projected to use public sewerage  
11 systems is roughly two and a half times the number projected to use on-site sewage  
12 disposal systems, but the nitrogen load from new development of on-site sewage  
13 disposal systems is likely to be almost twice that from new development using public  
14 sewerage systems; and

15 WHEREAS, Per household, the pollution load contributed by new developments  
16 utilizing on-site sewage disposal systems is almost five times the load contributed by  
17 areas using public sewerage systems;

18 WHEREAS, The average lot size in areas utilizing on-site sewage disposal  
19 systems is approximately seven-to-eight times larger than the average lot size in  
20 areas using public sewerage systems; and

21 WHEREAS, Nutrient caps on wastewater treatment plants constrain  
22 development in areas that will utilize public sewerage systems but there are no  
23 similar constraints on development in areas that will rely on on-site sewage disposal  
24 systems; and

25 WHEREAS, On-site sewage disposal systems contribute to the proliferation of  
26 urban sprawl because the cost of development is relatively inexpensive as a result of  
27 cost savings from avoided infrastructure costs; and

28 WHEREAS, Priority Funding Areas were established in 1997 to encourage  
29 development in and around existing towns, cities, and local growth areas by  
30 concentrating public investment for new infrastructure such as public sewerage  
31 systems, roads, and schools in those areas; and

32 WHEREAS, Despite these efforts since 1997, 78% of the statewide acreage  
33 associated with residential development has been located outside of Priority Funding  
34 Areas; and

35 WHEREAS, In recognition of the need to focus the State's efforts to direct  
36 growth to the Priority Funding Areas and limit harmful sprawl the General Assembly  
37 established a statewide land use goal of increasing the current percentage of growth  
38 located within Priority Funding Areas and decreasing the percentage of growth located  
39 outside Priority Funding Areas; and

1 WHEREAS, Growth within Priority Funding Areas reduces the nutrient  
2 pollution from sewage by sending household wastewater to treatment plants instead of  
3 on-site sewage disposal systems; and

4 WHEREAS, Over the past 10 years the State has lost approximately 137,000  
5 acres of farmland to development; and

6 WHEREAS, Limiting the number of on-site sewage disposal systems and  
7 improving those systems will advance the achievement of critical public goals by  
8 reducing the nitrogen load to the Chesapeake Bay, focusing development within  
9 Priority Funding Areas, and preserving agricultural and rural land and the character  
10 of those areas; now, therefore,

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

13 **Article – Environment**

14 9-501.

15 (a) In this subtitle the following words have the meanings indicated.

16 (b) “Community sewerage system” means a publicly or privately owned  
17 sewerage system that serves at least 2 lots.

18 (c) “Community water supply system” means a water supply system that  
19 serves at least 2 lots.

20 **(D) “CONTROLLING AUTHORITY” MEANS A UNIT OF GOVERNMENT, A**  
21 **PUBLIC CORPORATE BODY, OR AN INTERCOUNTY AGENCY AUTHORIZED BY THE**  
22 **STATE, A COUNTY, OR A MUNICIPALITY TO PROVIDE FOR THE MANAGEMENT,**  
23 **OPERATION, AND MAINTENANCE OF A COMMUNITY SEWERAGE SYSTEM, SHARED**  
24 **FACILITY, OR MULTIUSE SEWERAGE SYSTEM.**

25 **[(d)] (E)** (1) “County plan” means a comprehensive plan for adequately  
26 providing throughout the county, including all towns, municipal corporations, and  
27 sanitary districts in the county, the following facilities and services by public or  
28 private ownership:

29 (i) Water supply systems;

30 (ii) Sewerage systems;

31 (iii) Solid waste disposal systems;

32 (iv) Solid waste acceptance facilities; and

1 (v) Systematic collection and disposal of solid waste, including  
2 litter.

3 (2) "County plan" includes a revised or amended county plan.

4 [(e)] (F) "Individual sewerage system" means a sewerage system that  
5 serves only 1 lot.

6 [(f)] (G) "Individual water supply system" means a water supply system  
7 that supplies water to only 1 lot.

8 [(g)] (H) "Litter" means any:

9 (1) Waste material;

10 (2) Refuse;

11 (3) Garbage;

12 (4) Trash;

13 (5) Debris;

14 (6) Dead animal; or

15 (7) Other discarded material.

16 [(h)](I) (1) "Lot" means a parcel of land[, including] **OR A BUILDING**  
17 **SITE.**

18 (2) **"LOT" INCLUDES** a part of a subdivision, that:

19 [(1)] (I) Is used or is intended to be used as a building site; and

20 [(2)] (II) Is not intended to be further subdivided.

21 (J) **"MAJOR SUBDIVISION" MEANS THE SUBDIVISION OF LAND INTO**  
22 **FIVE OR MORE NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF**  
23 **LAND.**

24 (K) **"MINOR SUBDIVISION" MEANS THE SUBDIVISION OF LAND INTO**  
25 **FEWER THAN FIVE NEW LOTS, PLATS, BUILDING SITES, OR OTHER DIVISIONS OF**  
26 **LAND.**

27 [(i)](L) "Multiuse sewerage system" means a sewerage system that:

- 1           (1)    Serves only 1 lot;
- 2           (2)    Serves a number of individuals;
- 3           (3)    Has a treatment capacity of more than 5,000 gallons a day; and
- 4           (4)    Is not publicly owned or operated.

5           **[(j)] (M)**    “Multiuse water supply system” means an individual water supply  
6 system that:

- 7           (1)    Has the capacity to supply more than 5,000 gallons of water a day;  
8 and
- 9           (2)    Serves a number of individuals.

10           **(N)**    “**NITROGEN REMOVAL TECHNOLOGY**” MEANS TECHNOLOGY FOR  
11 THE REMOVAL OF NITROGEN AS APPROVED BY THE DEPARTMENT.

12           **(O)**    “**ON-SITE SEWAGE DISPOSAL**” MEANS THE DISPOSAL OF SEWAGE  
13 EFFLUENT BENEATH THE SOIL SURFACE.

14           **(P) (1)**    “**ON-SITE SEWAGE DISPOSAL SYSTEM**” MEANS A SEWAGE  
15 TREATMENT UNIT, COLLECTION SYSTEM, DISPOSAL AREA, AND RELATED  
16 APPURTENANCES.

17           **(2)**    “**ON-SITE SEWAGE DISPOSAL SYSTEM**” INCLUDES A SHARED  
18 FACILITY OR COMMUNITY SEWERAGE SYSTEM THAT DISPOSES OF SEWAGE  
19 EFFLUENT BENEATH THE SOIL SURFACE.

20           **[(k)] (Q)**    (1)    “Proposed county plan” means a county plan that:

- 21                   (i)    Has been adopted by the county governing body; and
- 22                   (ii)   Has not been approved by the Department.

23           (2)    “Proposed county plan” includes any proposed amendment or  
24 revision of the county plan.

25           **[(l)] (R)**    “Sewage” means any human or animal excretion, street wash,  
26 domestic waste, or industrial waste.

27           **[(m)] (S)**    (1)    “Sewerage system” means:

1 (i) The channels used or intended to be used to collect and  
2 dispose of sewage; and

3 (ii) Any structure and appurtenance used or intended to be used  
4 to collect or prepare sewage for discharge into the waters of this State.

5 (2) "Sewerage system" includes any sewer of any size.

6 (3) "Sewerage system" does not include the plumbing system inside  
7 any building served by the sewerage system.

8 **(T) "SHARED FACILITY" MEANS A SEWERAGE SYSTEM THAT:**

9 **(1) SERVES MORE THAN ONE:**

10 **(I) LOT AND IS OWNED IN COMMON BY THE USERS;**

11 **(II) CONDOMINIUM UNIT AND IS OWNED IN COMMON BY THE**  
12 **USERS OR BY A CONDOMINIUM ASSOCIATION;**

13 **(III) USER AND IS LOCATED ON INDIVIDUAL LOTS OWNED BY**  
14 **THE USERS; OR**

15 **(IV) USER ON ONE LOT AND IS OWNED IN COMMON BY THE**  
16 **USERS; OR**

17 **(2) IS LOCATED IN PART OR ENTIRELY ON ANY OF THE COMMON**  
18 **ELEMENTS OF A CONDOMINIUM.**

19 **[(n)] (U)** "Solid waste acceptance facility" means any sanitary landfill,  
20 incinerator, transfer station, or plant whose primary purpose is to dispose of, treat, or  
21 process solid waste.

22 **[(o)] (V)** (1) "Solid waste disposal system" means any publicly or  
23 privately owned system that:

24 (i) Provides a scheduled or systematic collection of solid waste;

25 (ii) Transports the solid waste to a solid waste acceptance  
26 facility; and

27 (iii) Treats or otherwise disposes of the solid waste at the solid  
28 waste acceptance facility.

29 (2) "Solid waste disposal system" includes each solid waste acceptance  
30 facility that is used in connection with the solid waste disposal system.

1            **[(p)] (W)**    (1)    “Subdivision” means any division of a tract or parcel of land  
2 into at least 2 lots, for the **IMMEDIATE OR FUTURE** purpose of sale or building  
3 development.

4            (2)    “Subdivision” includes [any]:

5                            **(I)**    A change in street lines or lot lines, **UNLESS THE**  
6 **SECRETARY OR THE SECRETARY’S DESIGNEE DETERMINES THAT THE CHANGE**  
7 **WILL NOT ADVERSELY AFFECT THE SAFETY AND ADEQUACY OF WELL SITES OR**  
8 **SEWAGE DISPOSAL AREAS OF THE SUBJECT LOT OR ADJACENT LOTS; AND**

9                            **(II)**    **RESUBDIVISION.**

10                            **[(3)**    Except as provided in paragraph (4) of this subsection,  
11 “subdivision” does not include any division of land into parcels of more than 3 acres, if  
12 the division:

13                            (i)    Is for agricultural purposes; and

14                            (ii)    Does not involve any new street or easement of access.

15                            (4)    In Carroll County, “subdivision” does not include:

16                            (i)    Any division of land into parcels of more than 3 acres, if the  
17 division:

18    1.    Is for agricultural purposes; and

19    2.    Does not involve any new street or easement of access;

20 or

21                            (ii)    A remainder parcel of land of 25 acres or more that exists as  
22 a result of the division of a large parcel into at least 2 smaller parcels, provided that  
23 any occupied dwelling on the remainder parcel is serviced by a properly functioning  
24 sewerage disposal system and potable water supply.

25            **(q)] (X)**    (1)    “Water supply system” means a publicly or privately owned  
26 or operated:

27                            (i)    Source and the surrounding area from which water is  
28 supplied for drinking or domestic purposes; and

29                            (ii)    Structure, channel, or appurtenance used or intended to be  
30 used to prepare water for use or to deliver water to a consumer.

1           (2) “Water supply system” does not include the plumbing system  
2 inside any building that is served by the water supply system.

3 9–512.

4           (a) In this section, “building permit” means any permit that allows any  
5 building construction and is issued by any State or local authority.

6           (b) (1) A State or local authority may not issue a building permit unless:

7                   (i) The water supply system, sewerage system, or solid waste  
8 acceptance facility is adequate to serve the proposed construction, taking into account  
9 all existing and approved developments in the service area;

10                   (ii) Any water supply system, sewerage system, or solid waste  
11 acceptance facility described in the application will not overload any present facility  
12 for conveying, pumping, storing, or treating water, sewage, or solid waste;

13                   (iii) Except for essential public services, after January 1, 1992,  
14 the county in which the proposed construction is located has an approved recycling  
15 plan under § 9–505 of this subtitle and § 9–1703 of this title; and

16                   (iv) Except for essential public services, after January 1, 1994,  
17 the county in which the proposed construction is located has met the recycling  
18 reductions submitted in an approved recycling plan under § 9–505 of this subtitle and  
19 § 9–1703 of this title.

20           (2) A water supply system, sewerage system, or solid waste acceptance  
21 facility referenced in a subdivision plat shall conform to the applicable county plan.

22           (3) If an allocation of water or wastewater is needed, and before a  
23 State or local authority may issue a building permit, the State shall:

24                   (i) Have an allocation of water and wastewater from the county  
25 whose facilities are affected by the proposed building construction; or

26                   (ii) Show evidence of being able to provide an acceptable on–site  
27 sewage disposal system or well system until an allocation becomes available, or on a  
28 permanent basis if the State elects.

29           (4) The county shall timely review any State request for an allocation  
30 of water or wastewater, and report its findings to the State within 45 days from the  
31 date of such request.

32           (5) The Department may grant a waiver from the sanctions of  
33 subsection (b)(1)(iii) and (iv) of this section if the county demonstrates to the  
34 satisfaction of the Secretary that it cannot achieve the recycling goal due to unforeseen  
35 or emergency circumstances beyond the county’s control.



1           (6) (i) In the event that sanctions are imposed under this  
2 subsection, and the county submits an application for removing the sanctions, the  
3 Secretary shall promptly approve or deny the application.

4           (ii) In the event that the Secretary has neither approved nor  
5 denied the application within 30 days of its submission, the application shall be  
6 deemed approved and the sanctions shall be removed.

7           (c) To apply for a building permit, an applicant shall:

8           (1) Submit an application to a State or local authority on the form that  
9 the authority requires; and

10          (2) Provide any information that the authority reasonably requires to  
11 comply with subsection (b) of this section.

12          (d) (1) A State or local authority may not record or approve a subdivision  
13 [plat] unless any approved facility for conveying, pumping, storing, or treating water,  
14 sewage, or solid waste to serve the proposed development would be:

15           (i) Completed in time to serve the proposed development; and

16           (ii) Adequate to serve the proposed development, once  
17 completed, without overloading any water supply system, sewerage system, or solid  
18 waste acceptance facility.

19          (2) Each water supply system, sewerage system, and solid waste  
20 acceptance facility in a subdivision shall:

21           (i) Conform to the applicable county plan; and

22           (ii) Take into consideration all present and approved  
23 [subdivision plats] **SUBDIVISIONS** and building permits in the service area.

24          (3) If an allocation of water or wastewater is needed, and before a  
25 State or local authority may record or approve a subdivision [plat], the State shall:

26           (i) Have an allocation of water and wastewater from the county  
27 whose facilities are affected by the proposed development; or

28           (ii) Show evidence of being able to provide an acceptable on-site  
29 sewage disposal system or well system until an allocation becomes available, or on a  
30 permanent basis if the State elects.

1           (4)    The county shall timely review any State request for an allocation  
2 of water or wastewater, and report its findings to the State within 45 days from the  
3 date of such request.

4           (e)    To apply for approval of a subdivision [plat], an applicant shall:

5                   (1)    Submit an application to the appropriate State or local authority  
6 on the form that the authority requires; and

7                   (2)    Provide any information that the authority reasonably requires to  
8 comply with subsection (d) of this section.

9           **(F)    (1)    EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION,  
10 THIS SUBSECTION APPLIES NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
11 ARTICLE.**

12                   **(2)    AFTER JULY 1, 2011, THE STATE OR A LOCAL AUTHORITY  
13 MAY NOT RECORD OR APPROVE A RESIDENTIAL MAJOR SUBDIVISION THAT WILL  
14 BE SERVED BY AN ON-SITE SEWAGE DISPOSAL SYSTEM.**

15                   **(3)    AFTER JULY 1, 2011, THE STATE OR A LOCAL AUTHORITY  
16 MAY RECORD OR APPROVE A RESIDENTIAL MAJOR SUBDIVISION THAT WILL BE  
17 SERVED BY:**

18                           **(I)    A PUBLICLY OWNED SEWERAGE SYSTEM; OR**

19                           **(II)   A COMMUNITY SEWERAGE SYSTEM, A SHARED FACILITY,  
20 OR A MULTIUSE SEWERAGE SYSTEM THAT:**

21                                   **1.    IS MANAGED, OPERATED, AND MAINTAINED BY:**

22   **A.    A CONTROLLING AUTHORITY; OR**

23   **B.    A THIRD PARTY UNDER CONTRACT WITH THE  
24 CONTROLLING AUTHORITY; AND**

25                                   **2.    DISCHARGES:**

26   **A.    TO SURFACE WATERS OF THE STATE IN  
27 ACCORDANCE WITH A PERMIT ISSUED UNDER § 9-323 OF THIS TITLE; OR**

28   **B.    BY WAY OF A LAND APPLICATION UNDER A  
29 NUTRIENT MANAGEMENT PLAN THAT ASSURES THAT 100% OF THE NITROGEN  
30 AND PHOSPHORUS IN THE APPLIED EFFLUENT WILL BE TAKEN UP BY  
31 VEGETATION.**

1           **(G) (1) EXCEPT AS PROVIDED IN SUBSECTION (H) OF THIS SECTION,**  
2 **THIS SUBSECTION APPLIES NOTWITHSTANDING ANY OTHER PROVISION OF THIS**  
3 **ARTICLE.**

4           **(2) AFTER JULY 1, 2011, THE STATE OR A LOCAL AUTHORITY**  
5 **MAY NOT RECORD OR APPROVE THE SUBDIVISION FOR A RESIDENTIAL MINOR**  
6 **SUBDIVISION THAT WILL BE SERVED BY AN ON-SITE SEWAGE DISPOSAL SYSTEM**  
7 **UNLESS THE ON-SITE SEWAGE DISPOSAL SYSTEM USES NITROGEN REMOVAL**  
8 **TECHNOLOGY.**

9           **(3) AFTER JULY 1, 2011, IF A TRACT OR PARCEL OF LAND IS**  
10 **SUBDIVIDED INTO A RESIDENTIAL MINOR SUBDIVISION LEAVING ANY**  
11 **REMAINDER PARCEL OR TRACT OF LAND:**

12                   **(I) THE RESIDENTIAL MINOR SUBDIVISION MAY NOT BE**  
13 **RESUBDIVIDED OR FURTHER SUBDIVIDED;**

14                   **(II) THE REMAINDER PARCEL OR TRACT OF LAND MAY NOT**  
15 **BE SUBDIVIDED; AND**

16                   **(III) THE SUBDIVISION PLAT OF THE RESIDENTIAL MINOR**  
17 **SUBDIVISION SHALL STATE THAT:**

18                           **1. THE RESIDENTIAL MINOR SUBDIVISION MAY NOT**  
19 **BE RESUBDIVIDED OR FURTHER SUBDIVIDED; AND**

20                           **2. THE REMAINDER PARCEL OR TRACT OF LAND MAY**  
21 **NOT BE SUBDIVIDED.**

22           **(H) SUBSECTIONS (F) AND (G) OF THIS SECTION DO NOT APPLY TO AN**  
23 **APPLICATION FOR APPROVAL OF A SUBDIVISION UNDER SUBSECTION (E) OF**  
24 **THIS SECTION IF:**

25                   **(1) (I) THE APPLICATION IS MADE BEFORE JANUARY 1, 2011;**  
26 **AND**

27                   **(II) THE SUBDIVISION PLAT IS RECORDED BEFORE JULY 1,**  
28 **2012; OR**

29                   **(2) (I) THE APPLICATION IS MADE ON OR AFTER JANUARY 1,**  
30 **2011; AND**

