

May 21, 2008

The Honorable Thomas V. Mike Miller, Jr.

President of the Senate  
State House  
Annapolis MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 398 – *Anne Arundel County – Environmental Health Monitoring –Reimbursement of Costs*.

The bill would require the Maryland Department of the Environment (“Department”) to reimburse Anne Arundel County for any future costs it incurs for environmental health monitoring and testing related to permit violations for which the Department collects a fine. Reimbursement may not exceed the amount of the fine. In addition, this bill would require the Department to retroactively reimburse Anne Arundel County for the testing and monitoring of well water that the County conducted for 83 homes in the vicinity of the Gambrills fly ash disposal site.

In accordance with current law, the Department delegates authority to local health departments to test and certify drinking water wells. The Department currently has a delegation agreement with Anne Arundel County under which the County voluntarily agreed to provide support such as investigation, inspection, monitoring, and sampling for the Department subject to the availability of staff and resources. The agreement does not address funding, nor does it require the County to perform testing or sampling.

Current law does not allow the Department to factor in the costs it or any other governmental entity incurs when assessing an appropriate penalty amount to a party who has violated the State’s environmental laws. All funds, fees, and penalties collected by the Department for groundwater related violations must be paid into the Maryland Clean Water Fund. Reimbursement of expenses for sampling/testing/monitoring is not identified as a permissible use of the Clean Water Fund. Given this legal constraint, the reimbursement required under the bill would have to come from some source other than the Clean Water Fund, most likely from the Department’s already tightly constrained General Fund budget.

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Supporters of Senate Bill 398 argue that the Department should take local testing and monitoring expenses and costs into account when assessing fines related to sites that are permitted by the Department. Unfortunately, as noted above, the law as currently drafted does not allow the Department to shift the burden of those expenses to the parties who violate our State's environmental laws. Since the bill applies prospectively to any future Anne Arundel County costs, it is impossible to definitively calculate the future fiscal impact, which could be significant.

Thus, while the intent of the bill's supporters to ultimately shift the costs that local governments incur for testing and monitoring of well water to parties who violate our State's environmental laws may have merit, the bill is deficient in that it does not directly confront that issue. The Department completes approximately 2,000 enforcement actions a year, including approximately 900 actions for water violations, in jurisdictions across the State. An indeterminate number of those actions will include some activity by State and local agencies leading up to the action. The Department lacks statutory authority to require reimbursement in assessing the penalty, so the effect of the bill is to divert money from the Department to a local jurisdiction for activities the local jurisdiction has agreed to perform.

The bill is also deficient because it applies only to Anne Arundel County. Many counties provide environmental testing and monitoring services but they would not be eligible for reimbursement under this legislation. Requiring the Department to reimburse the expenses of only one of Maryland's 24 counties, many of which routinely undertake the monitoring, testing, and sampling of well water, is not a rational approach.

The appropriate public policy discussion is whether the Department should be authorized to incorporate reimbursement provisions in the assessment of a penalty, for every jurisdiction in the State. My Administration would be willing to engage in that discussion during the 2009 Session of the Maryland General Assembly. But Senate Bill 398 does not accomplish that public policy goal – instead, it diverts resources of the Department to reimburse a single local government a specific amount for a past event, and an uncapped, indeterminate amount for future events, for functions the County has agreed to perform.

For the above stated reasons, I have vetoed Senate Bill 398.

Sincerely,

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Governor