



*Gregory J. Swain, County Attorney*

## MEMORANDUM

**To:** Council Members, Anne Arundel County Council

**From:** Kelly Phillips Kenney, Supervising County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** September 21, 2020

**Subject:** Bill No. 79-20 – Public Works – Utilities – Extension of Public Water and Wastewater Systems

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### Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 79-20. The summary is intended to explain the purposes and legal effects of the bill.

**Purpose.** The primary purpose of Bill No. 79-20 is to modify the current process for property owners to petition the County for public water or wastewater service.

### **Background.**

The current petition process set forth in § 13-5-303 is unnecessarily convoluted and multi-stepped. As the County is moving forward to convert properties from septic systems to public sewer service (as previously discussed before the Council on Bill Nos. 90-19 and 95-19), this Bill serves to simplify and streamline the petition process in the hope of making more petitions successful. This section highlights some of the burdens and deficiencies in the current process that are modified in the Bill.

The current law requires the petitioners to create a “defined area” for proposed water or wastewater service. Oftentimes, the area defined by the petitioners does not work from an engineering standpoint, and, if DPW has to add or delete properties, the property owners are required to start over with a new petition. This Bill simplifies this process and allows DPW to revise the defined area without the need to start over from the beginning of the petition process.

**Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.**

The current law requires two public hearings by DPW, although they can be (and often are) combined into one. The Bill streamlines the process by requiring only one public hearing.

As discussed in the Legislative Summary for the assessment legislation that will be introduced on or around the same time as this Bill, when the County moves forward with a petition project to expand the County’s water or wastewater systems to provide service to an area, the project is required to be “self-sustaining”, meaning that the County must recoup the entire cost of the project back from the property owners who connect to the facilities. This requirement does not change in either Bill, however, the method of assessment is revised in the assessment legislation and the process for approval of the rate is modified in this Bill.

Current § 13-5-303 requires that, when the front foot rate that is required to make a project self-sustaining is more than the maximum front foot assessment rate, a majority of the petitioners in the defined area must petition the County Council for an “excess” front foot rate. As a practical matter, all petition projects require a rate over the maximum, and, as a result, the Council has had to approve the rates for all recent petition projects. The two new bills simplify this step as well. The minimum/maximum requirement are removed in the assessment legislation. This Bill allows the petitioners to vote for the assessment rate in a ballot submitted to DPW, and eliminates the need for the rate to be approved by the County Council.

### **Bill provisions.**

The Bill repeals existing §§ 13-5-301 and 13-5-303 and replaces it with new §§ **13-5-301 and 13-5-303**, makes changes to §§ **13-5-304 through 13-5-306**, and adds new § **13-5-307**.

Current § 13-5-301 provides that the subtitle does not apply in the Mayo Water Reclamation Subdistrict. That language is being deleted as obsolete, and replaced with new § **13-5-301**, which sets forth several definitions. “Defined area” is defined in subsection (1), as the “the boundaries of all real property proposed to be provided with public water or wastewater facilities specifically described in a petition submitted to the department and shown on a map or drawing.” Subsection (2) states that “owner” has the meaning stated in § 1-1-101 of the County Code (any part owner, joint owner, tenant in common, tenant by the entireties, tenant in partnership, or joint tenant of all or part of the structure or land) and, in addition, includes each person in whose name an account with respect to a parcel of real property stands in the records of the Supervisor of Assessments for the County when a petition is submitted under this title.<sup>1</sup>

Subsection (3) defines “petition area” as the defined area, revised defined area, or area encompassing all properties served by private water or wastewater facilities for which a petition is submitted. Subsection (4) defines “project cost” identical to what is set forth in the assessment legislation as all costs or expenses required to complete a water or wastewater extension or upgrade, including the combined cost of design, engineering, surveying, construction, right-of-way or property acquisition, and connections. “Revised defined area” is defined in subsection (5) as a defined area that is revised by DPW after receiving a petition.

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<sup>1</sup> This is the same definition used for purposes of special community benefit districts and has been what has been applied by DPW for all water and sewer petitions.

Section § **13-5-303(a)(1) and (2)** are slightly reworded, but are otherwise nearly identical to the same existing subsections. Subsection **(a)(1)** allows the owners of a majority of the properties in a defined area to petition the County to establish public water or wastewater facilities. Subsection **(a)(2)** allows a majority of the owners of a private water or wastewater system, or the majority of the owners of property serviced by such a system, to petition the County to take over the private system. For purposes of both sections, a “majority” is a simple majority of at least 51%. Existing subsection (a)(3) has been deleted as obsolete.

Section **13-5-303(b)** is new and allows DPW to revise a defined area after receipt of a petition to include or exclude properties as necessary from an engineering standpoint. If DPW establishes a revised defined area, the petition shall be considered as one for the revised defined area, and, as provided in subsection **(b)(2)**, the owners of properties added to the defined area shall be notified and shall be given 60 days to vote against or in favor of the petition for the revised defined area. If an owner of property added to the revised defined area does not respond within 60 days of the notice, it shall be considered as a vote against the petition.

Under subsection **(b)(3)**, the owners of the properties within the original defined area are notified of the revised defined area and given 60 days to change the position of the vote from the original petition. If the owner does not respond, the vote on the original petition shall remain unchanged. In accordance with **(b)(4)**, after the passage of the 60 days set forth in subsections (2) and (3), DPW shall determine whether a majority of the owners of the properties in the revised defined area have voted in favor of the petition. DPW may proceed forward with the remaining steps in § 13-5-303 only after it is determined that a majority have voted in favor of the petition for the revised area.

Subsection **(c)** is the same existing subsection (n) and allows the Director to treat a petition for either water or wastewater as for a petition for both. If that is done, the estimated costs for both services shall be included when determining the project cost.

Subsection **(d)** is similar to existing (b) and requires DPW to prepare a preliminary engineering study, preliminary project cost estimate, and the approximate cost and method of financing. Subsection **(e)** is identical to existing (c) and requires DPW to publish notice of the preliminary cost estimate as required in § 13-1-103<sup>2</sup> and to set a time and place for a public hearing when persons interested in the improvements may appear and present their views.

Subsection **(f)** governs the public hearing. It combines existing subsections (d), (i), and (j), which provided for a preliminary and final or combined public hearing. New subsection **(f)** requires that the Director hold only one public hearing where persons interested present their views and where DPW presents an overview of the engineering evaluation, preliminary estimate of the project cost, estimated cost for preparation of final design documents, and an estimate of the revenue required from the petitioners to make the project self-sustaining.

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<sup>2</sup> This section requires: “A notice required by this article to be given by publication shall be published at least once a week for two consecutive weeks in a newspaper circulated in the area affected by the notice or be posted on the property or in conspicuous public places in the area affected.”

Subsection **(g)** sets forth the requirement that the project be self-sustaining before DPW proceeds with final engineering, design, and construction. A project is self-sustaining if the Director determines that the County will recover the net assessable amount of a project from the estimated annual revenues of the project within 30 years after its completion, or, for projects that qualify for a partial deferral under § 13-5-815.1, within 40 years after its completion.

Subsection **(h)** requires that, after the public hearing, the Director determine the net assessable amount of the project by the same method set forth in the assessment legislation, which is by: establishing the project cost; subtracting any costs associated with making service available beyond the petition area and any aid towards the project; and adding the amount necessary to reimburse the County for the estimated interest expense of the money invested in the project, as determined by the Controller.

Subsection **(i)** is similar to existing (m) and requires the Director to determine the estimated revenues of a project by dividing the net assessable amount by 30, or for projects that qualify for a partial deferral under § 13-5-815.2, by 40.

Subsection **(j)** provides that DPW shall provide the owners in the defined area or revised defined area with an assessment rate ballot. If the owners of a majority of the properties do not vote in favor of a rate of assessment sufficient to make the project self-sustaining, the project may not move forward to final engineering, design, or construction. Under subsection **(k)**, if a majority of the owners vote in favor of the assessment, the project may move forward for final design, engineering, and construction.

Subsection **(l)** is similar to existing (r) and provides that a project shall be considered abandoned if a majority of the owners of the properties in the defined area or, if applicable, the revised defined area, file a counter-petition against the project any time after the Director proceeds in accordance with subsection (k) and before a construction contract is awarded for the project. A counter-petition may not be considered if it is received after the award of the construction contract for the project or after materials to construct the project are ordered. Subsection **(m)** is similar to existing (s), and allows the County to assess the costs incurred by the County if the project is abandoned in accordance with subsection (l), except where the project is abandoned because the costs of the project increase more than 15% of the amount in the assessment ballot. If the costs are to be assessed to the owners, they shall be levied in the annual tax ordinance as a special assessment for a time not to exceed five fiscal years.

Subsection **(n)** provides that the Director may decide not to proceed forward with the petition project at any stage if the petition is not in compliance with State law, the Code, or the Master Plan for Water Supply and Sewerage Systems; the County is unable to acquire the property needed to move forward; or for any other reason.

Section **13-5-304** is revised slightly for clarity without any substantive change. Subsection **13-5-305(a)** is new and defines “property required to connect”, which is a concept and phrase used in the current Code, but is not formerly defined. The term means all improved properties abutting a road or right of way in which a water main or wastewater main is laid for project initiated in accordance with § 13-5-302 or 13-5-303. Existing subsections (a) and (b) are renumbered to **(b)** and **(c)** without change.

Subsections 13-5-305(c) and (d) are renumbered to **§ 13-5-305(d) and (e)**, respectively and existing language is replaced with “a property required to connect”, as appropriate. Subsection (e) requires that an owner of a property required to connect must make the applications for connection within six months after receiving a notice from the County. The owner is also required to pay the applicable permit fees and connection fees, or, if eligible, apply for a deferral, subsidy, or installment payments, or any combination thereof. Obsolete language regarding the mailing of a notice is deleted.

Existing § 13-5-303(e) is deleted and encompassed in new **§ 13-5-307**, as discussed below. The changes in **(f), (g), and (h)** are to replace existing language with the term “property required to connect”. Additionally, subsection (h) is revised to provide that an owner who fails to comply with the connection requirements forfeits any deferral under § 13-5-815.1 or any subsidy granted by the County under § 13-5-815.2. There is no change to subsection (i).

Section **13-5-306(a)** is revised for clarity. Subsection **(b)** is revised to add a reference to the section imposing connection charges and assessment charges. Subsection **(c)** is revised to make it a Class C civil offense to connect to a County water or wastewater line without having obtained the required connection permit. The new language also states that the owner of any property served by an unlawful connection who causes damage or impairment to the County’s system is liable for any expenses, losses, or damages caused by the illegal connection. As provided in § 9-2-101(f)(3) of the County Code, the fine for a Class C civil offense is \$500 for the first violation and \$1,000 for subsequent violations.

Section **13-5-307** is new, but it repeats in part existing § 13-5-305(e) and also clarifies existing law and practice with regard to developer projects and County capital projects. Subsection **(a)** clarifies that, for a water or wastewater main constructed by a developer or by the County at County expense (a capital project other than one initiated under §§ 13-5-302 or 13-5-303), an owner is permitted but is not required to connect. If the property owner chooses to connect, they shall pay all required permit fees, connection, and assessment charges.

Subsection **(b)** states that the Director may order the connection of a property otherwise not required to connect when necessary to protect the public health or welfare. Within six months of notice of the requirement to connect under this subsection, the owner shall comply with and be subject to the requirements set forth in § 13-5-305(e) through (i).

**Section 3** provides that the Bill is effective 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you very much.

cc: Honorable Steuart Pittman, County Executive

Matt Power, Chief Administrative Officer  
Dr. Kai Boggess-de Bruin, PhD, Chief of Staff  
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