

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1355 (Delegate Rose, *et al.*)  
 Environment and Transportation

Sewerage Systems - Residential Major Subdivisions in Tier III and Tier IV Areas

This bill allows a local jurisdiction to authorize a residential major subdivision served by onsite sewage disposal systems (OSDS), community sewerage systems, or shared systems in Tier III and Tier IV areas under certain circumstances. The bill does not create new development rights.

Fiscal Summary

**State Effect:** General fund expenditures for the Maryland Department of the Environment (MDE) increase by \$163,500 in FY 2018 to evaluate additional sites for the development of major residential subdivisions served by OSDS, community sewerage systems, or shared systems in Tier III and Tier IV areas. Future year estimates reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	163,500	155,300	162,200	169,400	177,100
Net Effect	(\$163,500)	(\$155,300)	(\$162,200)	(\$169,400)	(\$177,100)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local government expenditures may increase to evaluate additional sites for the development of major residential subdivisions served by OSDS, community sewerage systems, or shared systems in Tier III and Tier IV areas jointly with MDE. Revenues may increase to the extent a local government increases site evaluation or permitting fees to offset its costs.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** A local jurisdiction may authorize a residential major subdivision served by OSDS, community sewerage systems, or shared systems in Tier III areas if (1) development rights existed on December 1, 2012, or development rights existed in the manner in which an area, a plat, or a lot was zoned on or before December 1, 2012; (2) at least 10% of the remaining portion of the local jurisdiction's Tier III area is protected as a specified federal, State, or local area; and (3) at least 25% of the remaining portion of the local jurisdiction's total land is protected from development as a specified federal, State, or local area.

A local jurisdiction may authorize a residential major subdivision served by OSDS, community sewerage systems, or shared systems in Tier IV areas if (1) development rights existed on December 1, 2012, or development rights existed in the manner in which an area, a plat, or a lot was zoned on or before December 1, 2012; (2) at least 20% of the remaining portion of the local jurisdiction's Tier IV area is protected as a specified federal, State, or local area; and (3) at least 30% of the remaining portion of the local jurisdiction's total land is protected from development as a specified federal, State, or local area.

### **Current Law:**

#### *The Sustainable Growth and Agricultural Preservation Act of 2012 (Chapter 149)*

Chapter 149 of 2012 established a system of four growth tiers, which are based on specified land use characteristics, that may be adopted by local jurisdictions. The Act established land use and sewerage criteria and restrictions applicable to each of the four tiers. Property within residential minor subdivisions is generally restricted from further subdivision beginning December 31, 2012. There are numerous exceptions from and conditions upon these restrictions, and the transfer of subdivision rights among specified agricultural property owners is authorized.

#### *Prohibitions and Growth Tier Restrictions*

Beginning December 31, 2012, a local jurisdiction may not authorize a residential major subdivision served by an OSDS, community sewerage system, or shared system until the jurisdiction adopts the growth tiers. If a jurisdiction does not adopt the growth tiers, the jurisdiction may nevertheless authorize either a residential minor subdivision served by OSDS (if the subdivision otherwise meets specified requirements), or any subdivision in a Tier I area served by "public sewer." "Public sewer" means a community, shared, or multiuse sewerage system.

In a designated Tier I area, a jurisdiction may not approve a residential subdivision plat unless all lots are to be served by public sewer. In a Tier II area, lots are to be served by

public sewer, except that a *minor* subdivision may be served by OSDS. An OSDS is defined for this purpose to also include a shared facility or community sewerage system that disposes of sewage effluent beneath the soil surface.

In a Tier III or IV area, only a minor subdivision served by individual OSDS may be approved, except under specified conditions. In a Tier IV area, only minor subdivisions may be approved unless the local subdivision and zoning requirements applicable to the cumulative Tier IV areas result in an “overall yield” (density) of one or less dwelling unit per 20 acres as verified by the Maryland Department of Planning (MDP). A local jurisdiction may request a verification of the density by MDP, in consultation with the Maryland Sustainable Growth Commission. MDP must verify the overall yield for zoning in a Tier IV area on request from a local jurisdiction, including reviewing and examining specified information. MDP must discuss any discrepancies or questions with the jurisdiction before determining if the jurisdiction’s Tier IV area meets the overall yield of one dwelling unit per 20 acres.

A jurisdiction that has established growth tiers may approve a major subdivision in a Tier III area served by OSDS, shared facilities, or community sewerage systems, if it has been recommended by the local planning board following a specified review. The planning board must hold at least one public hearing that includes a review of potential environmental issues or a natural resources inventory, as well as the estimated cost of providing local government services unless the jurisdiction’s adequate public facilities ordinance already requires a review of government services. The planning board must make its recommendation on the proposed residential major subdivision by a resolution of the board.

### *Exceptions and Exclusions*

The prohibitions relating to the restrictions on subdivisions in the various growth tiers generally do not apply to a project for which the preliminary plan submission and approval are completed before specified dates, which vary based on the project planning requirements of the particular jurisdiction.

Specifically, Chapter 149 established a grandfathering clause that excludes an application for the approval of a residential subdivision from the land use and sewerage criteria and restrictions applicable to each of the four growth tiers if certain conditions and steps are taken by specified dates. These grandfathering requirements include (1) the submission of a preliminary plan approval with specified required information to a local jurisdiction by October 1, 2012; (2) approval of a soil percolation test by the relevant local jurisdiction and necessary steps to obtain a soil percolation test, depending on the rules in a particular jurisdiction; and (3) final approval of a preliminary plan by October 1, 2016.

**State Expenditures:** General fund expenditures for MDE increase by \$163,477 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring two sanitarians to review and evaluate sites and conduct design review for installation of OSDS, community sewerage systems, or shared systems for major subdivisions within Tier II and Tier IV areas, including the availability of water to supply wells and whether sewage areas can accommodate the development. It includes salaries, fringe benefits, one-time start-up costs, including the purchase of two vehicles, and ongoing operating expenses. MDE advises that the bill is anticipated to result in a significant increase in the demand for these evaluations and, as such, increases MDE’s workload significantly. To the extent that the workload is less than currently anticipated, the need for additional staff decreases.

Positions	2
Salaries and Fringe Benefits	\$109,696
Vehicle Purchases	40,000
Other Equipment/Operating Expenses	<u>13,781</u>
<b>Total FY 2018 State Expenditures</b>	<b>\$163,477</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

**Local Fiscal Effect:** Local approving authorities jointly review and evaluate sites and issue permits for the installation of OSDS, community sewerage systems, or shared systems for major subdivisions with MDE. Because the bill likely results in a significant increase in the demand for these evaluations, local workloads and expenditures increase, potentially significantly. Local revenues may also increase to the extent that local governments increase fees for related evaluations and permits in an effort to offset any costs incurred as a result of the bill.

**Small Business Effect:** The bill likely has a meaningful impact on any developers that are able to develop a major residential subdivision in a Tier III or Tier IV area that is served by OSDS, community sewerage systems, or shared systems that would not otherwise be authorized and/or developed under current law. Any small businesses involved in the development of these subdivisions benefit.

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Montgomery County; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Natural Resources; Maryland Department of Planning; Department of Legislative Services

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