

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 254

(Senator Young)

Education, Health, and Environmental Affairs

Environment and Transportation

On-Site Sewage Disposal Systems - Inspection - Licensing

This bill repeals the current law requirements related to the certification of those engaged in the business of property transfer inspections for on-site sewage disposal systems (commonly referred to as septic systems) and instead requires that by July 1, 2021, any person (unless exempted) who engages in the business of inspecting a septic system must obtain an on-site wastewater property transfer inspection license issued by the Maryland Department of the Environment (MDE). By January 1, 2021, MDE must adopt regulations that establish license eligibility criteria, minimum training standards, license terms, and fees for license applications and renewals, as specified. The bill also establishes a civil penalty for violators; civil penalties are deposited into the Septics Account within the Bay Restoration Fund (BRF). **The repeal of current law septic inspection provisions takes effect January 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$78,800 in FY 2021; future years reflect annualization and ongoing costs. General fund revenues increase beginning in FY 2021 from license application and renewal fees. Special fund revenues for BRF increase minimally due to the bill's civil penalty provision.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF/SF Revenue	-	-	-	-	-
GF Expenditure	\$78,800	\$99,300	\$101,300	\$104,700	\$108,200
Net Effect	-/(-)	-/(-)	-/(-)	-/(-)	-/(-)

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

Local Effect: Local government finances are not materially affected, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: An applicant for a license under the bill must submit an application to MDE on the form MDE provides and pay an application fee set by MDE.

The bill's licensing requirement does not apply to an individual who inspects a septic system as part of his/her duties as an employee of the federal government, the State, or any local government of the State.

The regulations adopted by MDE pursuant to the bill must require that (1) the training include instruction to determine whether a septic system needs to be replaced or repaired and is not in compliance with statutory or regulatory requirements and (2) each inspection performed by a licensee follows the inspection format provided by MDE. A local government may establish additional requirements for septic system inspections.

A person who violates the bill's provisions, or any regulation adopted pursuant to the bill, is subject to a civil penalty of up to \$10,000. Each day that an individual inspects a septic system without a valid license is a separate violation. Any civil penalty collected by MDE pursuant to the bill must be paid into BRF's Septics Account.

Current Law/Background:

Septic System Property Transfer Inspectors

All individuals performing inspections of septic systems for property transfers must complete an MDE-approved course in the proper inspection of septic systems and certify to the department that the course was completed. Inspectors must also make evidence of course completion available to their customers.

The required septic system inspector course is a one-time course. Historically, MDE's Onsite Systems Division has offered the free, but required, training for septic system inspectors, and most inspectors obtained their training from MDE. However, MDE no longer offers the course directly, and instead, there are three approved third-party training courses listed on MDE's [website](#). MDE maintains a list of trained inspectors on its website and advises that there are 1,125 individuals currently certified to inspect septic systems.

Failing Septic Systems

Chapter 342 of 2019 defined a "failing on-site sewage disposal system" as an on-site sewage disposal system or a cesspool, or a component of a septic system or a cesspool, that is a threat to public health due to the potential for direct contact between sewage and members of the public, significant noncompliance with the standards and conditions of the

permit (for a permitted system), or a failure to prevent (1) sewage from reaching the surface of the ground; (2) sewage from backing up into a structure due to slow soil absorption of sewage effluent; (3) sewage from leaking from a sewage tank or collection system; (4) unless specifically authorized by a groundwater protection report approved by MDE before January 1, 2019, groundwater degradation; or (5) surface water degradation.

Board of Environmental Health Specialists

Many septic system inspectors are already licensed by the Maryland State Board of Environmental Health Specialists (BEHS). Local health departments are one of the primary sources of septic system inspectors in the State, and inspectors employed by local health departments are environmental health specialists licensed by BEHS. Further, the vast majority of individuals licensed by BEHS are employed in the public sector (at the federal, State, and local levels). As of October 2019, there were 532 licensed environmental health specialists in the State.

Bay Restoration Fund

Chapter 428 of 2004 established BRF, which is administered by the Water Quality Financing Administration within MDE. The primary purpose of the fund is to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants with enhanced nutrient removal technology; funds are also used for septic system upgrade grants, among other things, and the Maryland Department of Agriculture's (MDA) Cover Crop Program.

As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks and Chapter 150 of 2012 doubled the fee for most users. Of the fee revenue collected from users of septic systems and sewage holding tanks, 60% must be deposited into a separate account, commonly referred to as the Septics Account. The remaining funds collected from users of septic systems and sewage holding tanks (40%) must be transferred to the Maryland Agricultural Water Quality Cost Share Program within MDA to provide financial assistance to farmers for planting cover crops.

State Revenues: The bill authorizes MDE to set license application and renewal fees. Because the bill does not direct license fee revenue to any of MDE's special funds, it is assumed that fee revenue is deposited into the general fund. Thus, general fund revenues increase beginning in fiscal 2021 from license application and renewal fees. There are currently 1,125 certified property transfer inspectors. Some portion of these individuals likely do not need to obtain a license under the bill; a significant number of certified inspectors work in the public sector for a federal, State, or local government agency. Actual fee revenues depend on the fees ultimately set by MDE, the number of individuals that

seek licensure under the bill, and how often licenses must be renewed. Accordingly, a reliable estimate of the increase in general fund revenues cannot be made at this time. However, it is not unreasonable to assume that MDE might set fees at a level sufficient to cover the department's costs (described below).

Special fund revenues to BRF's Septics Account increase minimally due to the bill's civil penalty provision.

State Expenditures: MDE advises that to fully implement the bill's licensing requirements, it must hire four full-time permanent employees. The Department of Legislative Services (DLS) agrees that additional staff are needed to administer the new licensing program. However, DLS disagrees that the additional responsibilities under the bill justify the need for four permanent full-time employees, particularly since many of the septic system property transfer inspectors in the State perform these inspections pursuant to jobs with local health departments and, therefore, are exempt from the bill's licensing requirement.

Thus, general fund expenditures increase by an estimated \$78,814 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one full-time environmental health specialist and one part-time (50%) administrative aide to (1) develop regulations; (2) conduct training; (3) conduct outreach to affected inspectors and counties; and (4) issue and track licenses. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- there are 1,125 certified property transfer inspectors, but some portion of these individuals do not need to be licensed because they are employed by, and perform inspection duties pursuant to a job with, the federal government, the State, or a local government;
- the bill expands upon the current certification program;
- MDE must adopt regulations, develop an appropriate training course, and conduct ongoing continuing education classes and training in the out-years; and
- MDE cannot fully implement the bill with existing staff.

Positions	1.5
Salaries and Fringe Benefits	\$72,711
Operating Expenses	<u>6,103</u>
Total FY 2021 State Expenditures	\$78,814

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

Local Fiscal Effect: The bill is not anticipated to materially affect local finances or operations because (1) local government employees who perform septic system property transfer inspections pursuant to their jobs do not need to be licensed and (2) MDE is responsible for implementing and enforcing the bill. The Maryland Association of County Health Officers (MACHO) notes that the bill may result in additional septic systems that need to be replaced or repaired, as more systems may be determined to be out of compliance when inspected at property transfer. However, MACHO anticipates that existing staff can handle these requirements and that any additional costs are offset by permit fees.

Small Business Effect: Expenditures increase for small businesses that conduct septic system property transfer inspections to pay license application and renewal fees and attend training. Under current law, septic system property transfer inspectors are only required to take a one-time free course for certification, so the bill's licensing requirements are a relatively significant change.

Small business owners that have septic systems likely benefit from higher quality and more uniform septic system inspections.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Calvert County; City of Bowie; Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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