

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 136

(Delegate Stein)

Environment and Transportation

Education, Health, and Environmental Affairs

Environment - On-Site Wastewater Services - Regulation

This bill establishes the State Board of On-Site Wastewater Professionals within the Maryland Department of the Environment (MDE) to regulate and license individuals who perform on-site wastewater services in the State. MDE must adopt implementing regulations in consultation with the board by July 1, 2023. Among other things, the regulations must establish minimum standards for specified “on-site wastewater systems” (OSWS). To support the board’s operations, the bill establishes the On-Site Wastewater Professionals Fund, funded primarily by license fees set by regulation, but also by a fee paid by existing service providers. The bill also establishes (1) reporting requirements; (2) provisions governing license denials, revocations, and suspensions; and (3) administrative penalties for violations. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: Special fund revenues increase significantly in FY 2021 and 2023, reflecting fees paid by existing service providers. Beginning in FY 2024, special fund revenues increase from license fees. Special fund revenues may also increase in any given year due to the bill’s penalty provisions. Special fund expenditures increase by \$47,200 in FY 2021; out-years reflect annualization and ongoing costs.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	-	-	-	-	-
SF Expenditure	\$47,200	\$54,700	\$55,900	\$57,800	\$59,800
Net Effect	-	(-)	-	-	-/(-)

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

Local Effect: Because local employees are exempt from the bill’s provisions and local governments are not responsible for implementation or enforcement, the bill is not anticipated to have a meaningful impact on local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “On-site wastewater services” means any activity associated with the design, installation, operation and maintenance, pumping, repair, or property transfer inspection of an on-site wastewater system. “On-site wastewater system” means a system designed to treat and dispose of effluent on the same property that produces the wastewater or a holding tank; the term includes a septic or any other on-site sewage disposal system.

State Board of On-Site Wastewater Professionals

The bill establishes provisions regarding board membership and the terms of board members. Each board member is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The board may employ a staff in accordance with the State budget.

The board must carry out the bill’s provisions, make recommendations to MDE regarding the adoption of regulations (discussed in more detail below), collect and account for fees collected pursuant to the bill, and keep a current record of all individuals and entities licensed under the bill’s provisions. The board must also establish a code of ethics provided by MDE for board members and individuals licensed by the board. Additionally, the board must review the regulations proposed by MDE pursuant to the bill.

Regulations and Enforcement of Standards

The board must make recommendations to MDE on the adoption of regulations to carry out the bill’s provisions, including (1) licensing procedures and qualifications for specified categories (master installer and journey installer, master on-site wastewater property transfer inspector and journey on-site wastewater property transfer inspector, master pumper and journey pumper, and master operation and maintenance provider and journey operation and maintenance provider); (2) certification procedures and qualifications for specified categories (designer, advanced treatment installer, mound installer, drip dispersal installer, pump dispersal system installer, advanced treatment operation and maintenance provider, advanced treatment unit pumper, advanced treatment property transfer inspector, and any other category associated with a specific on-site wastewater treatment technology; and (3) minimum standards related to the design, installation, operation, maintenance, and property transfer inspection of an OSWS for which a person is not required to hold a discharge permit.

By June 1, 2022, the board must make recommendations to MDE for establishing the licensing and certification procedures. By July 1, 2023, MDE, in consultation with the board, must adopt implementing regulations.

License Fees to Support the Newly Established On-Site Wastewater Professionals Fund

MDE, in consultation with the board, must set by regulation reasonable fees for the issuance and renewal of licenses and for other board-provided services. The fees must be set to approximate the costs of maintaining the board. The board must publish a schedule of the fees. All funds collected (including fees collected from existing service providers before the licensing program is established, as discussed below) must be deposited into the On-Site Wastewater Professionals Fund, a special fund established by the bill and administered by the board. The fund consists of all fees, penalties, and fines collected under the bill's provisions, money appropriated in the State budget, interest earnings of the fund, donations, and any other money from any other source accepted for the benefit of the fund.

The fund must be used only to maintain the board and implement the bill. Expenditures from the fund may be made only in accordance with the State budget.

Reporting Requirements

The board must prepare and submit an annual report, by December 31 each year, to the Secretary of the Environment on (1) the status of the fund; (2) revenues to and expenditures from the fund; (3) the efficiency of, and compliance with, the regulations adopted by MDE to implement the bill's provisions; and (4) whether the fees set by MDE by regulation need to be reviewed and adjusted.

License Requirements and Applicability

Generally, an individual must be licensed by the board before the individual may perform on-site wastewater services in the State. However, an individual who holds a license, registration, or certification to perform on-site wastewater services in the State as of January 1, 2020, may continue to perform these services until MDE establishes the regulations that implement the bill's licensing requirements if the individual pays (1) a \$150 fee to MDE by December 1, 2020 and (2) a \$150 renewal fee every two years thereafter until MDE sets license and any other service-related fees by regulation in accordance with the bill.

All individuals who perform on-site wastewater services in the State must be licensed by the board by July 1, 2024. To qualify for a license, an applicant must meet the requirements established by MDE by regulation, submit an application to the board, and pay the application fee set by MDE by regulation. A business performing or contracting to perform on-site wastewater services that are regulated by the board must have either an employee or an owner who is licensed by the board. Licenses are valid for two years.

The bill's provisions do not apply to an individual employed by a local, State, or federal agency who is performing duties associated with that employment. The bill does not prevent a local government from imposing requirements or standards that are more stringent than those established under the bill.

Denial/Revocation/Suspension of Licenses and Administrative Penalties for Violations

The bill establishes grounds for the board to deny a license application, reprimand a licensee, and suspend or revoke a license. The bill establishes related hearing provisions and authorizes a person aggrieved by a final decision of the board in a contested case to appeal, as specified.

Instead of or in addition to any other penalties authorized under the Water, Ice, and Sanitary Facilities Title of the Environment Article, a person who violates any of the bill's provisions is subject to an administrative penalty of up to \$1,000 per day for all violations cited on a single day. The bill establishes factors the board must consider in setting any administrative penalty. Any penalties collected are distributed to the On-Site Wastewater Professionals Fund. If a violator fails to pay an administrative penalty as specified, the matter is forwarded to the Central Collection Unit within the Department of Budget and Management.

Current Law:

Septic System 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.

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.

Septic System Installers

Although there is no generic septic system construction or installation certification, MDE offers training and certification for the installation of different types of specialized septic systems. Currently, these offerings include training for sand mound construction (and a refresher course), at-grade mound construction (and a refresher course), and the installation of systems with best available technology (BAT) for the removal of nitrogen. There is an approved third party for BAT operation and maintenance provider training. Current regulations require certification prior to installing a sand mound system, an at-grade system, or a BAT system. BAT septic system service providers must also be certified.

MDE notes that many, but not all, counties already license the installation of septic systems.

State Board of Waterworks and Waste Systems Operators

MDE advises that some of the individuals that need a license under the bill are already licensed by the State Board of Waterworks and Waste Systems Operators. This board protects the quality of water and public health by ensuring that operators and superintendents meet minimum professional standards. An operator of a waterworks participates in the control of the flow, processing, and distribution of water and an operator of a wastewater works participates in the collection, control of flow, processing, and discharge of wastewater and effluent. Waterworks operators treat water so that it is safe to drink, and waste systems operators remove harmful pollutants from domestic and industrial waste so that it is safe to return to the environment. A superintendent is certified as the individual who is in charge at either type of facility.

Permit Required to Construct or Alter On-site Sewage Disposal Systems

Pursuant to current regulations, a person may not construct or attempt to construct a septic system without first obtaining a permit from the appropriate approving authority. A person also may not alter a septic system or cause it to receive any increase in flow or change in the character of wastewater unless permitted. A person must obtain an appropriate septic system permit, well construction permit, public or private water supply system permit, or public or private sewerage permit before constructing or altering any structure, residence, floating home, or commercial establishment that is served or planned to be served by a septic system or a private water supply system.

An approving authority must consider specific site evaluation criteria when determining whether to approve a lot or parcel for a septic system. In most cases, local requirements are the same as those outlined in State regulations; however, a county with delegated authority may choose to impose more stringent requirements than the State. Current regulations contain specific technical design and construction requirements for conventional septic systems based on the use of a property, wastewater design flow, and site characteristics such as topography, geology, hydrology, soil descriptions, and soil permeability.

Delegation of Approval Authority

MDE delegates the authority to issue permits to construct and repair conventional septic systems to local approving authorities. Nonconventional septic systems are required when the specific site characteristics mean that a conventional septic system, if installed, would not meet requirements for the protection of groundwater and public health. MDE must review applications for any nonconventional system, jointly, with the local approving authority.

As with new construction, a local approving authority may only permit the repair or replacement of a *conventional* septic system. The local approving authority makes the initial determination as to whether a conventional system is sufficient for repair or replacement based on the site. If a conventional system is insufficient, and a nonconventional system is required, MDE must be involved and must approve the final permit.

Local approving authorities conduct inspections, and the employees that conduct these inspections are licensed environmental health specialists, as noted above.

State Expenditures: MDE advises that its costs increase significantly beginning in fiscal 2021 to hire several new employees to develop regulations, conduct trainings, administer examinations, and license and certify on-site wastewater service professionals in accordance with the bill's provisions. The Department of Legislative Services (DLS) concurs that MDE incurs some initial costs to establish the board and to collect fees from current practitioners until MDE, in consultation with the board, adopts regulations. However, DLS disagrees that MDE's initial costs are significant; the regulations do not have to be adopted until July 1, 2023 (the beginning of fiscal 2024), and affected individuals do not have to be licensed until July 1, 2024 (the beginning of fiscal 2025).

Thus, special fund expenditures increase by \$47,226 in fiscal 2021, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one administrator to help establish the board, track and collect fees from current practitioners, and generally begin to implement the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$41,860
Other Operating Expenses	<u>5,366</u>
Total FY 2021 State Expenditures	\$47,226

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. MDE likely incurs additional costs beginning in fiscal 2024, which is when on-site wastewater service professionals must begin the licensure process (in order to be licensed by July 1, 2024). Costs could include hiring individuals to train wastewater service professionals, administer licensing examinations, and issue licenses. However, the need for additional personnel depends largely on several unknown factors, including whether any required training or examinations are conducted by MDE in house or by third-party providers. Accordingly, without actual experience under the bill, a reliable estimate of any additional costs cannot be made at this time and are not reflected in this fiscal and policy note.

State Revenues: All individuals who (1) hold a license, registration, or certification to perform on-site wastewater services in the State as of January 1, 2020 and (2) wish to continue performing wastewater services in the State must pay a \$150 fee by December 31, 2020, and every two years thereafter until MDE sets license fees through regulation. Additionally, the bill requires MDE, in consultation with the board, to set reasonable fees for the issuance and renewal of licenses and other services the board provides at a level to *approximate* the costs of maintaining the board. Both the initial fees and the license fees established by regulation accrue to the On-Site Wastewater Professional Fund established by the bill. According to MDE, there are as many as 7,602 individuals who must be licensed under the bill. Thus, special fund revenues increase significantly in fiscal 2021 and 2023 from the payment of fees by existing service providers. Special fund revenues from license fees (and any other service-related fees) begin to accrue once the regulations adopted by MDE pursuant to the bill take effect, likely in fiscal 2024.

For illustrative purposes only, if all 7,602 individuals pay the \$150 fee to continue to provide services prior to the adoption of regulations, special fund revenues increase by \$1.14 million in fiscal 2021. There is a similar increase in fee revenues in fiscal 2023 since the \$150 fee must be paid every two years until license fees are established through regulation.

As noted above, once fees are established by regulation, special fund revenues from license fees (and any other service-related fees) begin to accrue. Although an exact estimate of the fee revenue cannot be made at this time, it is assumed, given the number of individuals who are potentially affected, that fee revenue and the fund balance from fees paid by existing service providers fully cover costs each year. The timing and amount of fee

revenue, however, ultimately depend on the fees established by regulation. DLS notes that licenses are valid for two years.

Special fund revenues may also increase in any given year as a result of the bill's monetary penalty provisions and from interest earned on the new special fund.

Small Business Effect: The bill has a significant impact on small businesses that provide on-site wastewater services. Expenditures increase for small businesses that conduct septic system inspections and install septic systems to pay the initial fees to be able to continue providing services prior to the adoption of regulations, pay application/license fees established through regulation, attend training, take licensing examinations, and meet any other requirements established by MDE and the board. Under current law, septic system inspectors are only required to take a one-time free course for certification. Septic system installers may have already obtained certifications in installing specific types of systems, but there are no general licensing requirements. Further, some of these individuals may already be licensed by another board.

Additional Information

Prior Introductions: HB 840 of 2019, a similar bill, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Worcester counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510