

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 407 (Delegate Stein)
 Environment and Transportation Education, Health, and Environmental Affairs

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, 2022, 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, 2022, 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 an administrative penalty for violators; administrative 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, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$123,400 in FY 2022; future years reflect annualization and ongoing costs. General fund revenues increase beginning in FY 2022 from license application and renewal fees. Special fund revenues for BRF increase minimally due to the bill’s administrative penalty provision.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF/SF Revenue	-	-	-	-	-
GF Expenditure	\$123,400	\$102,400	\$105,100	\$108,800	\$112,600
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 on determining 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 an administrative penalty of up to \$10,000. Each septic system that an individual knowingly inspects without a valid license is a separate violation. Any administrative penalty collected by MDE pursuant to the bill must be paid into BRF's Septics Account.

Current Law:

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.

Failing Septic Systems

A "failing on-site sewage disposal system" is 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).

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 2022 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 administrative 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 at this time, 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 \$123,380 in fiscal 2022, which accounts for the bill's October 1, 2021 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, including the purchase of a vehicle, 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	\$75,587
Vehicle Purchase	32,000
Operating Expenses	<u>15,793</u>
Total FY 2022 State Expenditures	\$123,380

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

This estimate does not account for the cost of training materials. MDE estimates that training materials cost approximately \$20 per person. Since the exact number of individuals that must be licensed under the bill is unknown, a reliable estimate of training material costs cannot be made at this time.

MDE advises that individuals who conduct other types of septic system inspections (not just inspections conducted for property transfers) must be licensed under the bill, since the licensing requirement applies to any individual engaging in the business of inspecting septic systems. However, the license established by the bill is referred to as an “on-site wastewater property transfer inspection license.” Accordingly, this analysis assumes that the bill’s licensing requirement only applies to individuals inspecting septic systems for purposes of property transfers. To the extent the regulated community is broader than anticipated, MDE likely needs additional staff.

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.

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 course for certification (that was free until recent years), 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: SB 254 of 2020 passed the Senate with amendments and received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: SB 22 (Senator Young) - Education, Health, and Environmental Affairs.

Information Source(s): Harford and Montgomery counties; Maryland Association of County Health Officers; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: rh/lgc
First Reader - January 19, 2021
Third Reader - April 1, 2021
Revised - Amendment(s) - April 1, 2021
Enrolled - April 9, 2021
Revised - Amendment(s) - April 9, 2021

Analysis by: Kathleen P. Kennedy

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