

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Enrolled - Revised

House Bill 1069

(Delegate Stewart)

Environment and Transportation

Education, Health, and Environmental Affairs

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Water Supply - Private Well Safety Program

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This bill requires the owner of residential rental property that is served by a private water supply well to provide for water quality testing every three years and disclose the results to current and prospective tenants, as specified. When a water quality test reveals that a private water supply well is contaminated, the owner must notify the Maryland Department of the Environment (MDE) and the local health department (LHD) and resolve the issue, as specified. A person who violates the bill's provisions is subject to a civil penalty of up to \$1,000. An LHD may enforce the bill and collect the civil penalty. MDE must adopt regulations that establish the minimum criteria for water quality testing under the bill. In addition, by December 31, 2022, MDE must report to specified legislative committees regarding reports of private water supply contamination. **The bill takes effect July 1, 2021.**

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Fiscal Summary

**State Effect:** Assuming that private residential rental property owners are responsible for costs to conduct water quality testing under the bill, there is no material fiscal impact on State agencies. MDE can generally implement the bill, including promulgating regulations and submitting the required report, with existing budgeted resources. State revenues are not materially affected.

**Local Effect:** Local expenditures increase for LHDs that choose to enforce the bill. Local expenditures may increase further to the extent that LHDs provide any support to affected rental property owners beyond merely receiving notice of contamination, as discussed below. Potential minimal increase in local revenues from the bill's civil penalty.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** An owner of residential rental property that is served by a private water supply well must notify a tenant (1) after completing any water quality test required by the bill and (2) of the most recent water quality test when the tenant signs a lease.

When a private water supply well is contaminated by a substance that exceeds (1) the maximum contaminant level for that substance for drinking water quality, as set by the U.S. Environmental Protection Agency or (2) a harmful level for that substance, as determined by MDE, the owner of the residential rental property that is served by the well must (1) notify MDE and the LHD about the contamination; (2) provide an approved potable water supply until the contamination is permanently remediated; and (3) resolve the issue within 60 days of knowing of the contamination. Resolution of the issue includes (1) providing an approved potable water supply on an ongoing basis; (2) permanently remediating the contamination; or (3) providing the tenant with the option to terminate the lease.

By December 31, 2022, MDE must report to the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee regarding any reports of private water supply contamination received by MDE pursuant to the bill.

**Current Law:** MDE is responsible for primary enforcement of the federal Safe Drinking Water Act, which, among other things, ensures that public water systems meet strict safe drinking water standards. These standards do not apply to private drinking water wells. Rather, private well owners are responsible for the safety of their own wells after initial construction and certification is completed.

### *Water Well Construction in the State, Generally*

MDE's water well construction program regulates the permitting and installation of water wells in the State, including for potable and nonpotable supply wells, geothermal wells (both open and closed loop), irrigation wells, geotechnical/environmental wells, and industrial wells. Wells must be installed by a Maryland-licensed well driller, and the licensed well driller must obtain a well construction permit prior to drilling. Regulations establish the standards that a proposed site must meet, along with other restrictions and requirements, in order to drill a new well, along with construction standards that must be met.

MDE delegates authority to enforce the State's water well construction regulations to LHDs and other local permitting agencies, which are referred to as approving authorities. MDE provides technical support to the local approving authorities. Licensed well drillers

apply to the local approving authority to obtain a well construction permit prior to drilling. After obtaining a permit to drill, the well driller must also submit a completion report to the approving authority.

If the well is to be used as a potable water supply, a Certificate of Potability (COP) is required before the well is put into service. A COP is issued after a series of laboratory tests indicate the water is safe for human consumption. There are also regulatory standards for well maintenance and repair and abandoning and sealing wells. A well must be considered abandoned when the well is (1) in such a state of disrepair that continued use for its intended purpose is impracticable; (2) the well has been permanently disconnected from any water supply system or irrigation system; and (3) the well is unsuccessful and does not meet specified regulatory standards. Further, all wells constructed prior to April 1, 1969, that are not in use must be abandoned.

**Local Fiscal Effect:** In general, LHDs in the State are understaffed and face funding shortfalls, particularly in light of local response efforts to the COVID-19 pandemic. The Maryland Association of County Health Officers (MACHO) notes that LHDs are also experiencing difficulty recruiting and retaining environmental health specialists throughout the State. Thus, expenditures increase for LHDs that choose to enforce the bill due to the need to hire staff. For context, MACHO estimates that if each of the 24 LHDs in the State hire a quarter-time employee, costs total approximately \$370,000 annually.

Additionally, to the extent that LHDs must provide any resources to residential rental property owners beyond merely receiving notifications regarding contamination, expenditures for LHDs increase further. For example, if LHDs provide tracking of contamination results, reviews or analysis of drinking water quality tests, or assistance with mitigating contamination issues for affected owners, LHDs likely need to hire additional staff.

Revenues for LHDs that choose to enforce the bill may increase minimally due to the bill's civil penalty. However, any penalty revenues are not expected to offset local enforcement and implementation costs.

**Small Business Effect:** Expenditures for residential rental property owners increase to conduct well water testing at least every three years, disclose the results to tenants, and as necessary, notify MDE and LDHs, and address any contamination issues (which could include providing a temporary potable water supply, permanently remediating the contamination, or providing the tenant with the option to terminate a lease). On the other hand, residential rental property owners and tenants (which could include small businesses operating out of residential rental properties) benefit from a clearer understanding of the state of private water supply wells.

Small businesses in the State that provide well remediation or repair services, conduct well water testing, or supply temporary water sources could benefit from an increase in the demand for their services.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Prince George's County; Maryland Association of County Health Officers; Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; State Department of Assessments and Taxation; Department of Legislative Services

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