

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 113 (Senator Hester)
 Education, Health, and Environmental Affairs

**Environmental Health Specialists and On-Site Sewage Disposal Systems –
 Transfer of Responsibilities and Standards, Regulations, Applications, and Plans**

This bill transfers the Board of Environmental Health Specialists (BEHS) from the Maryland Department of Health (MDH) to the Maryland Department of the Environment (MDE) under Title 11 of the Environment Article (Environmental Health Specialists) and makes conforming changes. In addition, the bill establishes several new standards and requirements for MDE and local approving authorities related to the installation and regulation of septic systems and the regulation of environmental health specialists. Among other things, MDE must (1) create an online system to track the status of an application for the installation of an on-site sewage disposal system (commonly referred to as a septic system) and associated permits and (2) host monthly informational meetings on the interpretation and application of Title 11.

Fiscal Summary

State Effect: Net increase in general fund expenditures of an estimated \$1.1 million in FY 2023. Future years reflect annualization, inflation, elimination of one-time costs, and ongoing expenses. General fund revenues from the board’s activities are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,125,200	277,900	285,800	293,200	301,100
Net Effect	(\$1,125,200)	(\$277,900)	(\$285,800)	(\$293,200)	(\$301,100)

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

Local Effect: Overall, the bill is anticipated to primarily have an operational impact on local governments (mainly local health departments (LHDs)). However, local finances could also be affected, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: In addition to being responsible for all the functions, powers, duties, assets, liabilities, and records of BEHS, MDE must (1) develop an online system to track the status of septic system installation applications and any associated permits; (2) provide incentives to encourage the timely completion of the review and approval of plans for the installation of septic systems; (3) develop and make available standardized permit forms for septic system installations; (4) promote consistent standards and regulations under Title 11 of the Environment Article; (5) develop and make available statewide standards for private environmental health specialists who work with septic systems; (6) host monthly informational meetings on the interpretation and application of Title 11 of the Environment Article and any corresponding regulations for local government employees who are or work with environmental health specialists; and (7) by October 1, 2023, develop regulations that establish that an existing regulatory standard under COMAR 26.04.03.02 requiring a minimum area of 10,000 square feet for subsurface disposal of sewage applies to detached dwellings.

The bill also requires that an application for the installation of a septic system be approved or denied within two months of receipt by the approving authority. If an application is denied, the bill requires the approving authority to provide the applicant with information on how to appeal the decision.

Current Law:

State Board of Environmental Health Specialists

BEHS was created in 1969 to ensure that individuals practicing in Maryland as environmental health specialists meet minimum professional standards. The nine-member board regulates licensed environmental health specialists as well as environmental health specialists in training (individuals who meet the educational requirements for licensure but are obtaining relevant supervised experience); oversees approval of certificates of eligibility for obtaining employment (for those individuals who meet the educational requirements for licensure and are ready to begin obtaining relevant supervised experience but have not yet begun); approves continuing education courses for licensees; and occasionally imposes disciplinary sanctions.

Chapter 667 of 2012 altered the funding for BEHS from general to special funds when the board was transferred from MDE to MDH (then the Department of Health and Mental Hygiene). Chapters 483 and 484 of 2021 repealed the State Board of Environmental Health Specialists Fund and instead required the board to pay any money collected from fees into the general fund. As a result, the board is currently funded with general funds and all fee revenue is deposited into the general fund.

Septic System Installers and Inspectors

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 are approved third parties 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.

Chapters 444 and 445 of 2021 require MDE to adopt regulations that establish license eligibility criteria, minimum training standards, license terms, and fees for license applications and renewal for septic system property transfer inspectors. Further, Chapters 444 and 445 require any person (unless exempted) who engages in the business of inspecting a septic system to obtain an on-site wastewater property transfer inspection license issued by MDE by July 1, 2022. As of the writing of this fiscal and policy note, MDE has not promulgated the required regulations.

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.

The *Code of Maryland Regulations* (COMAR) 26.03.03 addresses water supply and sewerage systems in the subdivision of land in the State. The purpose of the regulation is to ensure that subdivisions in the State are served by an adequate community water supply

and community sewerage system. COMAR 26.04.03.02 establishes the procedures for a developer or subdivider to submit plans to secure approval prior to subdividing land. COMAR 26.04.03.03 establishes the minimum ownership requirements and specifies that for each dwelling unit, a minimum area of 10,000 square feet (exclusive of buildings, easements, right-of-ways, and other permanent physical objects) must be provided for the subsurface disposal of sewage.

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.

State Expenditures:

Maryland Department of the Environment

General fund expenditures for MDE increase by \$1,233,345 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of transferring one administrative officer from MDH (as discussed below) and hiring two additional full-time employees (one administrative officer and one environmental health specialist) and one half-time assistant Attorney General to (1) operate the board under MDE; (2) oversee the creation of an online septic system application tracking database; (3) provide incentives to encourage timely completion of the review and approval of septic installation plans; (4) develop the required standardized permit forms and statewide standards for private environmental health specialists who work with septic systems; and (5) conduct the required monthly meetings. It includes salaries, fringe benefits, one-time start-up costs (including contractual costs for establishing an online database) and ongoing

operating expenses. The information and assumptions used in calculating the estimate are stated below:

- there are approximately 500 environmental health specialists licensed by BEHS;
- current staffing levels at MDH have resulted in a backlog of license applications;
- in addition to the transfer of board duties, the bill establishes additional responsibilities for MDE;
- MDE does not have any shared board staff and existing MDE staff are fully subscribed; and
- the one MDH employee dedicated to BEHS transfers to MDE.

Positions (New and Transferred)	3.5
Salaries and Fringe Benefits	\$204,370
Contractual Database Costs	1,000,000
Other Operating Expenses	<u>28,975</u>
Total MDE FY 2023 Expenditures	\$1,233,345

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including database maintenance costs.

Maryland Department of the Health

As noted above, MDH currently has one employee dedicated to BEHS. Although not specified in the bill, for purposes of this analysis, it is assumed that the existing MDH employee is transferred to MDE.

The board also pays overhead costs and for a portion of shared staff costs for employees who work for MDH's health occupations boards. Based on information from fiscal 2021, it is estimated that MDH general fund expenditures decrease by approximately \$108,165 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date, and by approximately \$144,220 annually thereafter due to the transfer of the board (and the associated employee) from MDH to MDE.

Local Fiscal Effect: MDE advises that some of the site-specific evaluations that are required under COMAR (and for health and safety reasons) are seasonal, and that an application may not be able to be adequately evaluated within the two-month timeframe required by the bill. Thus, the bill's requirement that an application for the installation of a septic system must be approved or denied within two months of receipt by an approving authority (which are primarily LHDs) likely means that additional applications that hit the two-month point are denied that otherwise would not have been. Both MDE and several

local governments (*e.g.*, Anne Arundel and Frederick counties) anticipate this likely results in additional appeals, hearings, and an overall increase in administrative time needed to evaluate septic system applications, which could result in an increase in expenditures. On the other hand, local governments may collect additional application fees from applications to install septic systems that need to be resubmitted; however, any such increase in fee revenues is expected to be minimal.

Local governments may also incur programming costs to develop the capacity to utilize and input data into MDE's online tracking system. On the other hand, LHDs likely benefit from the ongoing informational meetings for local government staff on the interpretation and application of Title 11 of the Environment Article and any related regulations.

Small Business Effect: As discussed above, the bill's requirement that an application for the installation of a septic system must be approved or denied within two months of receipt by an approving authority likely results in some applications being denied that would not otherwise be denied. To the extent that small businesses pursue the installation of septic systems (such as contractors, developers, installers of such systems, *etc.*), additional denials could delay the implementation of a project, result in additional permitting fees being paid, and potentially increase legal costs to pursue appeals and/or hearings.

On the other hand, small businesses may benefit from an increase in standardization/clarification of the standards related to installing septic systems. They may also benefit from the online tracking system developed under the bill.

Additional Comments: Although COMAR 26.04.03.02 is cited in Section 3 of the bill, this analysis assumes the bill's intent is to cite COMAR 26.04.03.03, which establishes the minimum ownership requirements and specifies that for each dwelling unit, a minimum area of 10,000 square feet (exclusive of buildings, easements, right-of-ways, and other permanent physical objects) must be provided for the subsurface disposal of sewage.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Health; Legislative Services; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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