

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 353 (Senator Young)
 Education, Health, and Environmental Affairs

On-Site Sewage Disposal Systems - Construction and Inspection Licenses

This bill repeals the current law requirements related to the certification of those engaged in the business of inspecting on-site sewage disposal systems (commonly referred to as septic systems) and instead requires any person who engages in the business of constructing, installing, or inspecting a septic system to obtain a corresponding septic construction or septic inspection license issued by the Maryland Department of the Environment (MDE). By regulation, MDE must establish license eligibility criteria and minimum training requirements, as specified. An applicant must (1) submit an application to MDE on a form provided by MDE and (2) pay an application fee set by MDE.

Fiscal Summary

State Effect: General fund expenditures increase by \$332,300 in FY 2020; future years reflect annualization and ongoing costs. *Under one set of assumptions*, general fund revenues from license application fees increase by an estimated \$300,000 annually from FY 2020 through 2023 and minimally in FY 2024.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	\$300,000	\$300,000	\$300,000	\$300,000	-
GF Expenditure	\$332,300	\$372,700	\$380,900	\$389,600	\$398,600
Net Effect	(\$32,300)	(\$72,700)	(\$80,900)	(\$89,600)	(\$398,600)

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

Local Effect: Expenditures for local health departments and local approving authorities may increase to cover employee license application fees and training costs. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A person may not engage in the business of constructing or installing a septic system unless the person holds a valid septic construction license issued by MDE. A person may not engage in the business of inspecting a septic system unless the person holds a valid septic inspection license.

The training requirements established by regulation for a septic inspection license must include determining when a septic system is (1) in need of replacement or repair or (2) inconsistent with statutory or regulatory requirements.

Nothing in the bill may be interpreted to preempt or supersede any provision of local law.

Current Law/Background:

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. MDE's Onsite Systems Division offers the free, but required, training for septic system inspectors between 6 and 15 times annually. MDE maintains a list of trained inspectors on its website.

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).

Licensure as an environmental health specialist in Maryland requires applicants to meet minimum education and training requirements. If an applicant meets one of the statutory combinations of required education and experience, the applicant is eligible to take the qualifying exam. If the applicant passes the exam and pays the requisite fees, the board issues the applicant a license. The board may waive the exam requirement under specified circumstances. The initial license fee is \$75. Examination fees are established by the examination service, and the current fee is \$125. There are ongoing continuing education

requirements, and licensees must renew their license every two years. The biennial renewal fee is \$200. A number of current BEHS-approved continuing education courses involve training specific to septic system inspections.

The Department of Legislative Services (DLS) notes that, according to survey results from a sunset evaluation of the board in 2015, a large number of licensed environmental health specialists also hold a credential from the National Environmental Health Association (NEHA). The registered environmental health specialist/registered sanitarian credential issued by NEHA is recognized throughout the country.

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 throughout the year. Currently, these offerings include training for sand mound construction (and a refresher course), at-grade mound construction, the installation of systems with best available technology (BAT) for the removal of nitrogen, and BAT operation and maintenance. MDE advises that more than 2,500 contractors hold a certification for one or all of these trainings. Current regulations require certification prior to installing a sand mound system, at-grade system, or a BAT system. BAT septic system service providers must also be certified.

MDE notes that several, but not all, counties already license the installation of septic systems. For example, the Frederick County Health Department requires a license prior to installing a septic system. The county also licenses sewage disposal contractors, although the license only requires that the contractor have a driver's license and pay a fee. The county notes that master plumbers already qualify for the county sewage disposal contractor license.

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 requirements. 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 Revenues: The bill authorizes MDE to set an application fee for a license to construct or install a septic system and a license to inspect a septic system. Because the bill does not direct application 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 by approximately \$300,000 annually from fiscal 2020 through 2023 from application fees. This estimate is based on the following information and assumptions:

- there are approximately 4,000 individuals in the State who need to be licensed;
- MDE phases in the licensing requirement and conducts the required training for 1,000 individuals annually from fiscal 2020 through 2023, so all initial applicants are trained and licensed by the end of fiscal 2023; and
- MDE anticipates charging an application fee of \$300 per applicant. (To the extent MDE sets the fee at a higher level to offset more of its costs, as estimated below, fee revenues increase.)

The bill is silent as to how long a license issued by MDE under the bill is valid for. The bill is also silent as to whether MDE has the authority to charge a license renewal or ongoing training fee, so it is unclear whether general fund revenues continue to increase beyond the initial license application period. Thus, this estimate does not include any revenues from license renewals or training expenditures in the out-years. However, the analysis does assume that a minimal number of individuals apply for initial licensure and pay the application fee in the out-years.

State Expenditures: General fund expenditures for MDE increase by \$332,251 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of hiring three environmental health specialists and one administrative aide to (1) develop license eligibility criteria and minimum training requirements (some of which need to be specific to different regions in the State) and promulgate regulations; (2) conduct outreach to affected contractors, inspectors, and counties; (3) conduct statewide training; and (4) issue and track licenses and applications. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including training materials and the rental of training spaces. The information and assumptions used in calculating the estimate are stated below:

- there are approximately 4,000 individuals who need to be licensed;
- MDE phases in the licensing requirement and conducts the required training for 1,000 individuals per year from fiscal 2020 through 2023;
- MDE conducts 14 training classes throughout the State each year;
- there are approximately 70 trainees in each training class;
- MDE conducts ongoing continuing education classes and training in the out-years;
- MDE’s Onsite Systems Division is currently staffed by four individuals, and the bill’s requirements significantly increase the scope of the training programs offered; and
- MDE cannot absorb the additional workload resulting from the bill.

Positions	4
Salaries and Fringe Benefits	\$182,153
Training Materials	125,000
Other operating Expenses	<u>25,098</u>
Total FY 2020 State Expenditures	\$332,251

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

To the extent that MDE is unable to phase in licensure and must issue licenses more quickly than currently anticipated, general fund expenditures increase significantly further in

fiscal 2020 and 2021 for MDE to hire contractual assistance to (1) conduct the required training and (2) issue licenses.

Local Expenditures: Local health departments and approving authorities employ licensed environmental health specialists who conduct septic system inspections, among other duties. Under the bill, these individuals must also obtain a septic system inspection license from MDE. To the extent that local government employers cover employee licensing fees, expenditures increase. DLS notes that most, if not all, of these employees already pay license fees and are responsible for continuing education requirements from BEHS. Further, many pay national licensing fees as well.

Frederick County notes that the bill may result in more qualified and better trained septic system installers and inspectors but that there could be fewer installers and inspectors overall. To that end, DLS also notes that during a 2015 sunset evaluation of BEHS, recruitment and retention of qualified environmental health specialists was an ongoing concern that was also noted during 2009 and 2011 sunset evaluations. This was largely attributed to pending retirements, difficulty recruiting new applicants and retaining qualified professionals due to stringent educational and experience requirements, low entry-level wages, the lack of opportunities for advancements within small local health departments, and budget constraints.

Small Business Effect: Expenditures increase for small businesses that conduct septic system inspections and install septic systems to pay application fees and attend training, as required under the bill. Although it is unclear whether individuals must pay ongoing license renewal or training fees, expenditures in the out-years continue at a minimum to attend training courses. Under current law, septic system inspectors are only required to take a one-time free course for certification, so the bill's licensing requirements are a relatively significant change. Septic system installers may have already obtained certifications in installing specific types of systems, but there are no general licensing requirements. Thus, the bill's changes represent a significant increase in regulation for these individuals as well.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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