

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1068 (Delegate Stein)

Environment and Transportation and  
 Health and Government Operations

Local Health Departments, Environmental Health Specialists, and On-Site  
 Sewage Disposal Systems - Systems Standards, Regulations, Applications, and  
 Funding

This bill establishes various requirements, standards, and funding provisions generally related to on-site sewage disposal systems (septic systems) and environmental health specialists. Among other things, the bill requires the Maryland Department of the Environment (MDE) to (1) create a system for tracking online the status of an application for the installation of a septic system and associated permits and (2) update specified sewage disposal regulations. In addition, the bill requires the Maryland Department of Health (MDH), in consultation with MDE, to, among other things, promote consistent standards and regulations for statutory provisions governing environmental health specialists. For fiscal 2024 and each fiscal year thereafter, the Governor must include in the annual budget bill an appropriation of \$5.0 million to MDH for licensed environmental health specialists, as specified.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$3.6 million in FY 2023; out-years reflect annualization, inflation, ongoing costs, and the mandated funding. State revenues are not affected. **This bill establishes a mandated appropriation beginning in FY 2024.**

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3.6	5.2	5.2	5.2	5.2
Net Effect	(\$3.6)	(\$5.2)	(\$5.2)	(\$5.2)	(\$5.2)

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

**Local Effect:** Local revenues increase beginning in FY 2024 due to the mandated State funding for licensed environmental health specialists; expenditures increase correspondingly. Other impacts are anticipated to be primarily operational.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill requires MDE to (1) create a system for tracking online the status of an application for the installation of a septic system and any associated permits and (2) develop and make available standardized permit forms for septic system installations. If an approving authority denies an application for the installation of a septic system, the approving authority must provide the applicant with information on how to appeal the decision.

Any database or system that is created by MDE for local health departments (LHDs) must be designed in a manner that (1) automatically fills in relevant data that has already been entered for other State and local databases and systems and (2) makes the data entered available for automatically filling other State and local databases and systems.

By October 1, 2023, MDE must adopt regulations that establish that an existing regulatory standard under the Code of Maryland Regulations (COMAR) 26.03.03.03 requiring a minimum area of 10,000 square feet for subsurface disposal of sewage applies to detached dwellings.

The bill requires MDH, in consultation with MDE, to (1) promote consistent standards and regulations under Title 21 of the Health Occupations Article, which governs environmental health specialists; (2) develop and make statewide standards for private environmental health specialists who work with septic systems; and (3) host monthly information meetings on the interpretation and application of Title 21 of the Health Occupations Article and any corresponding regulations for local government employees who are or work with environmental health specialists.

For fiscal 2024 and each year thereafter, the bill requires the Governor to include an appropriation of \$5.0 million in the annual budget bill for MDH to address wage disparities and staffing shortages of licensed environmental health specialists.

## **Current Law:**

### *State Board of Environmental Health Specialists*

The 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, which is housed within MDH, 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.

### *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.

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 26.03.03.03 establishes the content that must be included in a county comprehensive solid waste management plan. 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 Health*

General fund expenditures for MDH increase by \$5.0 million annually beginning in fiscal 2024 – due to the bill’s mandated appropriation – to address wage disparities and staffing shortages for environmental health specialists licensed by BEHS. MDH advises that the department can implement the bill’s requirements with existing budgeted staff and resources. To the extent that MDH workloads increase more than anticipated to distribute the mandated funding for licensed environmental health specialists, promote and develop standards and regulations, and host the monthly meetings, as required under the bill, MDH may request additional resources through the annual budget process.

*Maryland Department of the Environment*

General fund expenditures for MDE increase by \$3,571,069 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one administrator to (1) oversee the contract for and the development and maintenance of the required database; (2) consult with MDH to promote and develop standards and regulations (and likely attend MDH’s monthly meetings); (3) update MDE regulations; (4) ensure approval authorities provide the required appeal information; and (5) provide assistance to LHDs, MDH, and any other entities that use the database. It includes a salary, fringe benefits, one-time start-up costs (which includes contractual costs to develop the database), and ongoing operating expenses, including ongoing database maintenance. The estimated database development costs are based on estimates from a preliminary conversation with a business analyst to develop a similar database as well as historical costs to develop similar databases. It should be noted that, according to MDE, MDH is working with the Department of Information Technology to review a possible joint, collaborative information technology effort between MDH, MDE, and LHDs for an online tracking system for septic system permit applications that mirrors the one required by the bill. Accordingly, although the cost of the database has been included in this estimate, it is possible that a similar database would have been developed – and associated costs incurred – even in the absence of the bill.

Position	1.0
Salary and Fringe Benefits	\$63,726
Database Development	3,500,000
Other Operating Expenses	<u>7,343</u>
<b>Total MDE FY 2023 Admin. Costs</b>	<b>\$3,571,069</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses, including ongoing contractual services of \$150,000 annually for database maintenance.

**Local Fiscal Effect:** Many of the environmental health specialists licensed by BEHS work for LHDs. Accordingly, revenues for LHDs increase beginning in fiscal 2024 due to the bill's mandated appropriation. Specifically, the bill requires the Governor, beginning in fiscal 2024, to include in the annual budget bill an appropriation of \$5.0 million for MDH to address wage disparities and staffing shortages of environmental health specialists licensed by BEHS. If the \$5.0 million in annual funding is divided evenly among Maryland's 24 counties (and only provided to LHDs – and not private licensed environmental health specialists), each county receives approximately \$208,000 annually. Expenditures increase correspondingly.

Overall, the remainder of the bill's impacts are anticipated to be primarily operational. Approving authorities (which are primarily LHDs) likely benefit from the required database and efforts to standardize and clarify State septic system permitting throughout the State. It is anticipated that the automatic data entry features and mandatory compatibility between local and State databases and systems likely reduce the time it takes to complete related tasks.

**Small Business Effect:** Small businesses may benefit from an increase in standardization/clarification of the standards related to the installation of septic systems. They may also benefit from the online tracking system developed under the bill.

**Additional Comments:** Although COMAR 26.03.03.03 is cited in Section 2 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.

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## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 113 (Senator Hester) - Education, Health, and Environmental Affairs.

**Information Source(s):** Baltimore, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland Association of County Health Officers; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2022  
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