

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 479

(Senator Hester)

Education, Health, and Environmental Affairs

Rules and Executive Nominations

Environment - On-Site Wastewater Services - Regulation

This bill establishes the State Board of On-Site Wastewater Professionals as a unit within the Maryland Department of the Environment (MDE) to regulate and license individuals who provide on-site wastewater services in the State. MDE must adopt implementing regulations in consultation with the board by July 1, 2025. To support the board’s operations, the bill establishes the On-Site Wastewater Professionals Fund, funded primarily by fees, penalties, and fines collected under the bill. The bill also establishes (1) reporting requirements; (2) provisions governing license denials, revocations, and suspensions; and (3) penalties for violations. Finally, the bill repeals existing provisions related to the licensing of on-site wastewater property transfer inspectors. **The bill generally takes effect July 1, 2022; the repeal of provisions related to the licensing of on-site wastewater property transfer inspectors takes effect June 30, 2025.**

Fiscal Summary

State Effect: Special fund revenues increase significantly in FY 2023 and 2025 from fees paid by existing service providers. Beginning in FY 2026, special fund revenues increase from license fees. Special fund revenues may also increase beginning in FY 2023 from the bill’s penalty provisions. General fund revenues decrease beginning in FY 2026 from the repeal of existing licensing provisions. Special fund expenditures increase by \$92,600 in FY 2023 for staff; out-years reflect hiring additional staff, inflation, and ongoing costs.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	\$0	\$0	\$0	(-)	(-)
SF Revenue	-	-	-	-	-
SF Expenditure	\$92,600	\$156,300	\$154,100	\$221,300	\$220,700
Net Effect	-	(-)	-	-	-/(-)

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

Local Effect: Because local employees are exempt from the bill’s provisions and local governments are not responsible for implementation or enforcement, the bill is not anticipated to have a direct, material impact on local government operations or finances; however, the bill may indirectly affect some local jurisdictions, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “On-site wastewater services” means any activity associated with the design, installation, operation and maintenance, pumping, repair, or property transfer inspection of an on-site wastewater system. On-site wastewater services does not include any type of on-site wastewater system inspection other than a property transfer inspection. “On-site wastewater system” means (1) a wastewater system designed to treat and dispose of effluent on the same property that produces the wastewater or on an easement or (2) a holding tank. The term includes a septic or any other on-site sewage disposal system. However, the term does not include a wastewater treatment system that requires a discharge permit from MDE or that treats 5,000 or more gallons per day.

State Board of On-Site Wastewater Professionals

The board is subject to the Maryland Program Evaluation Act (MPEA), and any final action of the board is subject to review by the Secretary of the Environment or the Secretary’s designee. The bill establishes provisions regarding board membership and the terms of board members. Each board member is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The board may employ a staff in accordance with the State budget.

The board, in consultation with MDE, must make recommendations to MDE regarding the adoption of regulations (discussed in more detail below), collect and account for the fees collected pursuant to the bill, and keep a current record of all individuals and entities licensed under the bill’s provisions. The board must also establish a code of ethics provided by MDE for board members and individuals licensed and certified by the board. Additionally, the board must review the regulations proposed by MDE pursuant to the bill. The board must be fully operational by June 1, 2023.

Regulations and Enforcement of Standards

The board must make recommendations to MDE on the adoption of regulations to carry out the bill’s provisions, including (1) licensing procedures, definitions, qualifications, and continuing education requirements for specified categories (designer, master installer and

journey installer, master on-site wastewater property transfer inspector and journey on-site wastewater property transfer inspector, master pumper and journey pumper, and master operation and maintenance provider and journey operation and maintenance provider); (2) certification procedures, definitions, qualifications, and continuing education requirements for specified categories (designer, advanced treatment installer, mound installer, drip dispersal installer, pump dispersal system installer, advanced treatment operation and maintenance provider, advanced treatment unit pumper, advanced treatment property transfer inspector, and any other category associated with a specific on-site wastewater treatment technology); and (3) minimum standards for any processes, procedures, techniques, and materials associated with on-site wastewater systems.

By June 1, 2024, the board must make recommendations to MDE for establishing the licensing and certification procedures. By July 1, 2025, MDE, in consultation with the board, must adopt implementing regulations.

Fees to Support the Newly Established On-Site Wastewater Professionals Fund

MDE, in consultation with the board, must set by regulation reasonable fees for the issuance and renewal of licenses and for other board-provided services. The fees must be set to produce funds to approximate the costs of the creation, maintenance, reasonable administrative costs, and ongoing activities of the board. The board must publish a schedule of the fees. All funds collected (including fees collected from existing service providers before the licensing program is established, as discussed below) must be deposited into the On-Site Wastewater Professionals Fund, a special fund established by the bill and administered by the board. The fund consists of all fees, penalties, and fines collected under the bill's provisions, money appropriated in the State budget, interest earnings of the fund, donations, and any other money from any other source accepted for the benefit of the fund.

The fund must be used only to pay for the costs of the board, as specified, and to implement the bill. Expenditures from the fund may be made only in accordance with the State budget.

Reporting Requirements

The board must prepare and submit an annual report, by December 31 each year, to the Secretary of the Environment on (1) the status of the fund; (2) revenues to and expenditures from the fund; (3) the efficiency of, and compliance with, the regulations adopted by MDE to implement the bill's provisions; and (4) whether the fees set by MDE by regulation need to be reviewed and adjusted.

License Requirements and Applicability

Generally, an individual must be licensed by the board before the individual may provide on-site wastewater services in the State. However, an individual who provides on-site wastewater services in the State may continue to provide such services until MDE establishes the regulations that implement the bill's licensing requirements if the individual (1) complies with all applicable State and local laws and regulations; (2) pays a \$150 fee to MDE by December 31, 2022; and (3) pays a \$150 renewal fee every two years thereafter until MDE sets license and any other service-related fees by regulation in accordance with the bill.

All individuals who provide on-site wastewater services in the State must be licensed by the board by July 1, 2026. To qualify for a license, an applicant must meet the requirements established by MDE by regulation, submit an application to the board, and pay the application fee set by MDE by regulation. Licenses are valid for two years. In accordance with regulations developed under the bill, the board may issue a certification to an individual to perform specific tasks associated with on-site wastewater services if the individual is (1) licensed by the board or (2) holds a board-approved professional license.

The bill's provisions do not apply to an individual employed by a local, State, or federal agency who is performing duties associated with that employment. The bill does not prevent a local government from imposing requirements or standards that are more stringent than those established under the bill.

Denial/Revocation/Suspension of Licenses and Penalties for Violations

The bill establishes grounds for the board to deny a license application, reprimand a licensee, and suspend or revoke a license. The bill establishes related hearing provisions and authorizes a person aggrieved by a final decision of the board in a contested case to appeal, as specified.

Additionally, a person who violates any of the bill's provisions or any regulations adopted pursuant to the bill is guilty of a misdemeanor, and on conviction, is subject to a fine of up to \$500 and/or imprisonment for up to three months. For any subsequent violation that occurs within two years of an earlier violation, the person is subject to a fine of up to \$1,000 and/or imprisonment for up to one year. Each day that a person provides off-site wastewater services without a license constitutes a separate offense.

Instead of or in addition to any other penalties authorized under the Water, Ice, and Sanitary Facilities Title of the Environment Article, the board may impose a civil penalty of up to \$1,000 per day, as specified, on a person who provides, attempts to provide, or offers to provide on-site wastewater services without a license (in violation of § 9-11A-20 of the

Environment Article as established by the bill). The board must consider certain factors when setting the amount of the civil penalty.

Finally, instead of or in addition to any other penalties authorized under the Water, Ice, and Sanitary Facilities Title of the Environment Article, a person who violates any of the bill's provisions is subject to an administrative penalty of up to \$1,000 per day for all violations cited on a single day. The bill establishes factors the board must consider in setting the amount of any administrative penalty.

Penalties collected under these provisions are paid into the On-Site Wastewater Professionals Fund. If a violator fails to pay a civil or administrative penalty within 30 days of its imposition, as specified, the matter must be forwarded to the Central Collection Unit in the Department of Budget and Management (DBM) for collection.

Repeal of On-Site Wastewater Property Transfer License Provisions

Effective June 30, 2025, the bill repeals existing provisions that (1) require an individual to hold a valid on-site wastewater property transfer license issued by MDE in order to engage in the business of inspecting an on-site sewage disposal system; (2) establish related application procedures; (3) establish an administrative penalty for violations; and (3) require MDE to adopt specified regulations.

Current Law:

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 repealed requirements related to the certification of those engaged in the business of property transfer inspections for septic systems and instead require 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 MDE. The Acts require MDE to adopt regulations that establish license eligibility criteria, minimum training standards, license terms, and fees for license

applications and renewals, as specified. As of the writing of this fiscal and policy note, MDE has not promulgated the required regulations.

An individual who violates a provision of Chapters 444 and 445 or any regulation adopted pursuant to those Acts is subject to an administrative penalty of up to \$10,000. Each on-site sewage disposal system that an individual knowingly inspects without a valid on-site wastewater property transfer inspection license constitutes a separate violation. Any administrative penalty collected by MDE pursuant to these provisions must be paid into the Septics Account of the Bay Restoration Fund.

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.

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.

Board of Environmental Health Specialists

Many septic system inspectors are already licensed by the Maryland State Board of Environmental Health Specialists (BEHS). LHDs are one of the primary sources of septic system inspectors in the State, and inspectors employed by LHDs 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).

State Board of Waterworks and Waste Systems Operators

MDE advises that some of the individuals that need a license under the bill are already licensed by the State Board of Waterworks and Waste Systems Operators. This board protects the quality of water and public health by ensuring that operators and superintendents meet minimum professional standards. An operator of a waterworks participates in the control of the flow, processing, and distribution of water, and an operator of a wastewater works participates in the collection, control of flow, processing, and discharge of wastewater and effluent. Waterworks operators treat water so that it is safe to drink, and waste systems operators remove harmful pollutants from domestic and industrial waste so that it is safe to return to the environment. A superintendent is certified as the individual who is in charge at either type of facility.

Maryland Program Evaluation Act

Pursuant to statutory provisions, approximately 60 regulatory entities and activities are typically subject to termination unless reauthorized periodically through statute. Under MPEA, these entities may also be subject to an evaluation by the Office of Program Evaluation and Government Accountability (OPEGA) within the Department of Legislative Services (DLS) prior to their termination. However, OPEGA may conduct an evaluation only if directed by specified entities or by legislation.

State Revenues:

Revenues for the Board of On-Site Wastewater Professionals

All individuals who provide on-site wastewater services and meet specified standards and wish to continue performing wastewater services in the State must pay a \$150 fee by December 31, 2022, and every two years thereafter until MDE sets license fees through regulation. Additionally, the bill requires MDE, in consultation with the board, to set reasonable fees for the issuance and renewal of licenses and other services the board provides at a level to *approximate* the costs of the creation, maintenance, reasonable administrative costs, and ongoing activities of the board. Both the initial fees and the license fees established by regulation accrue to the On-Site Wastewater Professional Fund established by the bill. According to MDE, in 2021, there were as many as 7,602 individuals who must be licensed under the bill. Thus, special fund revenues increase significantly in fiscal 2023 and 2025 from the payment of fees by existing service providers. Special fund revenues from license fees (and any other service-related fees) begin to accrue once the regulations adopted by MDE pursuant to the bill take effect, likely in fiscal 2026.

For illustrative purposes only, if 7,602 individuals pay the \$150 fee to continue to provide services prior to the adoption of regulations, special fund revenues increase by \$1.14 million in fiscal 2023. There is a similar increase in fee revenues in fiscal 2025 since the \$150 fee must be paid every two years until license fees are established through regulation.

As noted above, once fees are established by regulation, special fund revenues from license fees (and any other service-related fees) begin to accrue. Although an exact estimate of the fee revenue cannot be made at this time, it is assumed, given the number of individuals who are potentially affected, that fee revenue and the fund balance from fees paid by existing service providers fully cover costs each year. The timing and amount of fee revenue, however, ultimately depend on the fees established by regulation. DLS notes that licenses are valid for two years.

Special fund revenues may also increase in any given year as a result of the bill's monetary penalty provisions and from interest earned on the new special fund.

Decrease in Revenues from the Repeal of Provisions of Chapters 444 and 445 Relating to On-site Wastewater Property Transfer Inspection Licenses

Under Chapters 444 and 445, MDE is required to adopt regulations that, among other things, establish fees for license applications and renewals. Because the bill repeals these provisions effective June 30, 2025, general fund revenues decrease beginning in fiscal 2026

from forgone license/renewal fees. However, the actual decrease in revenues depends in large part on the number of individuals that would otherwise seek licensure under those provisions and the fees established in regulations (that have not yet been promulgated). Thus, a reliable estimate of any decrease in general fund revenues cannot be made at this time.

Additionally, effective June 30, 2025, special fund revenues for the Bay Restoration Fund’s Septics Account decrease minimally from the repeal of the administrative penalty established under Chapters 444 and 445.

State Expenditures: Special fund expenditures for MDE increase by \$92,576 in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. Future year expenditures reflect hiring additional staff in fiscal 2024 and 2026, inflation, and ongoing costs; accordingly, special fund expenditures increase by \$156,327 in fiscal 2024 and by \$221,307 in fiscal 2026.

These estimates reflect the costs of hiring three new employees (one administrator in fiscal 2023, one administrative officer in fiscal 2024, and one part-time assistant attorney general in fiscal 2026) to (1) help establish the board; (2) track and collect fees from current practitioners; (3) assist with developing licensing standards and training requirements, and potentially offering training courses; and (4) generally implement the bill. The estimates include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimates are stated below:

- there are an estimated 7,602 individuals who may need to be licensed under the bill;
- hiring new employees to implement the bill is staggered as the board becomes fully operational (by June 1, 2023), regulations are developed and adopted (by July 1, 2025), and affected individuals must be licensed (by July 1, 2026);
- MDE staffing requirements under the bill are similar to other licensing boards that are administered by State agencies; and
- MDE staff are fully subscribed.

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2026</u>
New Positions	1.0	1.0	0.5
Salaries and Fringe Benefits (Total)	\$84,968	\$147,648	\$212,069
Operating Expenses	<u>7,608</u>	<u>8,679</u>	<u>9,238</u>
Total MDE Expenditures	\$92,576	\$156,327	\$221,307

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

This estimate does not include any potential costs for MDE to hire a consultant to establish a database. To the extent MDE incurs such costs, special fund expenditures increase accordingly.

As mentioned above, as of June 30, 2025, the bill repeals the provisions of Chapters 444 and 445 related to on-site wastewater property transfer inspection licenses. The fiscal and policy note for those Acts estimated that MDE's general fund expenditures would increase by \$123,400 in fiscal 2022 and \$112,600 in fiscal 2026 to hire staff (one full-time environmental health specialist and one part-time administrative aide) to implement the licensing program for septic system property transfer inspectors. However, MDE has not received those staff, has not yet promulgated regulations to implement the Acts, and, therefore, has not begun to license these individuals. Thus, the bill's impact on State expenditures related to the implementation/repeal of those Acts is unclear at this time and is not reflected in this analysis.

The bill's enforcement and penalty provisions are not anticipated to materially affect the Judiciary, the Office of Administrative Hearings, DBM's Central Collection Unit, or State incarceration expenditures.

Any impact on OPEGA related to the evaluation of the new board is anticipated to be minimal and absorbable within existing budgeted resources.

Local Fiscal Effect: Several counties license individuals that provide on-site wastewater services, primarily through local health departments (LHDs). Both Prince George's and Caroline counties note, for example, that septic contractors are already licensed locally. Several LHDs anticipate that if there is a statewide licensing program, local governments will face pressure to discontinue their local licensing programs, which would result in a decrease in associated local fee revenues. The Maryland Association of County Health Officers advises that local environmental health directors estimate that local revenues decrease by approximately \$100,000 under the bill from forgone licensing fees. However, DLS notes that if local licensing programs are discontinued as a result of the bill, there would be a corresponding decrease in local workloads related to the licensing programs.

The bill's penalty provisions do not have a material impact on local finances or operations.

Small Business Effect: The bill has a significant impact on small businesses that provide on-site wastewater services. Expenditures increase for small businesses that conduct property transfer inspections of septic systems or design, install, maintain, and/or repair septic systems to pay the initial fees to be able to continue providing services prior to the adoption of regulations, pay application/license fees established through regulation, attend training, take licensing examinations, and meet any other requirements established by

MDE and the board. Further, as noted above, some of these individuals may already be licensed by a county or another board.

Additional Comments: DLS notes that entities that are subject to MPEA typically terminate pursuant to statute. Under the bill, the board is potentially subject to evaluation, but not termination.

Additional Information

Prior Introductions: HB 302 of 2021, a bill with similar provisions, passed the House and received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. HB 136 of 2020, another bill with similar provisions, passed the House with amendments and was referred to the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Similar legislation was also introduced during the 2019 session.

Designated Cross File: HB 318 (Delegate Stein) - Environment and Transportation.

Information Source(s): Caroline, Howard, and Prince George's counties; Maryland Association of County Health Officers; Maryland Association of Counties; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

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