

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 417 (Delegate Hill, *et al.*)
 Environment and Transportation

Water Pollution Control - Public Notification of Sewer Overflows and Treatment
 Plant Bypasses - Alteration

This bill expands requirements for public notice procedures for the Maryland Department of the Environment (MDE), the Maryland Department of Health (MDH), local health departments (LHDs), and local environmental health directors related to sewer overflows and treatment plant bypasses.

Fiscal Summary

State Effect: General fund expenditures increase by \$31,300 in FY 2020. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	31,300	35,400	36,600	37,900	39,200
Net Effect	(\$31,300)	(\$35,400)	(\$36,600)	(\$37,900)	(\$39,200)

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

Local Effect: Minimal increase in expenditures for some LHDs to meet the bill’s notice requirements. Local revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: MDE, in coordination with MDH, LHDs, and local environmental health directors, must develop procedures for requiring the owner or operator of any sanitary

sewer system, combined sewer system, or wastewater treatment plant (WWTP) to provide public notification of a *sewer overflow or treatment plant bypass*. These procedures must:

- be applied uniformly throughout the State;
- require that the notification be posted in Spanish and English on the MDE, MDH, and LHD websites and on any social media websites on which the departments regularly post information, as well as at the location of the overflow or bypass; and
- require notification within a reasonable time to the appropriate downstream jurisdictions and county governments, affected State parks, the Department of Natural Resources, and any other affected local, State, or federal land manager.

Alternatively, the owner or operator of any sanitary sewer system, combined sewer system, or WWTP may instead provide the required notice of a sewer overflow or treatment plant bypass in its quarterly or annual report, report of incidents included with water bills, or on an appropriate website if (1) the total volume of the overflow or bypass at the time of repair is less than 5,000 gallons and (2) MDH or the appropriate LHD or environmental health director (or designee) determines that the overflow did not enter specified waters and that there is no risk to public health.

Current Law: MDE, in coordination with MDH, LHDs, and local environmental health directors must develop procedures for requiring the owner or operator of any sanitary sewer system, combined sewer system, or WWTP to provide public notification of a sewage overflow. MDE is responsible for promulgating implementing regulations. MDH and LHDs must make all decisions and determinations as to public health issues resulting from sewer overflows or treatment bypasses, not the owner or operator of the system or plant.

The owner or operator of any sanitary sewer system, combined sewer system, or WWTP must report to MDE any sewer overflow or treatment bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State. This report must be made by telephone as soon as practicable but no later than 24 hours after the time that the owner or operator became aware of the event. Within five calendar days after notification of the event by telephone, the owner or operator must submit a written report of the incident to MDE.

Background: MDE advises that between October 1, 2018, and January 31, 2019, there were 342 reports of incidents of sewer overflows or treatment bypasses (an average of 21 per week). According to MDE, the department currently maintains an electronic database on its website that provides sanitary sewer overflow, bypass, and combined sewer overflow data to the public. The data included in the electronic database is based on the required telephone reports of overflows and follow-up written reports submitted to MDE. The data includes, but is not limited to, type of overflow, date of the incident, location, receiving water body, and volume discharged. The data is maintained in an Excel

spreadsheet that is manually updated prior to submitting to MDE's website coordinator to upload to the online database.

MDE also advises that on October 22, 2015, the U.S. Environmental Protection Agency (EPA) published the final National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. The regulation requires electronic reporting and sharing of Clean Water Act NPDES program information instead of the current paper-based reporting. The rule requires states and other regulatory authorities to share data electronically with EPA. Shared data includes permit, compliance monitoring (e.g., inspection), violation determination, and enforcement action data. The reporting rule includes two phases for the purposes of implementation: Phase I and Phase II. The implementation deadline for Phase II data, which includes sewer overflow and bypass event reports, is December 2020. MDE advises that in response to this requirement, it is developing a web-based online platform, into which an owner or operator will be able to directly enter an overflow or treatment bypass. MDE advises that full deployment of this web-based system is anticipated to be completed prior to December 21, 2020.

State Expenditures:

Maryland Department of the Environment Administrative Costs

MDE advises that costs increase by \$50,187 in fiscal 2020 to hire one full-time position to get copies of the required notification from system owners and operators and post the notifications to MDE's website and social media accounts (including in Spanish). MDE's estimated out-year costs range from \$60,505 to \$66,878.

The Department of Legislative Services agrees that additional staff is needed to track overflow and bypass events, post information in a timely manner to social media accounts, and remove notices as necessary. However, this analysis assumes that such responsibilities likely warrant a part-time (50%) position, rather than a full-time position.

Thus, MDE general fund expenditures increase by \$31,257 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one part-time (50%) administrative officer to collect notices and post them to MDE's social media websites and keep the information current. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- an average of 21 reports of sewer overflows and bypass events are reported to MDE each week;
- the bill's social media notice requirement is intended to ensure that sewer overflow and bypass events are reported to the public in a more timely manner, and MDE's

current policy of posting online notices in response to follow-up reports (written reports received five days after an incident is reported by telephone) is insufficient;

- MDE does not currently post this information to social media accounts and does not have experience with this type of public notice;
- MDE is able to use Google Translate to translate notices into Spanish; and
- the bill establishes an ongoing notice requirement that increases MDE’s workload on a permanent basis and MDE does not have sufficient staff to implement the bill.

Position	0.5
Salary and Fringe Benefits	\$26,132
Operating Expenses	<u>5,125</u>
Total FY 2020 State Expenditures	\$31,257

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

Maryland Department of Health Administrative Costs

MDH’s Prevention and Health Promotion Administration (PHPA) indicates that the bill’s impact on the administration is primarily operational. PHPA can implement the bill’s notice requirements with existing budgeted staff and resources.

Local Expenditures: The Maryland Association of Counties advises that the bill could create additional administrative duties and costs for LHDs. However, the Maryland Association of County Health Officers advises that many LHDs are already posting the information required under the bill. For those that are not, expenditures increase, likely minimally. For example, Montgomery County advises that the bill may result in minor costs to implement the notification requirements. Anne Arundel County indicates that the county already provides most of the notice required under the bill but that the county does not provide notices in Spanish. Thus, the county anticipates a minimal increase in expenditures to translate notices.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Kent, and Montgomery counties; Maryland Association of Counties; Maryland Association of County Health Officers; City of Laurel;

Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Health; Department of Natural Resources; Maryland Department of Transportation; Department of Legislative Services

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mm/jc

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