

M E M O R A N D U M

October 19, 2022

TO: Transportation and Environment Committee

FROM: Ludeen McCartney-Green, Legislative Attorney

SUBJECT: Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments

PURPOSE: Worksession – Committee to make recommendations to Council

Expected Attendees

Steven Shofar, Division Chief, Department of Environmental Protection
Alan Soukup, Department of Environmental Protection

Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments, sponsored by Council President at the Request of County Executive, was introduced on November 2, 2021. A virtual public hearing was held on November 30, at which, the lone speaker, Doug Lechlinder on behalf of the Montgomery County Agricultural Advisory Committee (AAC) testified in opposition to Bill 40-21.¹

Bill 40-21 would:

- (1) clarify certain definitions related to individual water supply and sewage disposal;
- (2) require the owners of individual sewage disposal systems to periodically pump-out the sewage treatment unit of the systems;
- (3) authorize use of Water Quality Protection Charge funds to partially reimburse septic system owners that perform sewage treatment unit pump-out; and
- (4) generally revise County law regarding individual water supply and sewage disposal facilities.

PURPOSE

The purpose of this bill is to improve the maintenance of onsite sewer systems by requiring property owners to periodically pump-out sewerage treatment systems.

BACKGROUND

The U.S. Environmental Protection Agency (EPA) defines an Onsite Wastewater Treatment System (OWTS) as “a system relying on natural processes or mechanical components

¹ #SpecticMaintenance

that are used to collect, treat, and disperse/discharge wastewater from single dwellings or buildings.”² County residents who are not serviced by the public sewerage facility need to install individual septic systems that will require on-site systems to treat the waste generated from their use.

The term OWTS is interchangeable, and is also commonly referred to as, “septic systems,” “private sewage disposal systems,” or “on-site decentralized systems.” For Bill 41-21 discussion, OWTS and septic systems will be the commonly used terms.

“Septic system discharges are one of the eight sectors listed in the Chesapeake Bay Total Maximum Daily Load (TMDL) and are a major source of pollution in the Chesapeake Bay.” Montgomery County has a smaller percentage of septic systems and is not in critical areas as some other rural counties in Maryland. The County has approximately 19,000 septic systems (or 13% of all properties in the County). *See* County Executive Memorandum ©11. Despite the small percentage, the impacts of an improper or inadequate system can cause serious public health concerns, including contamination of ground and surface water.

Typically, an OWTS may fail because of design, installation, and maintenance issues. In addition, a homeowner’s failure to maintain an onsite system can affect drinking water sources, watersheds, estuaries, coastal zones, aquatic habitats, and wetlands. The effective management of an onsite system requires rigorous planning, design, installation, operation, maintenance, monitoring, and controls.³

EPA Management Models

There are five different management models developed by the EPA used to regulate the maintenance and performance of an OWTS,⁴ ranging from simple to complex management programs. In 2017, the Council received a briefing and presentation from the Office of Legislative Oversight (OLO) on the Comprehensive Water Supply and Sewerage, which included various models for the Council’s consideration.⁵ As a result, the Council approved the *EPA Management Model # 1, Homeowner Awareness*. Homeowner Awareness requires the County to document all OWTS in the County and provide education and outreach efforts to remind owners of the necessity for ongoing maintenance. *See* County Executive Memorandum ©12. EPA considers this model appropriate in areas with low environmental sensitivity where OWTS require minimum owner attention.

EPA Management Model #2, Maintenance Contract combines the Homeowner Awareness model with an additional component. Specifically, it prohibits a regulatory authority from issuing a permit unless the property owner has a current contract with a trained and licensed service provider to perform proper and timely maintenance. EPA recommends the “Maintenance

² U.S. Environmental Protection Agency, Onsite Wastewater Treatment Systems Manual, EPA/625/R-00/008, Glossary-3, February 2002. https://www.epa.gov/sites/default/files/2015-06/documents/2004_07_07_septics_septic_2002_osdm_all.pdf.

³ *Ibid.*, page xiv.

⁴ *Ibid.*, page 5.

⁵ https://www.montgomerycountymd.gov/OLO/Resources/Files/2017%20Reports/OLOReport2017_5.pdf

Contract” model in areas where more complex OTWS designs are needed to properly treat wastewater.

County Requirements

County regulations require the Department of Permitting Services (DPS) to conduct onsite inspections at two specific times: (1) during the initial design; or (2) installation of a system before a permit is issued for usage.⁶ Once a permit is issued, the law does not require DPS to conduct any further inspections unless a sewer system becomes defective and causes surface discharge. So currently, the County goes beyond EPA’s management model #1, but does not require a maintenance contract as required under EPA’s management model # 2.

Other Local Jurisdictions

Queen Anne’s County is the only jurisdiction that has an established and ongoing program that requires all septic systems to be pumped out over a five (5) year period. Howard and Frederick County do not have a regulatory requirement, but the Counties offer rebate incentives for residents who pump out their systems. *See* County Executive Memorandum ©12.

BILL SPECIFICS

This bill would make several changes by first clarifying certain definitions as it relates to individual water supply and sewerage systems. It would require private individual owners to pump out their sewage disposal system at least once every 5 years, and after the pump-out, the owner is required to notify the DEP within 30 days.

A property owner would be required to execute an easement, inspection, and maintenance agreement that would allow the Director to access a property, at any reasonable time, to inspect a water supply or sewer system to ensure working conditions. The agreement would be binding on subsequent owners.

Further, the bill would expand the County’s authority to use funds from the water quality protection charge to reimburse payments to property owners. Specifically, a property owner may receive a one-time partial rebate if they register their sewer system and perform sewage treatment pump-out.

PUBLIC HEARING

There was one speaker at the public hearing and the Council received three written testimonies in opposition to Bill 40-21.

Doug Lechliden on behalf of Agricultural Advisory Committee (©33) testified in opposition. “The AAC believes the sections on enforcement, required easements, penalties, and violations on lines 136-141 and 146-154 are overreaching and threaten the property rights of our citizens.”

⁶ COMCOR 27A.00.01.03 and 27A.00.01.04

Montgomery County Farm Bureau opposes the bill because it impairs farmers' property owner rights by implementing mandates rather than a voluntary approach. Further, if the Council determines that property owners should pump out private septic systems or wells, it should use funds already designated in the Water Protection Quality Fund to cover the costs. See ©34.

The Montgomery County Agricultural Preservation Advisory Board (APAB) opposes the bill on several points. ©37. Followed by opposition from Montgomery Agricultural Producers (MAP). ©38.

SUMMARY OF IMPACT STATEMENTS

FISCAL IMPACT STATEMENT: According to the fiscal impact statement prepared by the Office of Management and Budget (OMB), Bill 40-21 annual estimated cost would be \$471,903. ©14. The expenditures include funding a reimbursement program for property owners who pump out their septic tanks, associated outreach materials, and a full-time position to manage the program. This bill would be funded by the Water Quality Protection Fund (WPQF).

RACIAL EQUITY AND SOCIAL JUSTICE: The Office of Legislative Oversight (OLO) anticipates that Bill 40-21 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White property and business owners. But because this bill will impact a limited number of property and business owners in the County, OLO anticipates a minimal impact. ©17. OLO proposed two amendments to improve the RESJ impact of Bill 40-21: 1) Target Septic Pump-Out Subsidy to Low-Income or Low-Wealth Households; and 2) Identify and Address Racial and Social Inequities in Stormwater Management. ©20. (see discussion below, issue # 5).

ECONOMIC STATEMENT: OLO anticipates that enacting Bill 40-21 would have a net negative impact on economic conditions in the County in the short term. Mainly because a significant portion of affected residents may "import" pump-out services from waste haulers based outside the County, resulting in a net decrease in economic activity in the County. ©22. OLO noted for discussion that the Council should consider whether to allow residents to receive reimbursements, on the condition, that they hire a local-based company for pump-out services. Further, OLO anticipates that the five-year pump-out requirement would likely reduce repair/replacement costs for owners, bolster home values, and reduce the risk for home buyers. Over the *long-term*, these positive economic impacts would mitigate the anticipated negative impacts of enacting Bill 40-21 in the *short-term*. ©30.

ISSUES FOR DISCUSSION

1. What is the scope of private sewer systems in the County that would be impacted by this legislation?

The County has approximately 19,000 septic systems in the County, and the pumping of septic tanks provides impervious area (IA) credit as part of the County's Municipal Separate Sanitary Sewer System (MS4) permit requirements. If all the property owners complied with the

regulation, that would equal 75.7 impervious acres per year or 378.4 acres every five-year MS4 cycle. See, Fiscal Impact Statement ©14.

DEP informed Council staff that rural and agricultural areas tend to have septic systems, but the density is relatively low. There is a significant number of septic systems that are down-County and typically in older properties. See, Demographic Index and Septic System Location. ©39.

2. How many owners in the County have pumped out their systems within the past five years?

It is unclear the number of properties that have pumped out of their systems. DPS data collection includes registration and the number of permits issued for each OWTS in the County, but it does not have information for when a pump-out occurs. This legislation would enhance data collection because it would require a property owner who performs a pump-out must provide notification to DEP within 30 days of the service. DEP would become the recordkeeper for pump-outs for each private sewer system and have more robust data on the frequency of pump-outs, the average amounts of load amounts, and would also review the condition of an OWTS if a problem or surface discharge is reported by a property owner or neighbor.

3. How much funds from the Water Quality Protection Fund (WQPF) would be appropriated for this program? Would this increase rates for individual property owners?

The Bill would authorize DEP to use funds allocated to the WQPF to reimburse partial payments to property owners who perform County-approved water quality protection activities under Chapter 27A and related administrative costs. The suggested partial reimbursement would be \$100 per sewer pump-out, once every five years.

The Water Quality Protection Charge (WQPC) is an excise tax levied by the Director of Finance to cover the cost of constructing, operating, and maintaining facilities within the County's stormwater management system and fund-related expenses allowed under state law.

OMB identified in its fiscal impact statement that, although the WQPF is projected to have the capacity to absorb these costs without a rate adjustment, it reduces the ability of the County to fund other priorities without increasing the WQPC. For illustrative purposes, the table shows the equivalent impact to the WQPC assuming this legislation is fully paid for by increasing the charge. ©15. The analysis provided essentially concludes the impact on the WQPC rate would be less than \$1.50 over the next six years.

	FY22	FY23	FY24	FY25	FY26	FY27	Total, FY22-27
Personnel Costs	\$0	\$63,523	\$83,503	\$83,503	\$83,503	\$83,503	\$397,535
Operating Expenses	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000
Reimbursement Costs	\$0	\$378,400	\$378,400	\$378,400	\$378,400	\$378,400	\$1,892,000
Total	\$0	\$451,923	\$471,903	\$471,903	\$471,903	\$471,903	\$2,339,535
Impact to WQPC rate	\$0	\$1.23	\$1.29	\$1.29	\$1.29	\$1.29	

4. Should the County issue a partial reimbursement for pump-out services?

Typically, on average, pump-out services may cost between \$250 - \$500, depending on the size of the septic tank. The partial reimbursement issued by DEP would be \$100 per pump-out per property once every 5 years. This was similar to the partial reimbursement that was offered by Howard County.

Since reimbursement is not required, DEP has the option of not providing the reimbursement for fiscal or other reasons. Further, it could also limit the reimbursement to one cycle, meaning, after the initial 5 years and every property has completed a pump-out, the reimbursement would cease.

Decision Point: As the bill is written, should DEP offer the reimbursement once every 5-years? Or, after one 5-year cycle end the reimbursement program, or not offer a reimbursement at all?

5. Is there a mechanism for DEP to consider a sliding scale to determine larger reimbursements for communities within low-income or low-wealth households as recommended by OLO?

No. However, the bill does include a hardship provision where the Director can waive the requirements under Chapter 27A.

Section 27A-3(b).

When there [is] are [evidence of] practical difficulties and undue hardship created by strict application of the provisions of this [chapter] Chapter, the [director] Director may, in writing, waive or vary such provision upon written application of the owner or his designated representative, provided the spirit and intent of the law shall be observed and that the public health and safety are assured. (©5, lines 96-101).

DEP provided two maps that were developed to show septic locations and the demographic index zone data produced by the EPA. The Demographic Index (DI) uses income and the percentage of people of color, then normalized for the whole County. Essentially, areas with a higher percentage of lower income, and a higher percentage of people of color will result in a higher index score. ©39 This data informs DEP of areas where residents may have a challenge complying with the pump-out requirement and need further assistance financially or qualify for a hardship waiver.

6. What is the current process with DPS/DEP getting access to a property for inspection and maintenance?

Currently, the County does not have the authority to access a property unless the property owner expressly grants permission.

The Council has received several testimonies in opposition about the bill provision that would require property owners to execute an easement, inspection, and maintenance agreement before a permit is issued (©7, lines 136-141) and allow access for DPS/DEP to perform an inspection (©7, lines 146-154). Currently, under County Code Section 19-28, there is a provision that provides similar access for property owners that are connected by a right-of-way to the stormwater management system. Bill 40-21 requirement for an executed agreement by the property owner parallels existing law where the County needs to gain access for the limited purpose of ensuring stormwater management systems are functional and properly maintained. The agreements would be required for newly installed sewer systems and not for existing systems.

Council staff recommends an amendment that any agreement executed must be recorded in the land records to place subsequent owners on notice that a private sewer exists, and that reasonable access is granted to the County.

Amend lines 141, as follows:

The owner must record in the County land records the easement and any other agreement executed in conjunction with the easement that binds any future owner of the land. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

Decision Point: Whether to adopt an amendment to require property owners who execute an easement, inspection, or maintenance agreement must record the document with the County land records?

7. **Line 148 has a provision that refers to “at any reasonable hour.” How do we balance a resident’s private property rights versus the County’s need to gain access?**

Section 27A-6. Inspections.

The Director or Director of Environmental Protection may enter a property for which a permit has been issued under Section 27A-5 at any reasonable hour to confirm compliance with the permit. ©7.

Council staff recommends the Committee consider an amendment to include a notice provision that would require DEP/DPS to inform the property owner that an employee accessed the property for inspection or maintenance purposes.

Amend line 149, as follows:

Notice to property owners. The Director or Director’s designee must provide written notification to a property owner within 10 days after having entered a property indicating the need for inspection and confirming compliance with the permit issued by DPS.

Decision Point: Whether to adopt language for a notice provision to property owners after an inspection has occurred by DPS or DEP?

8. What is being done in other jurisdictions related to pump-out for septic systems?

The DEP report showed a wide variety of OWTS management programs ranging from simple outreach to complex inspection and maintenance programs. In Maryland, Queen Anne's County is the only jurisdiction with a septic pump-out requirement. There are no other jurisdictions in Maryland that require post-installation inspection or maintenance. Frederick and Howard Counties have a rebate program to encourage septic pump out but there are no regulatory requirements for pump out. Fairfax County has a requirement for a septic pump out every five years similar to this legislative proposal. There are a number of states throughout the country that require the inspection and maintenance of OWTSs. One innovative approach by Clallam County, Washington, certifies homeowners through an online septic inspection training program (called *Septics 201*) to inspect their own OWTS. See, County Executive Memorandum at ©12.

Next Steps: Committee recommendation on whether to enact Bill 40-21, including any amendments described above.

This packet contains:	<u>Circle #</u>
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Bill No. 40-21
Concerning: Individual Water Supply and
Sewage Disposal Systems
Revised: 10/19/2022 Draft No. 2
Introduced: November 2, 2021
Expires: May 2, 2023
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of County Executive

AN ACT to:

- (1) clarify certain definitions related to individual water supply and sewage disposal;
- (2) require the owners of individual sewage disposal systems to periodically pump-out the sewage treatment unit of the systems;
- (3) authorize use of Water Quality Protection Charge funds to partially reimburse septic system owners that perform sewage treatment unit pump-out; and
- (4) generally revise County law regarding individual water supply and sewage disposal facilities.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Stormwater Management
Section 19-35

Chapter 27A, Individual Water Supply and Sewage Disposal Facilities
Sections 27A-1, 27A-2, 27A-3, 27A-4, 27A-5, 27A-6, 27A-7, 27A-8, 27A-9, 27A-10,
and 27A-11

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-35, 27A-1, 27A-2, 27A-3, 27A-4, 27A-5, 27A-6, 27A-7, 27A-8, 27A-9, 27A-10, and 27A-11 are amended as follows:

19-35. Water Quality Protection Charge.

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) The Director must deposit funds raised by the Charge, and funds for this purpose from any other source, into a stormwater management fund. Funds in the stormwater management fund may be applied and pledged to pay debt service on debt obligations to finance the construction and related expenses of stormwater management facilities as approved in the Capital Improvements Program. Funds in the stormwater management fund must only be used for:

(1) construction, operation, financing, and maintenance of stormwater management facilities, and related expenses, including debt service payments related to construction and related expenses of stormwater management facilities;

(2) enforcement and administration of this Article; [and]

(3) reimbursement payments to property owners that perform County-approved water quality protection activities under Chapter 27A and related administrative costs; and

[(3)] (4) any other activity authorized by this Article or state law.

(g) * * *

(h) * * *

(i) * * *

27A-1. Intent.

It is the intent of this [chapter] Chapter to assure an adequate supply of potable water for use on an individual lot, and to protect the public health by providing sanitary methods for the disposal of sewage on an individual lot. It is the general policy of the County that connections [must] be made to community water supply and sewerage systems when such systems abut the lot[, except when] unless sewer or water service is unavailable by policy determination [as stated in the county's comprehensive water supply] under the County's Comprehensive Water Supply and [sewerage systems plan] Sewerage Systems Plan. It is intended that permits for individual water supply and sewage disposal systems [will] be issued only when community systems are unavailable, inadequate or connections are not economically feasible.

27A-2. Definitions.

The following words and phrases have the following meanings:

Best Available Technology ("BAT") means a technology that has been approved by the Maryland Department of the Environment as a best available technology for removing nitrogen from onsite sewage disposal systems.

Director[:] means [The] the Director of the Department of Permitting Services or the Director's designee.

Director of Environmental Protection means the Director of the Department of Environmental Protection or the Director of Environmental Protection's designee.

Individual sewage disposal system[:] means [A] a system, other than a public or community system, which receives liquid wastes or human excreta, or both, generated on the [same lot] lot or parcel that the system serves. An individual sewage disposal system may also be located on an adjacent lot or parcel by easement as approved by the Director. [It] An individual sewage disposal

system includes a sewage treatment unit, effluent disposal area and related appurtenances.

Individual water supply system[:] means [A] a well or other approved source of water, and all appurtenances thereto, including pumps and piping, for delivery of an adequate supply of potable water [for use on the same lot].

Permit[:] means [A] a written permission issued by the Director for the construction and/or maintenance of an individual water supply system or an individual sewage disposal system.

Person[:] means [Any] any institution, individual, partnership, governmental entity, public or private corporation or other entity.

Potable water[:] means [Water] water [which] that is [safe for human consumption] free from impurities in amounts sufficient to cause disease or harmful physiological effects and which conforms with the State of Maryland Safe Drinking Water Standards.

Pump-out means the removal of the contents of a sewage treatment unit by a person under a Sewage Sludge Utilization Permit.

Lot[:] means [A] a measured parcel of land having fixed boundaries and designated on a plat or survey, together with any recorded easement satisfactory to the Director.

Sewage treatment unit means a device designed and constructed to receive sewage and to provide treatment to reduce organic and inorganic matter and includes septic tanks, BAT, aerobic treatment units, or any other MDE approved devices.

Well[:] means [Any] any [excavation that is drilled, cored, bored, driven, dug, jetted or otherwise constructed when the intended use of such an excavation is for the location, extraction or artificial recharge of] hole made in the ground to explore for ground water, to obtain or monitor ground water, to inject water into

any underground formation from which ground water may be produced, or to transfer heat to or from the ground or ground water if the hole:

(1) extends more than 20 feet below the surface of the ground; and

(2) is not a well for obtaining geothermal resources under Maryland Code, Environment Art., § 5-601 or any successor provision.

27A-3. Duties and responsibilities of [director] Director.

(a) The [director] Director [shall be] is responsible for the administration and enforcement of this [chapter] Chapter. The [director shall] Director must receive applications, collect fees and issue permits for the construction, installation and maintenance of individual water supply and sewage disposal systems, and for related facilities and services; inspect the premises for which such permits have been issued; and enforce compliance with the provisions of this [chapter] Chapter and any [rules and] regulations [promulgated hereunder] adopted under this Chapter.

(b) When there [is] are [evidence of] practical difficulties and undue hardship created by strict application of the provisions of this [chapter] Chapter, the [director] Director may, in writing, waive or vary such provision upon written application of the owner or his designated representative, provided the spirit and intent of the law shall be observed and that the public health and safety are assured.

27A-4. Regulations.

[After consulting] The County Executive may, in consultation with the Washington Suburban Sanitary Commission[,] and the Montgomery County Planning Board, [and any other concerned agency, the county executive may] adopt[,] regulations under method (2) [of section 2A-15 of this Code, regulations] to implement this [chapter] Chapter.

27A-5. Permits.

(a) [It shall be unlawful for any] A person [to] must not construct, alter or extend an individual water supply system or an individual sewage disposal system within the [county] County unless [he] the person holds a valid permit issued by the [director in the name of such person, for] Director authorizing the specific construction, alteration or extension proposed.

(b) [It shall be unlawful for any] A person [to] must not collect, transport and dispose of the solid and liquid contents of chemical toilets, holding tanks, [septic tanks] sewage treatment units, seepage pits and privies unless [he] the person holds a valid permit issued by the [director in the name of such person] Director.

(c) [All] An [applications] application for a [permits] permit under this Chapter [shall] must be made to the [director,] Director [who shall]. The Director must issue a permit [upon compliance by] if the [applicant] application complies with the applicable provisions of this [chapter] Chapter and any [rules and] regulations adopted [hereunder] under this Chapter.

(d) All permit applications [shall] must be in writing[, shall be] and signed by the applicant [and shall]. Applications must also include all information specified [in rules and regulations adopted in accordance with the provisions of this chapter, and] by regulation as well as any other necessary information required by the [director] Director [in accordance with this chapter].

(e) * * *

27A-6. Inspections.

(a) [The director is authorized and directed to make such inspections as are necessary to determine satisfactory compliance with the provisions of this

chapter and any rules and regulations promulgated hereunder.] Before issuing a permit for the construction of an individual sewage disposal system, the Director must require the property owner to execute an easement and an inspection and maintenance agreement that is binding on each subsequent owner of any property on which the system is located and any property served by the system.

(b) [It shall be the duty of the owner or occupant of a property to give the director access to the property at reasonable times for the purpose of making such inspections as are necessary to determine compliance with the provisions of this chapter and any rules and regulations promulgated hereunder.] The Director or Director of Environmental Protection may enter a property for which a permit has been issued under Section 27A-5 at any reasonable hour to confirm compliance with the permit.

(c) [The director is authorized to establish procedures leading to the resolution of differences in field interpretations of this chapter, and the regulations promulgated hereunder.] The Director or the Director of Environmental Protection may perform inspections of an individual water supply system or an individual sewage disposal system as needed to ensure that the system remains in proper working condition.

27A-7. Abatement of excreta disposal nuisances.

[It shall be unlawful for any] A person [to] must not discharge or cause [to be discharged,] the discharge of sewage or sewage disposal effluent directly or indirectly into the ground surface, groundwaters, surface waters, storm sewers or abandoned wells, or maintain or operate a sewage disposal system in such a manner that it becomes a nuisance or adversely affects the public health, safety or welfare.

27A-8. Maintenance of individual sewage disposal systems.

(a) Pump-out. The owner of any individual sewage disposal system must ensure that the system remains in proper working condition through pump-out of the sewage treatment unit at least once every 5 years in accordance with the regulations adopted under Section 27A-4.

(b) Pump-out notification. The owner must notify the Director of Environmental Protection in writing within 30 days after the septic tank and/or distribution box(es) are pumped. The written notification must include a copy of the receipt from the pump-out vendor containing the following information:

- (1) the name, telephone number, and mailing address of the owner;
- (2) the street address of the property;
- (3) the property tax identification number;
- (4) the date the tank was pumped;
- (5) the number of gallons pumped;
- (6) the name of the scavenger company; and
- (7) the Montgomery County Sewage Sludge Utilization permit number of the vehicle performing the pump-out.

(c) Notice of violation. The Director or the Director of Environmental Protection is authorized to issue a Notice of Violation to the owner of any property in violation of this Chapter or any permit issued pursuant to this Chapter. The owner of any individual sewage disposal system must complete pump-out of the sewage treatment unit within the time period specified in any written notice of violation issued by the Director of Environmental Protection.

27A-9. Reimbursements.

(a) The Director of Environmental Protection may issue a partial reimbursement to cover a portion, set by regulation, of the expenses

incurred by the owner of an individual sewage disposal system to perform the pump-out required under Section 27A-8 during the tax year that the owner completes pump-out of the system's sewage treatment unit. In any tax year, the Director of Environmental Protection may, at his or her discretion, determine whether reimbursements [shall] must be issued for pump-outs performed during that tax year and in what amount, if any, such reimbursements [shall] must be issued.

(b) To receive the reimbursement, the owner must apply to the Director of Environmental Protection in a form prescribed by the Director. The application must accompany the pump-out notification required under Section 27A-8(b).

(c) The Director of Environmental Protection must not issue a reimbursement to any property owner under this Section more frequently than once every 5 years.

[27A-8] 27A-10. Penalties.

A violation [Any persons violating the provisions] of this [chapter] Chapter [shall be] is [subject to punishment for] a [class] Class A violation [as set forth in section 1-19 of chapter 1 of the County Code]. Each day that the violation continues [shall be] is a separate offense.

[27A-9] 27A-11. Conflicts of law.

Nothing in this [chapter] Chapter [shall] may be construed to repeal or affect any powers, responsibilities or functions provided under [state] State law.

LEGISLATIVE REQUEST REPORT

Bill 40-21

Individual Water Supply and Sewage Disposal Systems – Amendments

DESCRIPTION:	The legislation proposes amendments to Chapter 19, Erosion, Sediment Control and Stormwater Management and Chapter 27A Individual Water Supply and Sewage Disposal Facilities to require the owners of individual sewage disposal systems to periodically pump-out the sewage treatment unit of the systems; and authorize use of Water Quality Protection Charge funds to partially reimburse septic system owners that perform sewage treatment unit pump-outs.
PROBLEM:	Currently, after design and construction of an individual sewage treatment system (also known as a septic system) there are no further requirements for maintenance and inspection of the system unless there is a reported problem. Improperly maintained septic systems can cause human health problems and contamination of groundwater, local streams, and the Chesapeake Bay.
GOALS AND OBJECTIVES:	The proposed amendments will improve the operation of septic systems in the County thereby reducing potential human health problems and improving ground and surface water quality.
COORDINATION:	Department of Environmental Protection, Department of Permitting Services
FISCAL IMPACT:	Office of Managment and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
RESJ Impact:	Office of Legislative Oversight
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	Queen Anne’s County, Maryland; Virginia; Hopewell Township, York County, PA; Connecticut; Washington State; Minnesota; and Wisconsin.
SOURCE OF INFORMATION:	Steven Shofar, Division Chief, Intergovernmental Affairs, Department of Environmental Protection, 240-777-7736
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A.



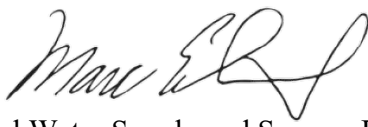
OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

October 11, 2021

TO: Tom Hucker, Council President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Introduction of XX-21, Individual Water Supply and Sewage Disposal Systems - Amendments

It is my pleasure to transmit the attached legislation, XX-21 Individual Water Supply and Sewage Disposal Systems - Amendments, to modify the County's current law to require pumping of septic tanks at least every five years. In addition, the legislation provides for a rebate that will be funded through the Water Quality Protection Charge (WQPC) to property owners who pump their septic tanks.

BACKGROUND:

An Onsite Wastewater Treatment System (OWTS), also known as a septic system, usually consists of septic tank to remove solids from wastewater and a drain field to allow the liquid waste to percolate through the soil to be treated before it flows into the groundwater. An improperly maintained OTWS can create public health concerns and contaminate ground and surface water.

Septic system discharges are one of the eight sectors listed in the Chesapeake Bay Total Maximum Daily Load (TMDL) and are a major source of pollution in the Chesapeake Bay. Montgomery County has a lower percentage of septic systems than some other rural counties in the State of Maryland with an estimated 19,000 septic systems or approximately 13% of all properties. With no critical area in the County, the potential septic impacts on the Bay are less than some other counties in Maryland. However, those impacts are not insignificant.

Under current County law the only time that an OWTS is regulated is at the time of design, permitting and construction by the Department of Permitting Services (DPS). DPS will also review the condition of an OWTS if a problem or surface discharge is reported by a property owner or neighbor.

The Office of Legislative Oversight prepared a report (OLO Memorandum Report 2017-5) entitled “Life-Cycle Regulation of On-Site Wastewater Treatment Systems” in December of 2016. The report presents alternative management models to regulate the maintenance and performance of onsite wastewater treatment developed by the United States Environmental Protection Agency (EPA). As a result of that report, when the County Council approved the 2018 Comprehensive Water Supply and Sewerage Report they requested that the County pursue EPA Management Model #1, Homeowner Awareness. Homeowner Awareness consists of documenting all the OWTs in the County and conducting outreach to the owners of the OWTs to remind them of the need for regular maintenance.

The tasks of Management Model #1 were completed in FY21. Using data from the Washington Suburban Sanitary Commission (WSSC) and the state’s property database, the Department of Environmental Protection (DEP) has created a database with all the properties determined to have septic systems in the County. In addition, DEP sent a postcard to all known septic system owners asking them to go register their system with DEP as well as, access the DEP website for additional information on how to properly operate and maintain their septic system and drinking water well. This legislation goes beyond Management Model #1 and is between Model #1 and Model #2. Management Model #2 requires the property owner to have a maintenance contract with septic company. This legislation does not require a contract but does require the pumping to be done every five years.

In preparation for this legislation DEP developed a white paper entitled “Review of Conventional Onsite Treatment System Laws and Regulations.” The report evaluates septic laws and regulations throughout the country and provides some examples of different legislative and regulatory frameworks.

POLICY OVERVIEW:

The DEP report showed a wide variety of OWTs management programs ranging from simple outreach to complex inspection and maintenance programs. In Maryland, Queen Anne’s County is the only jurisdiction with a septic pump out requirement. There are no other jurisdictions in Maryland that require post installation inspection or maintenance. Frederick and Howard Counties have a rebate program to encourage septic pump out but there are no regulatory requirements for pump out. Fairfax County has a requirement for septic pump out every five years similar to this legislative proposal. There are a number of states throughout the country that require inspection and maintenance of OWTs. One innovative approach by Clallam County, Washington, certifies homeowners through an online septic inspection training program (called *Septics 201*) to inspect their own OWTs.

This legislation is a large step forward in assuring OWTs are properly maintained and operated. Future legislation could potentially include requirements for OWTs to be inspected on a regular basis (at the time of pump-out). Inspections were not included at this time because of the resources needed to implement such a program.

IMPACT (excerpted from OLO report):

As mentioned previously, an improperly operated OWTS can contaminate drinking water and pollute groundwater. A study by EPA estimated that 168,000 viral illnesses and 34,000 bacterial illnesses occur each year as a result of consumption of drinking water from systems that rely on improperly treated ground water. EPA has concluded that proper use of OWTSs “reduces the risk of disease transmission and human exposure to pathogens, which can occur through drinking water, surface water, and shellfish bed contamination.” In addition, properly treated wastewater can recharge ground water and replenish aquifers.

Substandard or malfunctioning OWTSs also contribute to an overabundance of nutrients in coastal estuaries and inland surface waters. Increases in nitrogen and other nutrients in surface waters leads to excessive algae growth and harmful reductions in dissolved oxygen levels. wastewater treatment removes nutrients that can pollute ground and surface water.

RESOURCES:

It is anticipated that the workload required to implement this legislation will require an additional position in DEP’s Intergovernmental Affairs Division (IGAD) starting in FY23, a Program Specialist I. This position will handle day-to-day aspects of the program: responding to inquiries, organizing notice mailings, etc. Existing IGAD staff—the Senior Engineer, the Senior Planner, and Planner III—can address other responsibilities as needed as part of their existing workload. The impact of the additional workload will be somewhat less time dedicated to review of WSSC budget and technical reports and the category change program.

TIMING:

It is anticipated that the legislation will be in place by the end of calendar year 2021. The executive regulation is anticipated to be in place by the end of the fiscal year and implementation is expected to start in FY23. The County will be divided into five areas with approximately one fifth of the total septic systems in each area. Over the next five years all the septic systems will either have to have their septic tanks pumped or the owners provide proof that the tank was pumped within the past five years. Once a pump out notification is provided to a property owner, they will have 60 days to have their tanks pumped and provide proof of pumping. The property owner can also apply for a rebate at that time.

ME:ss

Attachments

Fiscal Impact Statement

Bill XX-21 – Individual Water Supply and Sewage Disposal Systems

1. Legislative Summary.

Bill XX-21 makes several changes to the County Code to require the regular pumping of septic tanks. Specifically, the bill:

- requires the owners of individual sewage disposal systems to periodically pump-out the sewage treatment unit of the systems;
- authorizes use of Water Quality Protection Charge (WQPF) funds for reimbursement payments to septic system owners that perform sewage treatment unit pump-out; and
- generally, revises County law regarding individual water supply and sewage disposal facilities for clarity.

There are approximately 18,922 septic systems in the County, and the pumping of septic tanks provides impervious area (IA) credit as part of the County's Municipal Separate Sanitary Sewer System (MS4) permit requirements. If all the property owners complied with the regulation, that would equal 75.7 impervious acres per year or 378.4 acre every five-year MS4 cycle.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Include source of information, assumptions, and methodologies used.

Bill XX-21 is not expected to impact County revenues.

Bill XX-21 will impact County expenditures by authorizing a reimbursement program for property owners who pump their septic tanks, associated outreach materials, and a position to manage the program. The annual cost estimate is \$471,903, which would be funded by the WQPF. It should be noted that the reimbursement is not required, and Department of Environmental Protection (DEP) has the option of not providing the reimbursement for fiscal or other reasons. However, for illustrative purposes this fiscal impact statement assumes there will be a reimbursement of \$100 per cleaning, comparable with what is offered by Howard County, Maryland for a similar program.

Position: It is anticipated that the workload to implement the legislation will require one additional position (a Grade 18 Program Specialist I) to handle day-to-day administration, such as maintaining the records of nearly 19,000 septic systems, database and program management, tracking cleanings and enforcement, and interactions with property owners. The salary and benefits are estimated to be \$83,503 per year.

Outreach materials: The printing and mailing of notices is expected for the program, totaling \$10,000 per year. This is based on outreach costs incurred by the septic program and similar programs.

Reimbursements: There are approximately 18,922 septic tanks in the County. If the reimbursement were set at \$100 and all property owners complied with the new legislation and then requested reimbursement after pumping their septic tanks, there would be a maximum annual cost of \$378,400 (assuming a five-year cycle).

An executive regulation setting the reimbursement rate is expected to be in place by the end of calendar year 2021, and implementation is expected to start in FY23. The County would be divided into five areas, with enforcement expanding to one new area each year. Thus, it is estimated that the program will take five years to roll out to the entire County.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

As stated in Question 2, implementation of the bill will require a Grade 18 Program Specialist I at an annualized cost of \$83,503. Assuming the position begins in October 2022 the FY23 personnel cost would total \$63,523, while reimbursements are estimated to be level at \$378,400 per year (the amount for total compliance in one of the five County areas). Operating expenses are assumed to be flat at \$10,000 annually to pay for outreach materials. As shown in the table below, the fiscal impact of the legislation is estimated to be \$451,923 in FY23 and \$471,903 each year thereafter.

Although the WQPF is projected to have the capacity to absorb these costs without a rate adjustment, it reduces the ability of the County to fund other priorities without increasing the Water Quality Protection Charge (WQPC). For illustrative purposes, the table shows the equivalent impact to the WQPC assuming this legislation is fully paid for by increasing the charge.

	FY22	FY23	FY24	FY25	FY26	FY27	Total, FY22-27
Personnel Costs	\$0	\$63,523	\$83,503	\$83,503	\$83,503	\$83,503	\$397,535
Operating Expenses	\$0	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000
Reimbursement Costs	\$0	\$378,400	\$378,400	\$378,400	\$378,400	\$378,400	\$1,892,000
Total	\$0	\$451,923	\$471,903	\$471,903	\$471,903	\$471,903	\$2,339,535
Impact to WQPC rate	\$0	\$1.23	\$1.29	\$1.29	\$1.29	\$1.29	

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

DEP's existing Infor asset management software will be used to support the program. It is anticipated that the work to modify Infor would be covered by existing IT staff.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill XX-21 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

It is estimated that during implementation it will take up to approximately 50 hours per week to update information, develop materials, and contact owners of septic systems. Once all the necessary operations have been set up, it is estimated that the bill will require up to 40 hours per week to administer. The anticipated workload will require one new position, Grade 18 Program Specialist I, with existing staff providing additional support as needed.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

In addition to a new staff position, the implementation of this bill will be assisted by the Senior Engineer in the Intergovernmental Affairs Division with assistance from a Planner III position. The additional work of those two positions is expected to be minimal but could have a minor impact on their other duties. There may also be additional workload on the Environmental Compliance Unit in enforcing Bill XX-21.

9. An estimate of costs when an additional appropriation is needed.

See response to Question 3.

10. A description of any variable that could affect revenue and cost estimates.

The number of property owners that request a reimbursement is variable and could affect expenditures.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case


Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

14. The following contributed to and concurred with this analysis:

Patty Bubar, Department of Environmental Protection
Vicky Wan, Department of Environmental Protection
Steven Shofar, Department of Environmental Protection
Alan Soukup, Department of Environmental Protection
Richard Harris, Office of Management and Budget



Jennifer R. Bryant, Director
Office of Management and Budget

8-20-21

Date

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 40-21: INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS—AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 40-21 could negatively impact racial equity and social justice as its benefits would disproportionately accrue to White property and business owners. But because this bill will impact a limited number of property and business owners in the County, OLO anticipates a minimal impact. To improve racial equity and social justice, this statement offers two options as recommended amendments for consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 40-21

The purpose of Bill 40-21 is to regulate onsite wastewater treatment systems, also known as septic systems, to promote public health.³ An improperly maintained septic system can contaminate ground water, local streams, and the Chesapeake Bay. Under current County law, the only time a septic system is regulated is when the system is designed, permitted and constructed. If enacted, Bill 40-21 will require property owners to flush out their septic systems every five years. The bill will also authorize the use of Water Quality Protection Charge (WQPC) funds to reimburse property owners (@ \$100) to cover part of the cost of pumping out their septic tanks every five years. Of note, the purpose of the WQPC is to “improve the water quality of our streams and reduce the impact of stormwater runoff.”⁴

The Department of Environmental Protection (DEP) anticipates budgeting \$472,000 per year, \$378,000 in reimbursement costs and the remainder in personnel costs – to implement Bill 40-21 for the nearly 19,000 property owners in Montgomery County with septic tanks. Bill 40-21 helps to fulfill DEP’s goal to provide “extensive outreach to property owners with septic systems to assist them with understanding the need to clean the systems and the benefits to groundwater and surface water quality from these efforts.”⁵ Bill 40-21 was introduced on November 2, 2021.

LAND OWNERSHIP, WATER SYSTEMS, AND RACIAL EQUITY

Understanding the impact of Bill 40-21 on racial equity and social justice requires understanding the historical context that shapes land ownership and water systems today. To describe this historical context, this section describes the historical drivers of racial inequities in land ownership and water systems and available data on current disparities.

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Inequities in Land Ownership. The possibility of land ownership has been placed out of reach for many Black, Indigenous, and Other People of Color (BIPOC) due to centuries of structural discrimination.⁶ Prior to European arrival, over 15 million Native Americans, organized in hundreds of tribes, inhabited what is now the United States.⁷ Many of these tribes practiced varying kinds of communal land ownership and management to sustain themselves and the environment at large.⁸ European settlers, however, systematically disposed Native Americans of their land base, often using physical violence and/or manipulation, with legal backing and the financial support of government.⁹

While White settlers obtained land taken from Native Americans, African people were stolen from their land and forced into slavery in the U.S. In the American South, plantation owners enslaved millions of Black people as farmworkers on tobacco, rice, and cotton plantations.¹⁰ In 1790, enslaved Africans comprised a third of Montgomery County's population, with many working on local tobacco plantations.¹¹ After the Civil War, Black people still accounted for about a third of the County's population.¹² Freedmen bought or were given land in Montgomery County and over 40 African American communities emerged.¹³ Yet, Black people continued to have their land stolen and property rights violated.¹⁴ Although 14 percent of farm owners in the U.S. were Black in 1920, today Black farmers own only about one percent of U.S. farms, losing around ninety percent of their farmland in the last century.¹⁵

Collectively, slavery, sharecropping, Jim Crow laws, the Homestead Act, and redlining were government policies designed to build White wealth by extracting resources from BIPOC communities. The crop lien system, heirs' property laws, partition sales, Torrens laws and tax sales have also been used to foster racial inequities in land ownership.¹⁶ Further, the U.S. Department of Agriculture systemically discriminating against Black farmers in farm programs and loans.¹⁷ Denial of access to land ownership is one of the many ways BIPOC communities have been excluded from accumulating wealth; and no one knows how many Black families or other families of color have been unfairly stripped of their land, or how many would have choose to stay on their land had they had the same support as White property owners.¹⁸ But the disparities in land and farm ownership by race are large. Nationally, in 2013:¹⁹

- White people accounted for 73.9 percent of the U.S. population but 87.1 percent of non-operating land owners and 96.1 percent of farm owner operators.
- People of color accounted for 26.1 percent of the U.S. population but 2.9 percent of non-operating land owners and 3.9 percent of farm owner operators.
- Latinx people accounted for 16.9 percent of the U.S. population but 2.2 percent of non-operating land owners and 6.2 percent of farm owner operators.

While local data on farm and land ownership rates by race and ethnicity are unknown, these inequities undoubtedly contribute to local inequities in wealth, business, and homeownership by race and ethnicity. For example:

- White households in the Metropolitan Washington Region had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.²⁰
- In Montgomery County, Asian firms accounted for four percent of local business revenue, Black firms accounted for 1.7% of local business revenue, and Latinx firms accounted for 1.5% of local business revenue in 2012.²¹
- In Montgomery County, 75 percent of White and Asian households resided in owner-occupied housing in 2019 compared to 50 percent of Latinx and Native American households and 42 percent of Black households.²²

Inequities in Water Systems. The history of systemic discrimination that shapes racial inequities in property ownership also shapes racial inequities in access to essential water services and water management systems. The NAACP Legal Defense and Education Fund (LDEF), for example notes:²³

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“For as long as our cities have been rigidly segregated by race, local officials have found ways to deprive communities of color access to essential water services. Municipal discrimination in the provision of water service runs deep.”

The NAACP LDEF further notes that as U.S. cities became more racially segregated, they prioritized services to White areas.²⁴ Similarly Montgomery County prioritized water services for White areas before Black communities. For example, the Washington Suburban Sanitary Commission (WSSC) did not connect the African American communities of Lyttonsville and Scotland to their public water system until the 1960’s;²⁵ and two predominantly Black communities - Jonesville and Jerusalem - did not have access to the Town of Poolesville’s public sewer system until the 1980’s.²⁶

Available data suggests that racial equity in accessing public water systems has been achieved. Currently WSSC, the City of Rockville, and the Town of Poolesville provide water services to all communities in the County except those designated as Service Area Category W-6 and S-6 where this is no planned community service within the 10-year scope of this plan or beyond that time period.²⁷ Development in these areas are expected to use septic systems; most of these areas are located in the County’s Agricultural Reserve.²⁸ Data on flooding, however, suggests that greater County investments aimed at addressing racial and social inequities in stormwater management are warranted.

Historical housing and development practices have concentrated BIPOC and low-income populations in flood-prone areas.²⁹ The impact of flooding can be more severe for BIPOC communities as they are often characterized by “inadequate infrastructure, additional environmental hazards, lower quality housing, limited flood and health insurance, and lost wages.”³⁰ During heavy rains, inadequate infrastructure increases the risk of flooding, especially in jurisdictions with combined sewer systems.³¹ The flooding of basement apartments in Rockville and New York City have made the risks of stormwater management inequities more clear; these risks are anticipated to increase with global warming.³²

ANTICIPATED RESJ IMPACTS

Understanding the impact of Bill 40-21 on racial equity and social justice requires understanding the stakeholders most likely to be impacted by the bill. Since septic systems in Montgomery County are generally located on rural properties or on large residential lots, rural and large lot property owners are the stakeholders most directly impacted by this bill followed by businesses that offer septic system services as follows.

- **Property Owners.** The demographics of current homeowners in the County suggest that White and Asian people could disproportionately benefit from Bill 40-21 because they demonstrate the highest home ownership rates. Three-quarters of White and Asian households reside in owner-occupied homes compared to half of Latinx households and 40 percent of Black households. If White property owners with septic systems benefit more from Bill 40-21 than others, this bill would widen current racial and social inequities in property ownership and wealth.
- **Septic Service Small Businesses.** Current business revenue by race and ethnicity in the County also suggest that White people will disproportionately benefit from Bill 40-21 because White-owned businesses generate more than 90 percent of all business revenue in the County. If White business owners benefit from Bill 40-21 more than other business owners, this bill would widen current racial inequities in entrepreneurship.

Taken together, OLO finds that Bill 40-21 could have a net impact of widening racial and social inequities in the County as available data suggests that the two groups to benefit the most from this bill – property and small business owners – are disproportionately White. Yet, because this bill will impact a limited number of property and business owners in the County, OLO anticipates a minimal impact.

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If Bill 40-21 works as intended to improve water quality by reducing septic system failures, County residents overall could benefit from increased public health. OLO anticipates, however, that such a benefit would favorably impact every racial and ethnic group in the County and in turn sustain racial and social inequities rather than narrow or widen them.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.³³ OLO finds that Bill 40-21 could widen racial and ethnic inequities because its provisions could exacerbate racial inequities in property ownership and business revenue. OLO, however, also finds that the anticipated RESJ impact of Bill 40-21 is minimal. Should the Council seek to improve the RESJ impact of Bill 40-21 with a recommended amendment or seek to endorse broader strategy aimed at creating a more equitable water system, the following two options could be considered.

- **Target Septic Pump-Out Subsidy to Low-Income or Low-Wealth Households.** Since BIPOC households are more likely to be low-income/low-wealth households, limiting eligibility for the septic system subsidy to such households could enhance racial equity and social justice. Means testing the subsidy could also enable the Department of Environmental Protection (DEP) to increase the value of the subsidy to eligible households. Offering a larger subsidy to fewer households could also have a bigger impact at mitigating septic system failures as only lower-income or – low-wealth households are probably at risk for not properly maintaining their septic systems due to costs.
- **Identify and Address Racial and Social Inequities in Stormwater Management.** BIPOC and low-income households, particularly those located in flood prone areas, are at greatest risk for experiencing the deleterious effects of flash floods. To reduce the inequitable impacts of stormwater runoff, DEP could use existing WQPC revenue to invest in efforts aimed towards this end. Noting the intersection of climate change, urban flooding, and historically marginalized communities, the U.S. Water Alliance offers five priority actions for creating efficient, resilient, and equitable water systems that could be implemented locally:³⁴
 - Use data to identify risks, assets, and community vulnerabilities to understand which populations are most vulnerable to flooding and why
 - Commit to ongoing and meaningful community engagements that enable the County to identify problems and develop solutions in tandem with communities
 - Set a proactive vision for flood management and build strategic alignment with agencies and community partners across jurisdictions
 - Fully incorporate equity into resilience planning process
 - Target investments in vulnerable communities most impacted by flooding

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

RESJ Impact Statement

Bill 40-21

CONTRIBUTIONS

Dr. Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.raciaequitytools.org/glossary>

² Ibid

³ Md. Tax-Property Code Ann. Section 9-260 and Section 9-262.

⁴ About the Water Quality Protection Charge, Montgomery County Government

⁵ FY22 Operating Budget and Public Services Program FY22-27, Environmental Protection, page 66-2

⁶ Megan Horst and Amy Marion, Racial, ethnic, and gender inequities in farmland ownership and farming in the U.S., Agriculture and Human Values, 2019

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ Melissa Gordon, “Revolution is Based on Land:” Wealth Denied Via Black Farmland Ownership Loss, Tufts University, December 17, 2018

¹¹ Montgomery’s Historically Black Communities, Montgomery Planning Blog, January 2013

¹² Ibid

¹³ Ibid

¹⁴ Melissa Gordon

¹⁵ Chelsea Gazillo, Active policy efforts to address the history of BIPOC land theft in America, American Farmland Trust, February 25, 2021

¹⁶ See Black Land Loss, Duke Sanford World Food Policy Center and Brian Barth, How Did African American Farmers Lose 90 Percent of Their Land? Modern Farmer, August 19, 2019

¹⁷ Melissa Gordon

¹⁸ Todd Lewan and Dolores Barclay, “When They Steal Your Land, They Steal Your Future”, The Los Angeles Times, December 2, 2001

¹⁹ Megan Horst and Amy Marion

²⁰ Kilolo Kijakazi, et al, The Color of Wealth in the Nation’s Capital, November 2016

<https://www.urban.org/research/publication/color-wealth-nations-capital>

²¹ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190611/20190611_3.pdf

²² Calculations based on American Community Survey, 2019 1-Year Estimates, Table ID S2502.

²³ The NAACP Legal Defense and Educational Fund, Inc., Water/Color: A Study of Race and the Water Affordability Crisis in America’s Cities.

²⁴ Ibid

²⁵ See Greater Lyttonsville Sector Plan, Planning Board Draft, July 2016 and Eugene Meyer, Montgomery County is one of the most progressive and diverse counties in the country, but it also has a long history of racism, Bethesda Magazine, March – April 2021

²⁶ Carlos Moncada, Two Tiny Hamlets Join the 20th Century, Washington Post, July 12, 1984

²⁷ Montgomery County, Maryland Comprehensive Water Supply and Sewerage Systems Plan, 2018-2027, Department of Environmental Protection. Water and Sewer Service Area Categories Table.

²⁸ Ibid

²⁹ Centering Racial Justice in Urban Flood Adaptation: Planning and Evaluation Tools for Great Lakes Cities, University of Michigan

³⁰ Ibid

³¹ Ibid

³² University of Michigan

³³ Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established

³⁴ U.S. Water Alliance, Water Rising: Equitable Approaches to Urban Flooding

Economic Impact Statement

Office of Legislative Oversight

Bill 40-21

Individual Water Supply and Sewage Disposal Systems – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 40-21 would have a net negative impact on economic conditions in the County in the *short-term*. By requiring owners of private septic systems to pump-out the sewage treatment units at least once every five years, the Bill would increase expenses for certain households. While certain licensed waste haulers based in the County would benefit from meeting the likely higher demand for more pump-out services, OLO anticipates that a significant portion of affected residents may “import” pump-out services from waste haulers based outside the County, resulting in a net decrease in economic activity in the County.

However, OLO anticipates that several factors would mitigate the potential short-term negative impacts over the *long-term*. These factors include the likelihood of the five-year pump-out requirement reducing (a) repair/replacement costs for owners of septic systems, (b) defrayed expenses for faulty septic systems that home sellers incur in residential real estate transactions, and (c) repair/replacement costs for home buyers who unknowingly purchase homes with faulty septic systems.

It is important to note that OLO cannot estimate the magnitude of the short- or long-term impacts of enacting Bill 40-21 due to various unknowns, particularly the number of septic system owners who would comply with the change in law and the precise market share of local waste haulers for pump-out services. Moreover, this analysis does not account for the opportunity cost of using funds from the Water Quality Protection Charge (WQPC) to partially reimburse owners for septic system pump-outs or reductions in negative economic externalities related to human health problems and contaminated ground and surface water quality caused by faulty septic systems.

BACKGROUND

Bill Description

The goal of Bill 40-21 is to “improve the operation of septic systems in the County thereby reducing potential human health problems and improving ground and surface water quality.” Under current law, there are no requirements for the maintenance and inspection of an individual sewage treatment system (hereinafter “septic system”) after its design and construction, unless there is a reported problem. If enacted, the Bill would require an owner of an individual sewage disposal system to pump-out the sewage treatment unit of the system at least once every five years. To offset the cost to

Economic Impact Statement

Office of Legislative Oversight

owners, the Bill would also authorize the use of WQPC funds to “partially reimburse” property owners for septic system pump-outs. Finally, the Bill would clarify certain definitions concerning individual water supply and sewage disposal.¹

Primary Stakeholders

The economic impacts from enacting Bill 40-21 would occur through owners of individual sewage disposal systems being required to pump-out the units at least once every five years and the County partially reimbursing owners for these costs. If the Bill achieves its goal of increasing the frequency of septic system pump-outs in the County, the following residents and businesses would experience economic impacts:

- **Owners of the current and future stock of septic systems who otherwise would not pump-out their systems on a five-year basis in the absence of enacting Bill 40-21.** Currently, there are an estimated 18,922 individual septic systems in the County, with the majority located in the Up-County and Mid-County. See attached graph of Demographic Index and Septic System Locations.

However, the number of residents who would increase septic system pump-outs due to the change in law is unknown for several reasons. First, the County lacks data on the frequency of pump-outs for septic systems. Therefore, OLO is unable to isolate the number of owners who do not perform pump-outs at least once every five years. Second, it is difficult to estimate the percentage of owners who would comply with the requirement, as compliance would likely depend on the ability of the Department of Environmental Protection (DEP) and/or Department of Permitting Services (DPS), the coordinating County agencies, to educate owners on the importance of routine pump-outs. (See more on compliance in the next section.)

- **Licensed waste haulers based in the County that would perform pump-out services for owners who otherwise would not pump-out their systems on a five-year basis in the absence of enacting Bill 40-21.** There are currently 47 waste haulers that have been issued a Sewage Sludge Utilization License by DPS in accordance with COMCOR 27A00.01.13. While DPS does not have the business locations, OLO approximates that 10, or 21%, of the licensed waste haulers are based in the County.

However, OLO is unable to estimate County-based waste haulers’ market share for pump-out services because the County does not collect data on the frequency of pump-outs nor the businesses that perform these services.

¹ See Introduction Staff Report Montgomery County Council, [Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments](#), Introduced on November 2, 2021.

Economic Impact Statement

Office of Legislative Oversight

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

OLO anticipates that enacting Bill 40-21 would increase transactions for pump-out services between owners of the current and future stock of septic systems in the County and licensed waste haulers. If so, affected owners would experience a net decrease in household income, whereas affected businesses would experience a net increase in revenue. Importantly, these effects would occur in the *short-term*—defined here as one five-year cycle for the pump-out requirement. As discussed below, various factors may offset the household income and business revenue effects in the *long-term*.

Predicting the magnitude of the transactions for pump-out services and their overall economic impacts is not possible due to the aforementioned data limitations. For this reason, the goal of this analysis is to anticipate whether enacting the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.

Methodology: OLO uses two methodologies in this analysis. First, OLO performs a qualitative assessment of the potential long-term impacts of enacting Bill 40-21. This assessment is based on interviews with several local realtors with experience in transactions for homes with septic-systems and personnel from DPS and DEP.

Second, to assess the short-term net impacts of enacting the Bill, OLO uses input-output (I-O) analysis, a form of quantitative macroeconomic analysis based on the interdependencies between different economic sectors or industries within a national, state, or regional economy.² I-O analysis is a methodology commonly used by local planners, policymakers, and investors to estimate how changes in economic activity affect other rounds of spending across all sectors within a specified economy. Importantly, the effect on other rounds of spending diminishes over time due to “leakages,” or “money that no longer circulates within the economy because of savings, taxes, or imports.”³

To clarify the concepts, consider the following illustration: On the one hand, households that experience a short-term decrease in income from pump-out service costs may reduce spending at restaurants based in the County, which in turn would decrease the restaurant revenues. The negative economic effects would diminish from leakages, like the restaurant owners using savings to cover operating expenses. On the other hand, local waste haulers that experience increased revenue may hire more employees who reside in the County. These residents may increase their spending at local restaurants. The positive economic effects would also diminish from leakages, like residents using a portion of their income gains to patronize businesses based outside the County.

To perform the I-O analysis for Bill 40-21, OLO uses the Regional Input-Output Modeling System (RIMS II) final-demand multiplier for the Waste Management and Remediation Services industry and Household sector. The RIMS II multipliers, developed by the U.S. Bureau of Economic Analysis,⁴ measure the ripple effects of changes in economic activity in terms of four measures:

² For a non-technical description of I-O analysis, see <https://www.investopedia.com/terms/i/input-output-analysis.asp>.

³ U.S. Bureau of Economic Analysis, *RIMS II: An Essential Tool for Regional Developers and Planners*, December 2013, G-3, https://apps.bea.gov/regional/rims/rimsii/rimsii_user_guide.pdf.

⁴ Ibid.

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- Output (sales): total market value of industry output;
- Value-Added: total value of income generated from production (equivalent to gross domestic product);
- Earnings: employee compensation plus net earnings of sole proprietors and partnerships; and
- Employment: number of full- and part-time employees.⁵

Industries with relatively high multiplier values for these measures result in greater output, value-added, earning, and employment for every additional dollar of economic activity in those industries. There are multipliers for 64 industries in the County. **Table 1** presents the values of the RIMS II Waste Management and Remediation Services industry and Household sector multipliers.

Table 1. RIMS II Waste Management and Remediation Services and Household Multipliers for Montgomery County

Sector	Output	Earnings	Employment	Value-Added
Waste Management and Remediation Services	1.4719	0.2432	4.4732	0.7979
Household	0.7951	0.1587	3.8028	0.4936
Difference	0.6768	0.0845	0.6704	0.3043

Short-Term Estimates: Using the Rims II multipliers, OLO estimates short-term net changes in output, earnings, employment, and value-added in the County for increased transactions for pump-out services between owners of the current and future stock of septic systems in the County and licensed waste haulers.

The total cost to households of pumping out 18,922 septic systems, the current estimated stock of units, per every five-year cycle is presented in **Figure 1**. Prior OLO analysis on septic systems in the County found that the price for each pump-out service ranges from \$350 to \$500, with a midpoint of \$425.⁶ The Figure presents cost estimates with the County's partial reimbursement of \$100, which is assumed in the Fiscal Impact Statement for Bill 40-21. With the \$100 reimbursement, the adjusted price per pump-out ranges from \$250 to \$400, with a midpoint of \$325.

As indicated in **Figure 1**, the total cost would vary significantly on the extent to which owners comply with the pump-out requirement. As previously stated, the County does not track the number of septic system owners who pump-out their units at least once every five years. However, it is worth noting that Fairfax County has achieved high levels of compliance for its five-year pump-out requirement. From FY17 to FY21, approximately 83% of the septic systems (17,899 out of 21,581) were pumped-out.⁷

To illustrate the short-term impacts of enacting Bill 40-21, **Figures 2-5** present estimates of the multiplier effects for every 10 percent increase in pump-out services given the current stock of septic systems (18,922) and the adjusted price range.

⁵ Ibid, 3 – 3 and 3 – 4.

⁶ Aron Trombka, *Life-Cycle Regulation of On-Site Wastewater Treatment Systems*, Office of Legislative Oversight, December 6, 2016.

⁷ Meeting with personnel from Fairfax County's Department of Health, Division of Environmental Health on November 23, 2021.

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The estimates vary by the percentage of pump-out services that County-based waste haulers perform. For every 10 percent increase in pump-out services to yield net positive economic impacts, County-based waste haulers would need to perform:

- greater than 54% of services for a net positive change in *output* (**Figure 2**),
- greater than 65% of services for a net positive change in *earnings* (**Figure 3**),
- greater than 62% of services for a net positive change in *value-added* (**Figure 4**), and
- greater than 85% of services for a net positive change in *jobs* (**Figure 5**).

Importantly, these estimates are significantly higher than the share of County-based businesses (21%) of the total number of licensed waste haulers. On this basis, the I-O analysis suggests that enacting Bill 40-21 may result in a net negative impact on economic conditions in the County in the *short-term*.

Figure 1. Total Cost to Households Affected by Pump-Out Requirement Per five-year Cycle



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Figure 2. Effect of Pump-Out Requirement on *Output* Per 10% Increase in Compliance

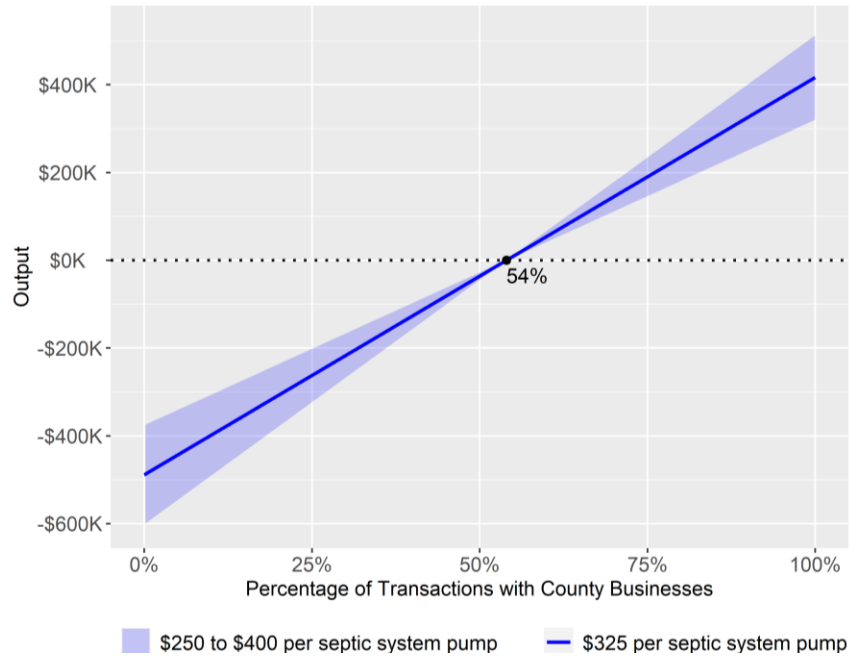
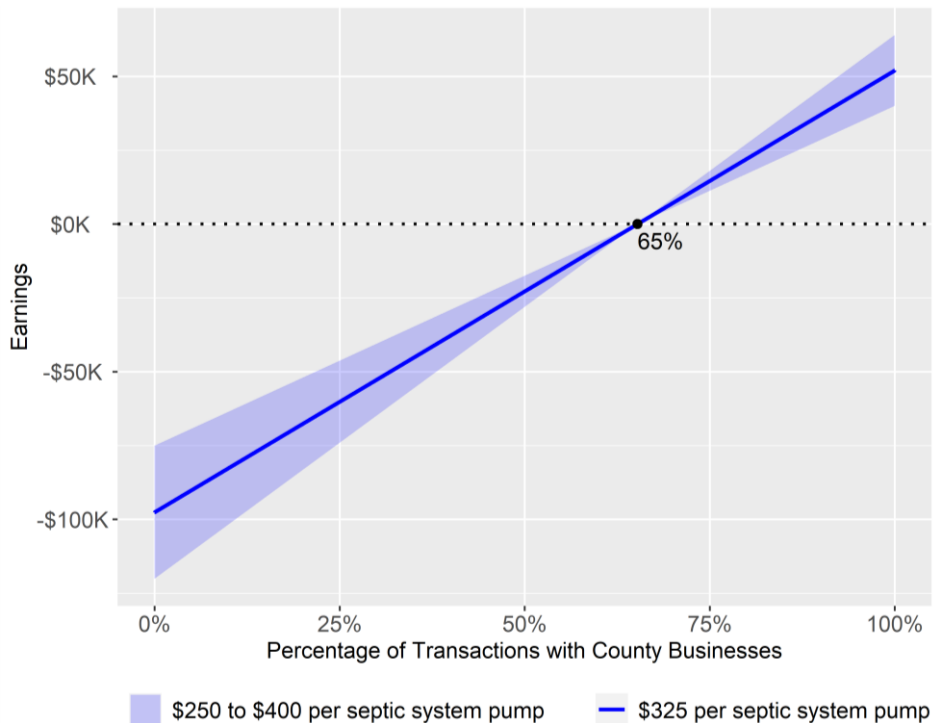


Figure 3. Effect of Pump-Out Requirement on *Earnings* Per 10% Increase in Compliance



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Figure 4. Effect of Pump-Out Requirement on *Value-Added* Per 10% Increase in Compliance

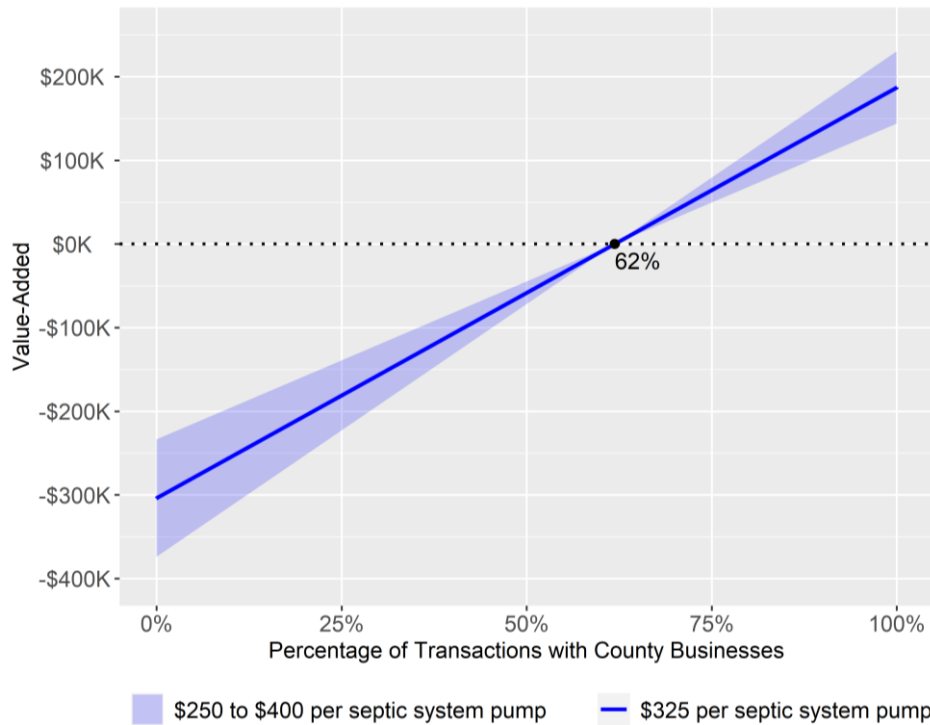
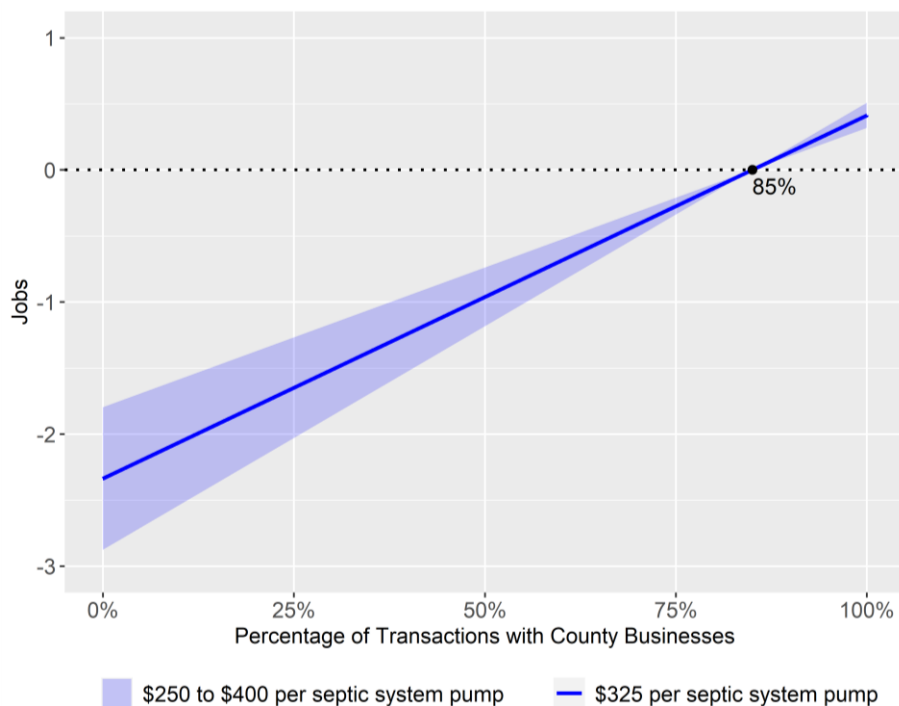


Figure 5. Effect of Pump-Out Requirement on *Jobs* Per 10% Increase in Compliance



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Long-Term: While the I-O analysis suggests that enacting Bill 40-21 may have net negative economic impacts in the *short-term*, several factors likely would mitigate the economic costs over the *long-term*. OLO consulted with several local realtors with experience in transactions for homes with septic-systems as well as personnel from DPS and DEP. They identified the following costs associated with improper maintenance of septic systems:

- Improper maintenance can reduce the life expectancy of septic systems, requiring owners to incur higher repair/replacement costs over the long-term.
- Improper maintenance can affect residential real estate transactions. Although septic system inspections are not required by State or County law, prospective buyers often request them. When septic systems fail inspection, owners often reduce the price of their homes to defray the cost of septic system repairs/replacements.
- Moreover, home buyers do not always request inspections. For instance, buyers may want to increase the competitiveness of their offers or lack familiarity with septic systems. As a result, home prices may not properly account for septic system repair/replacement costs that buyers incur after purchasing homes, resulting in a market inefficiency.

Based on qualitative evidence, OLO anticipates that the five-year pump-out requirement likely would reduce repair/replacement costs for owners, bolster home values, and reduce risk for home buyers. Over the *long-term*, these positive economic impacts would mitigate the anticipated negative impacts of enacting Bill 40-21 in the short-term. However, data and time limitations prevent OLO from estimating the magnitude of these impacts over the long-term.

Scope Limitations: It is important to note that the I-O analysis and qualitative assessment does not account for several factors that would likely influence the economic impacts of enacting Bill 40-21. These factors include:

- opportunity cost of using funds from the Water Quality Protection Charge to reimburse owners for septic system pump-outs; and
- reduction in negative economic externalities related to human health problems and contaminated ground and surface water quality caused by the faulty septic systems.

VARIABLES

The primary variables that would affect the economic impacts of enacting Bill 40-21 are the following:

- number of septic system owners who do not perform pump-outs at least once every five years;
- percentage of these owners who would comply with the pump-out requirement;
- average price for each pump-out service;
- market share of County-based waste haulers for pump-out services;
- total annual repair/replacement costs for septic systems;
- percentage of septic system inspections in residential real estate transactions; and
- total annual defrayed septic system expenses in residential real estate transactions.

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IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■
ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

OLO anticipates that enacting Bill 40-21 would have conflicting impacts on private organizations in the County in terms of several of the Council’s priority indicators.⁸

The Bill would have targeted, positive impacts on licensed waste haulers based in the County. If septic system pump-outs increase due to the change in law, these businesses likely would experience net revenue increases from pump-out services, which would result in net increases in business income holding all else equal. The magnitude of increases in business revenues and incomes largely would depend on owner compliance with the five-year pump-out requirement and local waste haulers’ share of the market for pump-out services, with greater owner compliance and market share having a positive effect on these indicators. It is worth noting, however, that local waste haulers may experience a net decrease in revenues from septic system repairs/replacements over the long-term.

As illustrated in the I-O analysis, Bill 40-21 may have diffuse, negative impacts on businesses in the County. If septic system pump-outs increase due to the change in law, there would be an increase in transactions for pump-out services between owners of septic systems and licensed waste haulers. These transactions would result in net increases in expenses for the Household sector and revenues in the Waste Management and Remediation Services sector, holding all else equal. Although the multiplier effects for the Waste Management and Remediation Services sector is relatively higher across all four RIMS II measures (see **Table 1**), OLO anticipates that a significant portion of the businesses in this sector that would provide the pump-out services are based outside the County. This conclusion is based on County-based waste haulers constituting 21% of the licensed waste haulers according to an OLO estimate, whereas local waste haulers would need to perform anywhere from 54% to 85% of the services for net positive changes in output, earnings, value-added, and jobs to occur (see **Figures 2-5**). Thus, the Bill may result in economic leakages in the form of County households “importing” pump-out services.

Beyond these impacts, OLO does not anticipate that enacting Bill 40-21 would significantly affect private organizations in terms of the Council’s other priority indicators.

Residents

OLO anticipates that enacting Bill 40-21 would have net negative impacts on County residents in the *short-term* in terms of several of the Council’s priority indicators. However, OLO believes short-term negative impacts likely would reduce over the *long-term*.

⁸ Montgomery County Code, [Sec. 2-81B, Economic Impact Statements](#).

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Bill 40-21 would have conflicting, targeted impacts on any residents who otherwise would not pump-out their septic systems on a five-year basis in the absence of enacting the Bill. On the one hand, these residents would experience *minor* increases in septic system maintenance expenses in the short-term. As **Table 2** shows, for one household, the cost of pumping-out a septic system spread out across five years would increase annual household expenses by approximately \$65 with the partial reimbursement and \$85 without the reimbursement. On the other hand, these residents may incur lower repair/replacement costs over the long-term and/or mitigate defrayed expenses for faulty septic systems when they sell their homes in the future. Similarly, certain home buyers would benefit from reduced risk of significant repair/replacement costs for unknowingly purchasing homes with faulty septic systems.

Table 2. Pump-Out Service Costs Per One Septic System

	\$100 Partial Reimbursement			No Reimbursement		
	Min	Mid-point	Max	Min	Mid-point	Max
Cost Per five-year Cycle	\$250	\$325	\$400	\$350	\$425	\$500
Cost Per Year	\$50	\$65	\$80	\$70	\$85	\$100

As illustrated in the I-O analysis, Bill 40-21 may have diffuse, negative impacts on residents affected by any net decrease in economic activity caused from the economic leakages described above.

Beyond these impacts, OLO does not anticipate that enacting Bill 40-21 would significantly affect residents in terms of the Council's other priority indicators.

DISCUSSION ITEMS

To limit potential economic leakages in the form of residents "importing" pump-out services from waste haulers based outside the County, Councilmembers may want to consider granting the partial reimbursement to owners of septic systems on the condition that they use County-based licensed waste haulers to perform the services. The Reforest Montgomery coupon, in which participating businesses are all based in the County, offers a potential model for Councilmembers to consider.⁹

⁹ See Montgomeryplanning.org, [Native Tree Discount](#).

Economic Impact Statement

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WORKS CITED

Introduction Staff Report for [Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments](#). Introduced on November 2, 2021.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomeryplanning.org, [Native Tree Discount](#).

U.S. Bureau of Economic Analysis. [RIMS II: An Essential Tool for Regional Developers and Planners](#). December 2013.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.



AGRICULTURAL ADVISORY COMMITTEE

November 24, 2021

The Honorable Tom Hucker, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Hucker:

Bill 40-21 Individual Water Supply and Sewage
Disposal Systems - Amendments

On behalf of the Montgomery County Agricultural Advisory Committee-AAC, please accept this letter in opposition to Bill 40-21 Individual Water Supply and Sewage Disposal Systems - Amendments.

We want to thank the Department of Environmental Protection-DEP for sharing this proposed legislation with the agricultural community prior to it being introduced. The DEP agreed to remove one of the provisions that were viewed as burdensome to property owners. After reviewing the Bill 40-21 more closely, the AAC believes the sections on enforcement, required easements, penalties, and violations on lines 136-141 and 146-154 are overreaching and threaten the property rights of our citizens.

The AAC encourages the DEP to implement a septic tank program that uses education and awareness rather than a heavy-handed approach surrounding enforcement, required easements, penalties, and violations.

We thank the County Council for this opportunity to present our views and we will participate in the Council Committee Work Session when this Bill 40-21 is scheduled.

Sincerely,

Doug Lechliden, Chairman

Cc: Marc Elrich, County Executive



Montgomery County Farm Bureau

PO Box 217, Damascus Maryland 20872

301-467-1419

mcfarmbureausecretary@gmail.com

www.montgomery.mdfarmbureau.com



November 26, 2021

The Honorable Tom Hucker, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments

Dear Council President Hucker,

Montgomery County Farm Bureau is opposed to Bill 40-21. We request that you consider our strong objections and vote against this measure as we feel it violates property rights of farmers.

A Water Quality Protection Charge (WQPC) is already being assessed to all property owners in Montgomery County. I believe those funds were intended to be used to protect water by making improvements to storm water drainage systems. So, all property owners are paying for that project.

The amendments in Bill 40-21 places the proposed costs squarely on the shoulders of those individuals with private wells and septic systems. Farmers have done far more than their fair share to protect water by planting cover crops, trees, and participating in a large variety of good soil and water quality systems, largely engineered by Montgomery Soil Conservation District's employees.

I am currently paying 624% more in water quality fees to Montgomery County than my counterparts in Frederick County (\$624 vs. \$1/ year). We do not need the heavy hand of government to collect more monies for water quality, dictate when and how to manage private septic systems, and impose permit fees, fines, and penalties on property owners when government dictates aren't or can't be followed.

If septic tanks should be pumped out every 3-5 years as language in Bill 40-21 suggests, we recommend Montgomery County use existing monies from WQPC to pay for the pumping and cover 100% of the cost. We are not persuaded that properly functioning septic tanks need to be pumped at all. My septic tank has not been pumped in over 30 years and works fine.

We are opposed to Bill 40-21 and any additional tax on Farm Bureau members. We believe further study of this matter is needed, and a different approach taken to meet water quality goals. We think a voluntary approach would be best for all. Carrots are favored over sticks.

Given that soils in Montgomery County are largely clay soils, not sandy soils, we are not in a "critical area" adjacent to the Chesapeake Bay, and we believe any effluent from individual septic systems will be properly filtered before reaching the underground aquifers and contaminate shellfish in the Bay.

In summary, we are very concerned about property rights, the negative economic impact, creation of larger government, and regulatory mandates. We recommend a voluntary approach be taken.

Sincerely,

Lonnie Luther, President

Montgomery County Farm Bureau

Cc: County Council and Staff

Marc Elrich, County Executive

Adrianna Hochberg, Acting Director, Department of Environmental Protection

Jeremy Criss, Director of Agriculture

Robert Butz, Chairman, Montgomery Soil Conservation District

Bob Cissel, Director, Montgomery Agricultural Producers

MCFB Board of Directors



AGRICULTURAL PRESERVATION ADVISORY BOARD

November 30, 2021

The Honorable Tom Hucker, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 40-21, Individual Water Supply and Sewage Disposal Systems – Amendments

Dear Council President Hucker,

The Montgomery County Agricultural Preservation Advisory Board – APAB met on November 9, 2021 for its regularly scheduled meeting. During the meeting, bill 40-21 was discussed and the Board moved and approved providing testimony for the November 30, 2021 public hearing.

The Department of Environmental Protection – DEP reached out to the agricultural groups prior to the introduction of bill 40-21 to inform them of goals of this legislation. When the APAB met with DEP staff, there was concern about the language requiring an easement and an inspection and maintenance agreement as well as the imposing of penalties if a landowner is in violation of this legislation.

Approximately 50% of the septic systems are in the Agricultural Reserve Zone. The APAB believes the easement requirement and inspection and maintenance agreement are an impediment to farmers and will create another cost to live in the County. While DEP described the goals of this bill to the agricultural groups, they did not share a sample easement or inspection and maintenance agreement. The APAB does not know who will be able to perform the required inspections and if a landowner cannot perform them, it will be a de facto tax without calling it a tax.

The APAB is concerned about lines 136 – 141 and lines 146-148. The bill would give new authority to DEP that had previously been under the Department of Permitting Services authority – inspection of septic systems and imposing penalties related to septic systems. This is a duplication of efforts and will create confusion to landowners.

In the policy review submitted by DEP, it states only one other county in Maryland currently requires septic pump out - Queen Anne's. Queen Anne's County's legislation does not have penalties tied to the law. Howard County's septic legislation only encourages septic pump out and similarly does not have any penalties associated with it. The APAB opposes the bill as



AGRICULTURAL PRESERVATION ADVISORY BOARD

written and believes there should be an effort to educate landowners with septic systems prior to proposing legislation with penalties as Howard and Frederick Counties have done.

The DPS had been the department involved in septic system inspections previously, the APAB does not know why another department needs to inspect the system – could the DPS complete an inspection form collecting the information the DEP needs?

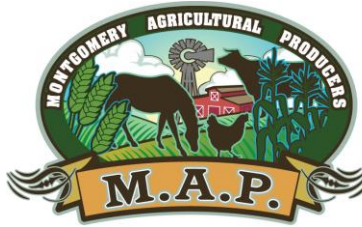
The APAB is aware of the requirements to meet its MS4 permits, the agricultural sector in the County and State have done their part to meet the Chesapeake Bay WIP, this bill will put another burden on the farmers. The APAB believes educating the landowners, encouraging pump outs and offering reimbursement for compliance are a better method than imposing fees, penalties and easements.

Please accept this as the written testimony for the Montgomery Agricultural Preservation Advisory Board.

Sincerely,

Michael Jamison, Chairman

cc: Marc Elrich, County Executive
Jeremy Criss, Director, Office of Agriculture
Adriana Hochberg, Acting Director, Department of Environmental Protection



"Representing the Agricultural Producers of Montgomery County"

The Honorable Tom Hacker, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20856

November 9, 2021

Re: Bill 40-21 Individual Water Supply and Sewage Disposal Systems-Amendments

Dear Council President Hacker

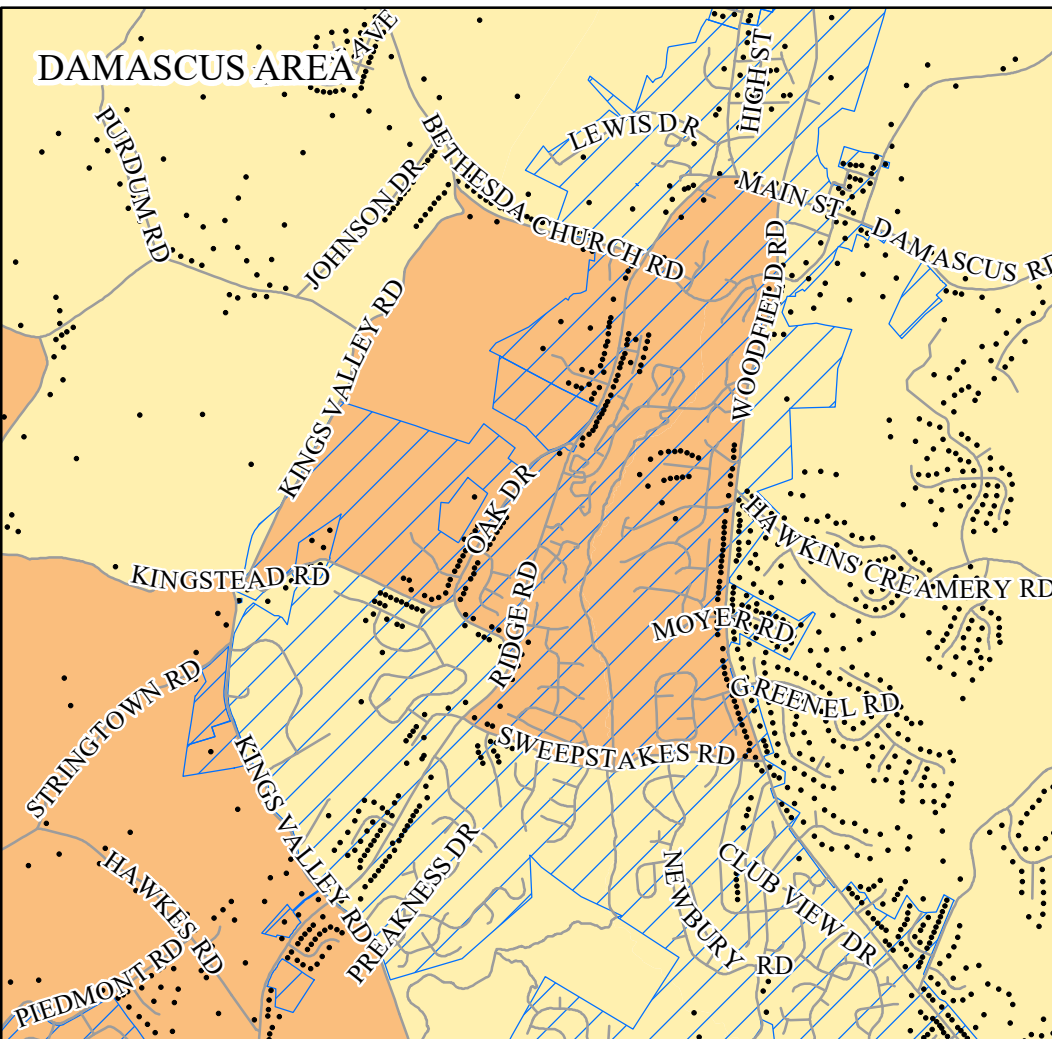
Please accept this written testimony opposing Bill 40-21 Individual Water Supply and Sewage Disposal Systems- Amendments. After careful review we find that we cannot support this bill as it is written.

Therefore, we ask for an unfavorable vote on bill 40-21 from the Council.

Sincerely

Bob Cissel
Director Montgomery Agricultural Producers, Inc.
P.O. Box 457
Poolesville, Maryland 20837
Cell: 301-775-8978

cc; County Executive



Demographic Index and Septic System Location

Legend

• Properties on Septic

▭ Sewer Envelope

Demographic Index

Low (0 – 33.33 Percentile)

Medium (33.34 - 66.66 Percentile)

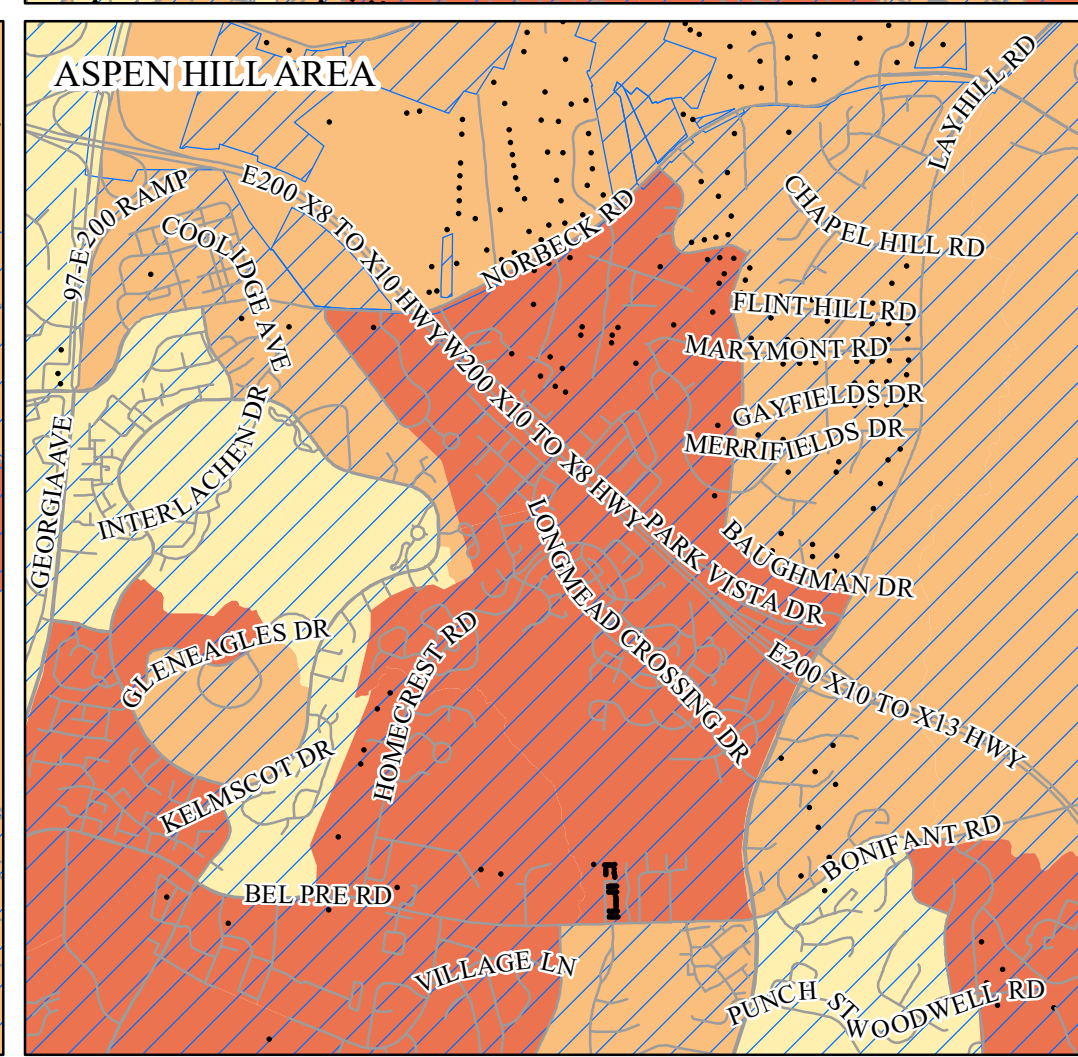
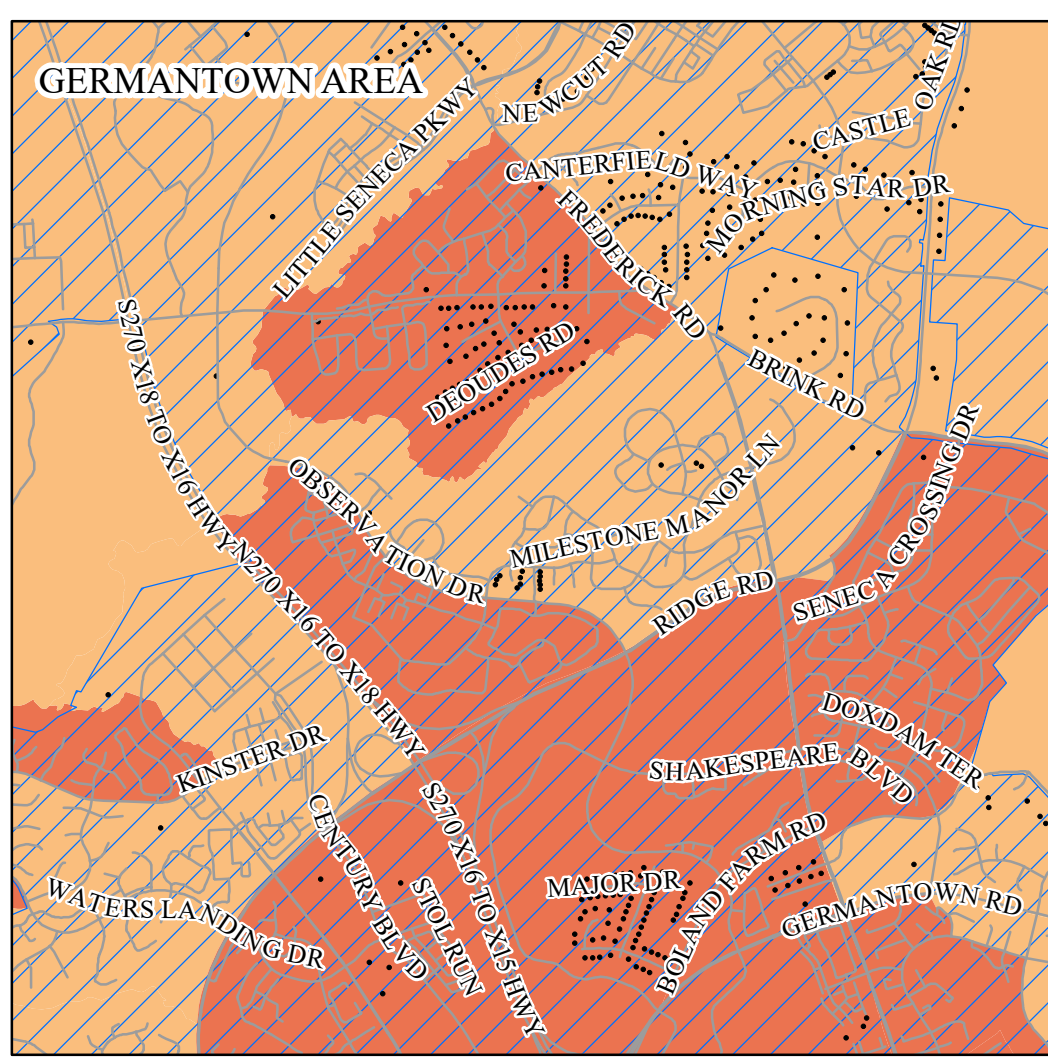
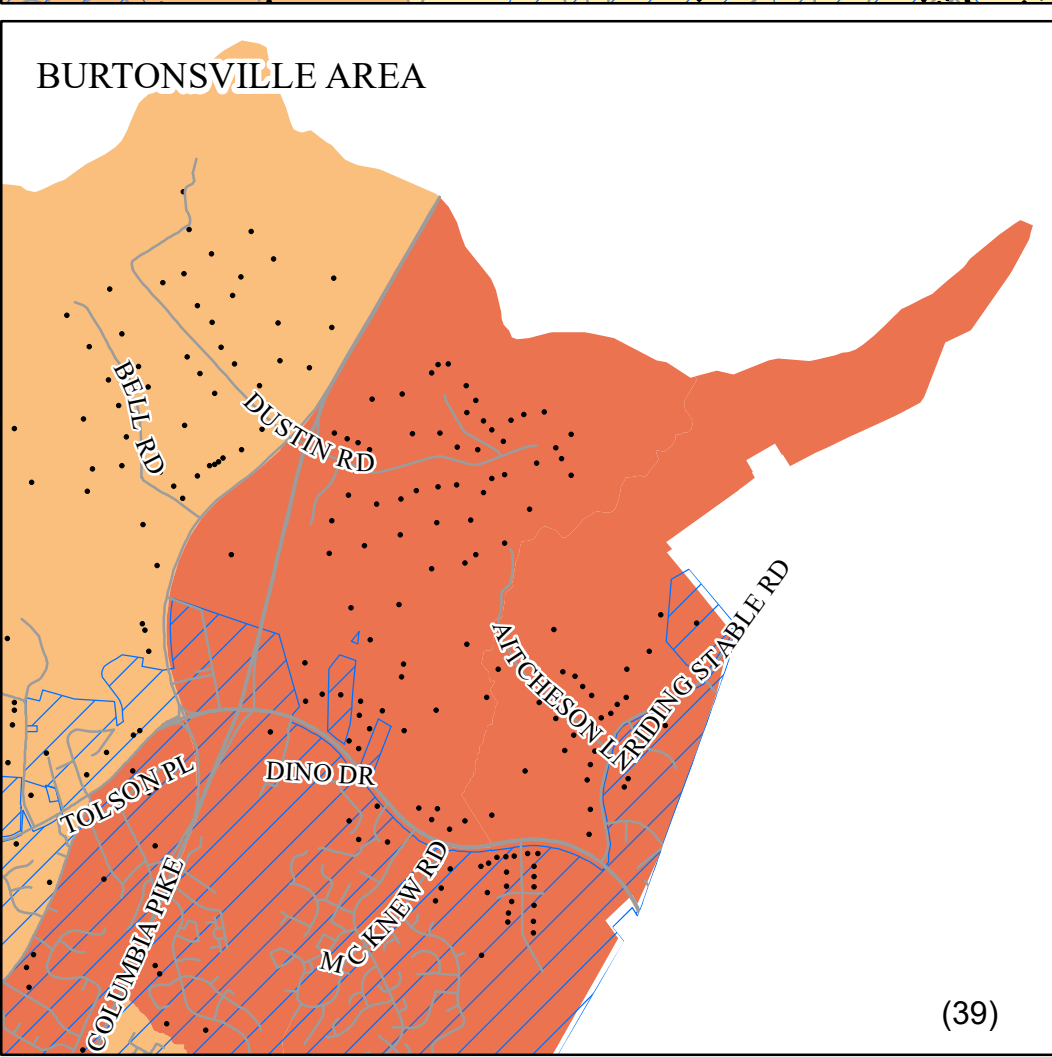
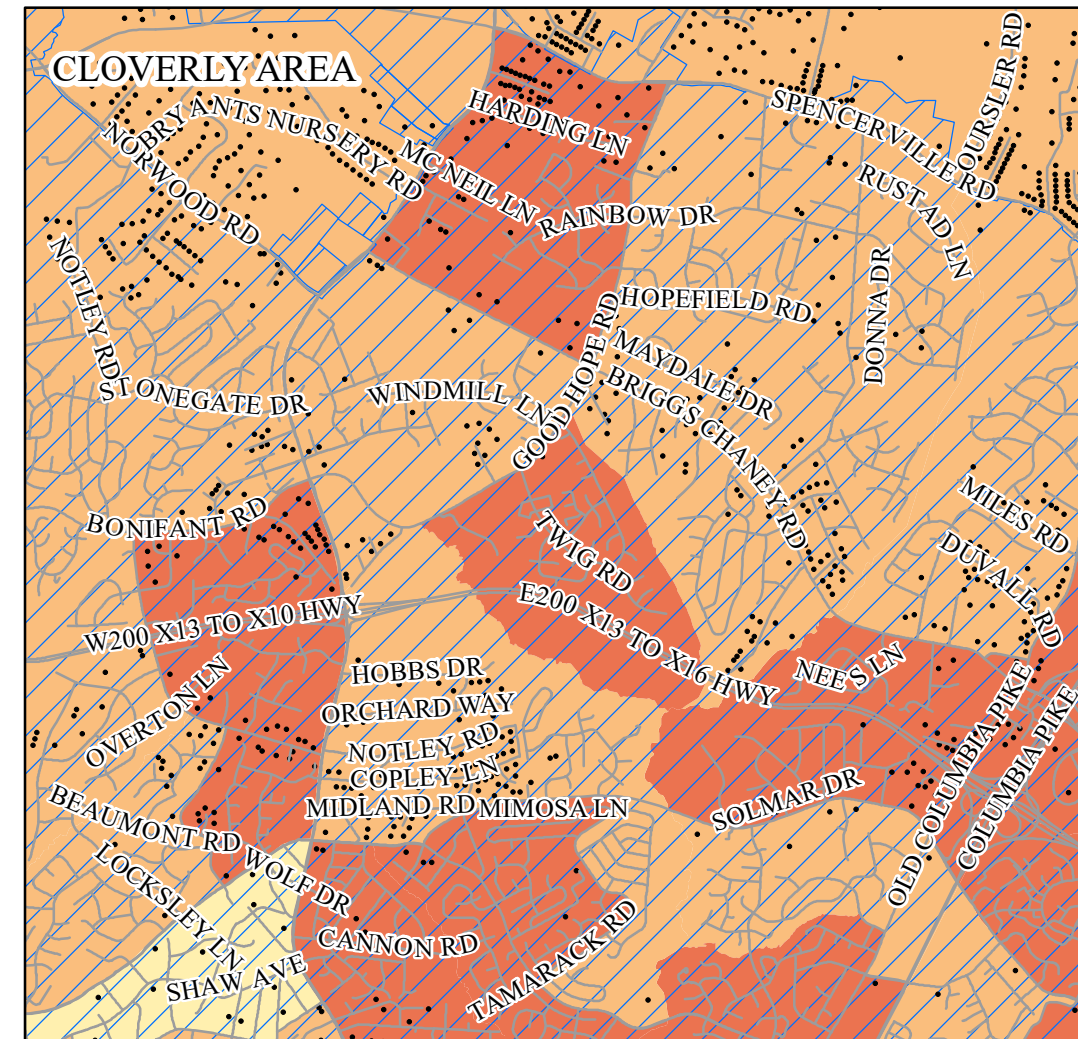
High (66.67 - 100 Percentile)

Please see Demographic Index data background Below taken from the Watershed Restoration Suitability & Equity Mapping Tools webpage (<https://www.montgomerycountymd.gov/water/restoration/equity.html>)

This map utilizes American Community Survey data from the 2019 version of the US EPA EJSCREEN* for census block groups in the County. By utilizing this data and determining the demographic index percentile of an area, the department can assess equity during the project selection process.

For example: Data for a census block group located in the Sligo creek watershed indicates the population in that block group is 54% people of color and 12% low income. Averaging these percentages results in a demographic index of 33%. This percentage is then compared to all the census block groups that exist within Montgomery County. Doing so, places this census block group in the 52nd percentile of the County. This equity assessment is split into 3 categories: low (0-33%), medium (34-66%) and high (67-100%). This provides the ability to cross reference percentiles with project suitability to ensure project targeting is not biased.

*For the purposes of this mapping, the term people of color is used to better reflect and depict the diversity exhibited across Montgomery County rather than the term "minority" which is used in the US EPA EJSCREEN



Demographic Index and Septic System Location

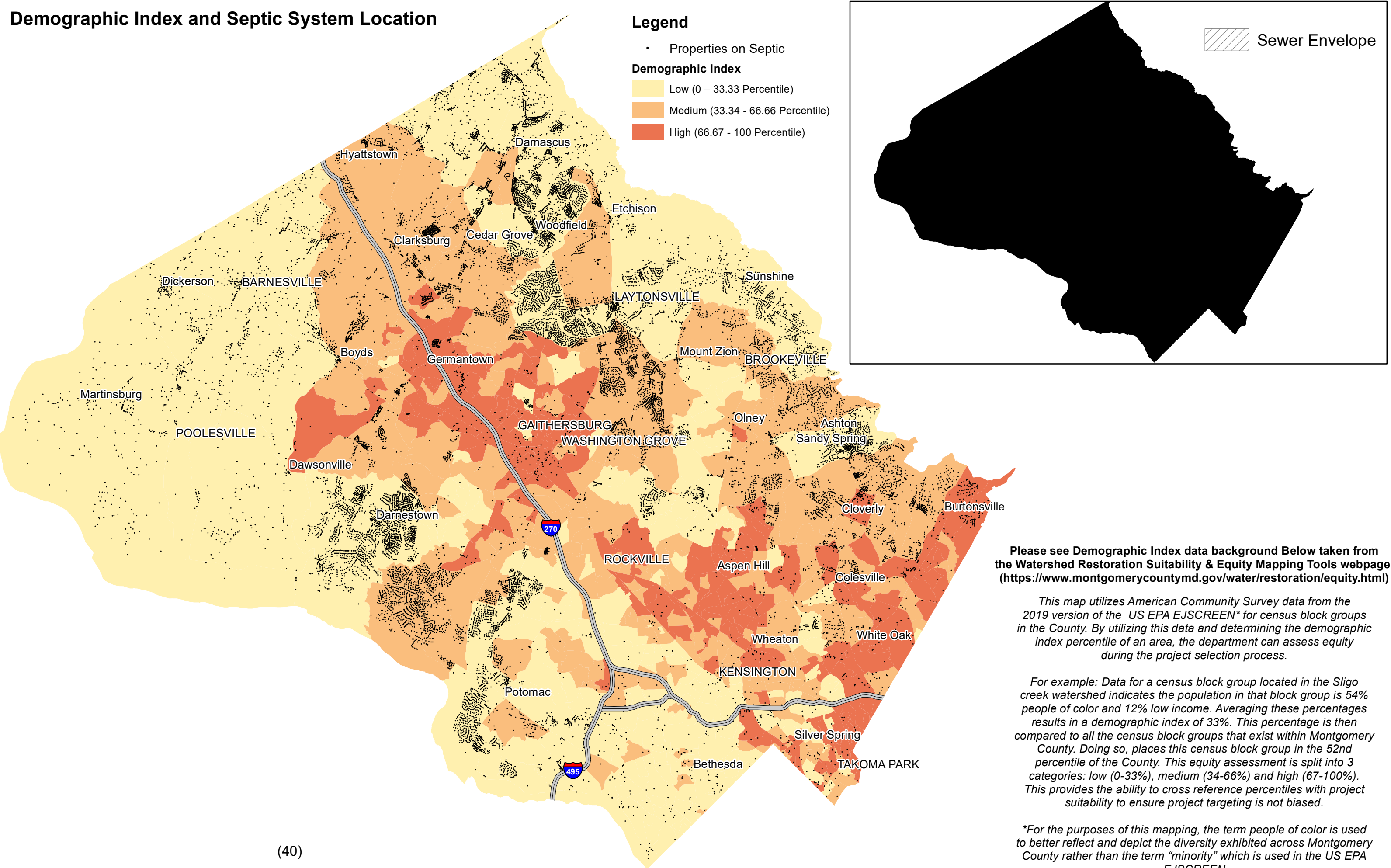
Legend

• Properties on Septic

Demographic Index

- Low (0 – 33.33 Percentile)
- Medium (33.34 - 66.66 Percentile)
- High (66.67 - 100 Percentile)

 Sewer Envelope



Please see Demographic Index data background Below taken from the Watershed Restoration Suitability & Equity Mapping Tools webpage (<https://www.montgomerycountymd.gov/water/restoration/equity.html>)

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