

Racial Equity and Social Justice (RESJ) Impact Statement

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.

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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.racialequitytools.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