

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 194

Representative Dolan

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A B I L L

To amend Sections 120.01, 120.02, and 120.05 of Am. 1
Sub. H.B. 119 of the 127th General Assembly that 2
temporarily suspended the operation of certain 3
provisions of the Household and Small Flow On-Site 4
Sewage Treatment Systems Law and that enacted 5
temporary provisions regarding that Law by 6
extending the termination of the suspension and 7
temporary law from July 1, 2009, to December 31, 8
2009, and to declare an emergency. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That Sections 120.01, 120.02, and 120.05 of Am. 10
Sub. H.B. 119 of the 127th General Assembly be amended to read as 11
follows: 12

Sec. 120.01. During the period beginning July 1, 2007, and 13
expiring ~~July 1~~ December 31, 2009, the operation of sections 14
3718.02, 3718.05, 3718.06, 3718.07, 3718.08, 3718.09, 3718.10, 15
3718.99, and 6111.441 of the Revised Code is suspended. On ~~July 1~~ 16
December 31, 2009, sections 3718.02, 3718.05, 3718.06, 3718.07, 17
3718.08, 3718.09, 3718.10, 3718.99, and 6111.441 of the Revised 18
Code, in either their present form or as they are later amended, 19
again become operational. 20

Sec. 120.02. (A)(1) Effective July 2, 2007, the rules adopted 21
by the Public Health Council under section 3718.02 of the Revised 22
Code that took effect on January 1, 2007, are not valid. Not later 23
than July 2, 2007, the Director of Health shall adopt rules that 24
are identical to the rules adopted by the Public Health Council 25
that were in effect prior to January 1, 2007, and were codified in 26
Chapter 3701-29 of the Administrative Code, except the rules in 27
that chapter that established requirements for separation 28
distances from a water table and soil absorption requirements. 29

At the same time that the Public Health Council adopts the 30
rules required under division (A)(2) of this section, the Director 31
shall rescind the rules adopted under this division. 32

The adoption and rescission of rules under this division are 33
not subject to section 119.03 of the Revised Code. However, the 34
Director shall file the adoption and rescission of the rules in 35
accordance with section 119.04 of the Revised Code. Upon that 36
filing, the adoption and rescission of the rules take immediate 37
effect. 38

(2) Not later than thirty days after the effective date of 39
this section as enacted by Am. Sub. H.B. 119 of the 127th General 40
Assembly and notwithstanding any provision of law to the contrary, 41
the Public Health Council shall rescind rules adopted by the 42
Council under section 3718.02 of the Revised Code, that took 43
effect on January 1, 2007. At the same time as those rules are 44
rescinded, the Council shall adopt rules that are identical to the 45
rules adopted by the Council that were in effect prior to January 46
1, 2007, and were codified in Chapter 3701-29 of the 47
Administrative Code, except the rules in that Chapter that 48
established requirements for separation distances from a water 49
table and soil absorption requirements. Instead, a board of health 50
or the authority having the duties of a board of health shall 51

adopt standards establishing requirements for separation distances 52
from a water table and soil absorption requirements based on the 53
water table and soils in the applicable health district for 54
purposes of the installation and operation of household sewage 55
treatment systems and small flow on-site sewage treatment systems 56
in the applicable health district. 57

The rescission and adoption of rules under this division are 58
not subject to section 119.03 of the Revised Code. However, the 59
Public Health Council shall file the rules in accordance with 60
section 119.04 of the Revised Code. Upon that filing, the rules 61
take immediate effect. 62

(B) A local board of health or the authority having the 63
duties of a board of health may adopt standards for use in the 64
health district that are more stringent than the rules adopted 65
under division (A)(1) or (2) of this section, provided that the 66
board of health or authority having the duties of a board of 67
health in adopting such standards considers the economic impact of 68
those standards on property owners, the state of available 69
technology, and the nature and economics of the available 70
alternatives. If a board of health or authority having the duties 71
of a board of health adopts standards that are more stringent than 72
the rules adopted under division (A)(1) or (2) of this section, 73
the board or authority shall send a copy of the standards to the 74
Department of Health. 75

(C)(1) A board of health or the authority having the duties 76
of a board of health shall approve or deny the use of household 77
sewage treatment systems and small flow on-site sewage treatment 78
systems in the applicable health district. In approving or denying 79
a household sewage treatment system or a small flow on-site sewage 80
treatment system for use in the health district, the board or 81
authority shall consider the economic impact of the system on 82
property owners, the state of available technology, and the nature 83

and economics of the available alternatives, ensure that a system 84
will not create a public health nuisance, and require a system to 85
comply with the requirements established in divisions (C)(2) and 86
(3) of this section. 87

(2) Notwithstanding any rule adopted by the Director of 88
Health or the Public Health Council or standard adopted by a board 89
of health or the authority having the duties of a board of health 90
governing the installation and operation of sewage treatment 91
systems, a board of health or the authority having the duties of a 92
board of health shall ensure that the design and installation of a 93
soil absorption system prevents public health nuisances. To the 94
extent determined necessary by a board of health or the authority 95
having the duties of a board of health, a sewage treatment system 96
that is installed after the effective date of this section as 97
enacted by Am. Sub. H.B. 119 of the 127th General Assembly shall 98
not discharge to a ditch, stream, pond, lake, natural or 99
artificial waterway, drain tile, other surface water, or the 100
surface of the ground unless authorized by a national pollutant 101
discharge elimination system (NPDES) permit issued under Chapter 102
6111. of the Revised Code and rules adopted under it. In addition, 103
a sewage treatment system shall not discharge to an abandoned 104
well, a drainage well, a dry well or cesspool, a sinkhole, or 105
another connection to ground water. As a condition to the issuance 106
of a permit to operate a system, a board of health or the 107
authority having the duties of a board of health shall require a 108
service contract for any sewage treatment system that is subject 109
to an NPDES permit to the extent required by the Environmental 110
Protection Agency. If classified as a class V injection well, a 111
household sewage treatment system serving a two- or three-family 112
dwelling or a small flow on-site sewage treatment system shall 113
comply with 40 C.F.R. 144, as published in the July 1, 2005, Code 114
of Federal Regulations and with the registration requirements 115
established in rule 3745-34-13 of the Administrative Code. 116

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(3) Notwithstanding any rule adopted by the Director of 118
Health or the Public Health Council or standard adopted by a board 119
of health or the authority having the duties of a board of health 120
governing the installation and operation of household sewage 121
treatment systems, all septic tanks, other disposal component 122
tanks, dosing tanks, pump vaults, household sewage disposal system 123
holding tanks and privy vaults, or other applicable sewage 124
disposal system components manufactured after the effective date 125
of this section as enacted by Am. Sub. H.B. 119 of the 127th 126
General Assembly and used in this state shall be watertight and 127
structurally sound. 128

(4) For purposes of division (C) of this section, "economic 129
impact" means all of the following with respect to the approval or 130
denial of a household sewage treatment system or small flow 131
on-site sewage treatment system, as applicable: 132

(a) The cost of a proposed system; 133

(b) The cost of an alternative system that will not create a 134
public health nuisance; 135

(c) A comparison of the costs of repairing a system as 136
opposed to replacing the system with a new system; 137

(d) The value of the dwelling or facility, as applicable, 138
that the system services as indicated in the most recent tax 139
duplicate. 140

(D)(1) Notwithstanding any rule adopted by the Director of 141
Health or the Public Health Council governing the installation and 142
operation of household sewage treatment systems, a board of health 143
or the authority having the duties of a board of health may 144
establish and collect fees for the purposes of this section. 145

(2) In addition to the fees that are authorized to be 146

established under division (D)(1) of this section, there is hereby 147
levied an application fee of twenty-five dollars for a sewage 148
treatment system installation permit. A board of health or the 149
authority having the duties of a board of health shall collect the 150
fee on behalf of the Department of Health and forward the fee to 151
the Department to be deposited in the state treasury to the credit 152
of the Sewage Treatment System Innovation Fund, which is hereby 153
created. Not more than seventy-five per cent of the money in the 154
Fund shall be used by the Department to administer the sewage 155
treatment system program, and not less than twenty-five per cent 156
of the money in the Fund shall be used to establish a grant 157
program in cooperation with boards of health to fund the 158
installation and evaluation of new technology pilot projects. In 159
the selection of the pilot projects, the Director of Health shall 160
consult with the Sewage Treatment System Technical Advisory 161
Committee created in section 3718.03 of the Revised Code. 162

(E) Not later than one year after the installation of a 163
household sewage treatment system, a board of health or the 164
authority having the duties of a board of health shall inspect the 165
system to ensure that it is not a public health nuisance. 166

(F) The Department of Health may file an injunctive action 167
against a board of health or the authority having the duties of a 168
board of health that allows a household sewage treatment system or 169
small flow on-site sewage treatment system to cause a public 170
health nuisance, provided that the Department provides reasonable 171
notice to the board or authority and allows for the opportunity to 172
abate the nuisance prior to the action. 173

(G) The Environmental Protection Agency shall not require a 174
board of health or the authority having the duties of a board of 175
health to enter into a memorandum of understanding or any other 176
agreement with the Agency regarding the issuance of NPDES permits 177
for off-lot sewage treatment systems. Instead, a representative of 178

a board of health or the authority having the duties of a board of health may meet with a person who intends to install such a system to determine the feasibility of the system and refer the person to the Agency to secure an NPDES permit for the system if needed. The Environmental Protection Agency, within ninety days or as quickly as possible after the effective date of this section as enacted by Am. Sub. H.B. 119 of the 127th General Assembly, shall seek a revision to the general NPDES permit, issued pursuant to the federal Water Pollution Control Act as defined in section 6111.01 of the Revised Code, in order not to require a memorandum of understanding with a board of health or the authority having the duties of a board of health and that allows a property owner to seek coverage under the general NPDES permit for purposes of this division. A board of health or the authority having the duties of a board of health voluntarily may enter into a memorandum of understanding with the Environmental Protection Agency to implement the general NPDES permit. In the interim, the Agency shall work with boards of health or authorities having the duties of boards of health and with property owners in order to facilitate the owners' securing an NPDES permit in counties without a memorandum of understanding.

(H) Notwithstanding any rule adopted by the Director of Health or the Public Health Council governing the installation and operation of household sewage treatment systems, a board of health or the authority having the duties of a board of health that, prior to the effective date of this section, has obtained authority from the Department of Health and the Environmental Protection Agency to regulate small flow on-site sewage treatment systems may continue to regulate such systems on and after the effective date of this section as enacted by Am. Sub. H.B. 119 of the 127th General Assembly. A board of health or the authority having the duties of a board of health that has not obtained such authority may request the authority from the Department of Health

and the Environmental Protection Agency in the manner provided by 212
law. 213

(I) Because the rules adopted by the Public Health Council 214
under section 3718.02 of the Revised Code that were effective on 215
January 1, 2007, have been rescinded by operation of this section, 216
the references to those rules in section 3718.021 of the Revised 217
Code are not operable. Instead, notwithstanding any other 218
provisions of this section, the Director of Health or the Public 219
Health Council, as applicable, shall provide for the 220
implementation of section 3718.021 of the Revised Code in the 221
rules that are required to be adopted under division (A) of this 222
section. 223

(J) The Department of Health in cooperation with a board of 224
health or the authority having the duties of a board of health 225
shall assess the familiarity of the board's or authority's staff 226
with the best practices in the use of sewage treatment systems and 227
conduct appropriate training to educate the board's or authority's 228
staff in those best practices and in the use of any new sewage 229
treatment system technology that is recommended for use by the 230
Sewage Treatment System Technical Advisory Committee created in 231
section 3718.03 of the Revised Code. 232

(K)(1) As used in this section, "household sewage treatment 233
system," "small flow on-site sewage treatment system," and "sewage 234
treatment system" have the same meanings as in section 3718.01 of 235
the Revised Code. 236

(2) For the purposes of this section, "household sewage 237
treatment system" is deemed to mean "household sewage disposal 238
system" as necessary for the operation of this section. 239

(3) For purposes of this section, a public health nuisance 240
shall be deemed to exist when an inspection conducted by a board 241
of health documents odor, color, or other visual manifestations of 242

raw or poorly treated sewage and either of the following applies: 243

(a) Water samples exceed five thousand fecal coliform counts 244
per one hundred milliliters (either MPN or MF) in two or more 245
samples when five or fewer samples are collected or in more than 246
twenty per cent of the samples when more than five samples are 247
taken. 248

(b) Water samples exceed five hundred seventy-six E. Coli 249
counts per one hundred milliliters in two or more samples when 250
five or fewer samples are collected or in more than twenty per 251
cent of the samples when more than five samples are taken. 252

(L) Neither the Director of Health or the Public Health 253
Council shall adopt rules prior to ~~July 1~~ December 31, 2009, that 254
modify or change the requirements established by this section. 255

(M) This section expires on the effective date of the rules 256
that are to be adopted under section 3718.02 of the Revised Code 257
when that section becomes operational on ~~July 1~~ December 31, 2009, 258
pursuant to Section 120.01 of ~~this act~~ Am. Sub. H.B. 119 of the 259
127th General Assembly. 260

Sec. 120.05. Sections 120.03 and 120.04 of Am. Sub. H.B. 119 261
of the 127th General Assembly take effect on ~~July 1~~ December 31, 262
2009. 263

Section 2. That existing Sections 120.01, 120.02, and 120.05 264
of Am. Sub. H.B. 119 of the 127th General Assembly are hereby 265
repealed. 266

Section 3. This act is hereby declared to be an emergency 267
measure necessary for the immediate preservation of the public 268
peace, health, and safety. The reason for such necessity is that 269
provisions of law that were suspended by the enactment of Am. Sub. 270
H.B. 119 of the 127th General Assembly are scheduled to be 271

reinstated on July 1, 2009, and the extension of the suspension 272
and of temporary provisions governing household and small flow 273
on-site sewage treatment systems is necessary to provide time for 274
the General Assembly to craft new requirements pertaining to those 275
systems. Therefore, this act shall go into immediate effect. 276