



Ohio Legislative Service Commission

Bill Analysis

Bill Rowland

S.B. 100

128th General Assembly
(As Introduced)

Sens. Grendell and Cafaro

BILL SUMMARY

- Eliminates the authority for the Public Health Council to adopt rules governing soil absorption specifications for household sewage treatment systems.
- Prohibits the Council, the Sewage Treatment System Technical Advisory Committee, and the Director of Health from establishing soil absorption specifications and vertical separation distances for sewage treatment systems, and requires boards of health to establish such specifications and distances.
- Declares that rules of the Public Health Council prescribing standards for household sewage treatment systems do not apply to a system on a parcel for which a plat or a division without a plat is submitted for approval under the Municipal Corporation Platting Law on or before the effective date of the rules if the approval of the plat or division of the parcel without a plat is pending on or after that date, and declares that for purposes of such a system, the Public Health Council must adopt rules that are identical to the rules that governed such a system and that were in effect on January 1, 2009.
- Requires the Public Health Council to adopt rules authorizing, rather than requiring an in current law, a board of health to inspect a sewage treatment system not later than 18 months after its installation to ensure that it is operating properly.
- Requires the Public Health Council to adopt rules establishing uniform statewide bonding requirements or other financial security requirements for installers, service providers, and septage haulers as a condition of registration within any health district and precluding a board of health from requiring additional or different bonding requirements.

- Requires rules to be adopted by the Public Health Council specifying conditions and circumstances under which a property owner is required to connect to an available central sewer system.
- Requires the Public Health Council and the Director of Health to submit a report to the General Assembly regarding proposed rules of the Council governing sewage treatment systems that must contain specified information.
- Declares that it is the intent of the General Assembly that rules to be adopted by the Public Health Council related to the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems must not have a substantial negative impact on the public's ability to finance or purchase housing, and makes other declarations regarding the intent of the General Assembly regarding the adoption of those rules.
- Authorizes boards of health to adopt rules establishing standards governing the use of sewage treatment systems that are more or less stringent than standards established in rules adopted by the Public Health Council rather than rules providing for more stringent standards as in current law.
- Declares that if a rule adopted by the Public Health Council or a board of health has a substantial negative financial impact on the public's ability to purchase housing, the rule has no force or effect.
- Requires the Sewage Treatment System Technical Advisory Committee to develop rules with the Department of Health that establish standards and guidelines for use by the Director of Health in approving or disapproving sewage treatment systems or components of systems rather than developing the standards and guidelines without rules as in current law, and establishes other requirements regarding the rules.
- Declares that a board of health has sole authority to approve or disapprove the use of sewage treatment systems within the applicable health district governed by the board.
- Declares what constitutes a public health nuisance for purposes of the Household and Small Flow On-Site Sewage Treatment Systems Law.
- Establishes the Household Sewage Treatment System Revolving Loan Program and the Household Sewage Treatment System Grant Program in the Department of Health to provide loans and grants to eligible persons for repairs to or upgrades of household sewage treatment systems.

- Establishes other requirements governing sewage treatment systems.
- Makes an appropriation.
- Declares an emergency.

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CONTENT AND OPERATION

Background

Prior to 2005, household sewage disposal was regulated under rules adopted by the Public Health Council pursuant to its authority to adopt, amend, or rescind sanitary rules of general application throughout the state. Persons who proposed to install or alter household sewage systems or to clean sewage tanks had to be registered by the board of health having jurisdiction where the work would be done. Registration requirements were established by the board of health, and certificates of registration expired annually and had to be renewed within 30 days before their expiration. If the health commissioner of the health district found that a person registered by the board of health was engaging or had engaged in practices that violated the district's rules, the terms of a permit to install or repair a household sewage system, or applicable state

laws, the board was required to notify the person, describe the violation, and provide an opportunity for a hearing prior to revocation or suspension of the person's registration. Council rules also required that a permit be obtained from the board of health having jurisdiction before a household sewage system was installed or altered. A permit was valid until the installation or alteration was completed or for one year after issuance, whichever was earlier. The design, construction, installation, location, maintenance, and operation of household sewage systems had to conform to the Council's rules, engineering practices acceptable to the Department of Health, and effluent standards of the Environmental Protection Agency. A board of health was authorized to adopt standards for household sewage systems that were more stringent than those of the Council when local conditions required more stringent standards. A board of health also was authorized to grant a variance from its rules or those of the Council if the variance was not contrary to the public interest and the applicant for the variance showed that strict application of the rules would cause an unusual and unnecessary hardship because of practical difficulties or other special conditions.

In 2005, the 125th General Assembly enacted Sub. H.B. 231, which established a comprehensive body of law governing the regulation of household sewage treatment systems. Under that act, the Public Health Council was charged with adopting rules governing such systems. That act also brought small flow on-site sewage treatment systems (see below) under the authority of the Public Health Council's rules. As a result of the enactment of Sub. H.B. 231, the Public Health Council was given broad authority to craft new rules governing sewage treatment systems. In 2007, those rules went into effect and their implementation was initiated. Subsequently, the General Assembly, via the enactment of Am. Sub. H.B. 119 of the 127th General Assembly, suspended the operation of most of the statutes enacted by Sub. H.B. 231 until July 1, 2009. Further, Am. Sub. H.B. 119 rescinded the rules of the Public Health Council that were adopted under Sub. H.B. 231 and reinstated the prior rules discussed above governing household sewage systems that had been in effect prior to the enactment of Sub. H.B. 231. Although the statutes were suspended and are thus unenforceable, they were not repealed and remain valid law.

Am. Sub. H.B. 119 also established the Household and Small Flow On-Site Sewage Treatment System Study Commission to study issues concerning household sewage treatment systems and small flow on-site sewage treatment systems. The Commission was charged with recommending appropriate legislation to the General Assembly, including establishing reasonable standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems and small flow on-site sewage treatment systems for the purpose of the treatment of sewage and the prevention of public health nuisances. The Commission issued its report in January, 2009.

The bill amends the Household and Small Flow On-Site Sewage Treatment Systems Law (Sewage Treatment Systems Law) by amending many of the statutes that were suspended by Am. Sub. H.B. 119. It also reinstates the operation of those suspended statutes. Many of the provisions of the bill address issues that were studied by the Household and Small Flow On-Site Sewage Treatment System Study Commission.

When the analysis refers to "current law," it is generally referring to statutes in the Sewage Treatment Systems Law, including provisions in that Law that were suspended by Am. Sub. H.B. 119.

Rules of the Public Health Council

Under current law, the Public Health Council is required to adopt rules in accordance with the Administrative Procedure Act of general application throughout the state governing a variety of issues related to the regulation of sewage treatment systems (R.C. 3718.02(A)). Current law defines "sewage treatment system" to mean a household sewage treatment system, a small flow on-site sewage treatment system, or both, as applicable. "Household sewage treatment system" means any sewage treatment system, or part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling. "Small flow on-site sewage treatment system" means a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage a day and that does not require a National Pollutant Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency under the Water Pollution Control Law or an injection well drilling or operating permit issued under that Law. (R.C. 3718.01(D), (M), and (N).)

Rules governing the siting and design of systems

Current law requires the rules of the Public Health Council to prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems and requires the standards to include at a minimum:

- (1) Soil absorption specifications;
- (2) Specifications for discharging systems that do not conflict with provisions related to the NPDES permit program regulated by the Environmental Protection Agency under the Water Pollution Control Law;
- (3) Requirements for the maintenance of a system according to the manufacturer's instructions, if available; and

(4) Requirements and procedures under which a person may demonstrate the required maintenance of a system in lieu of having an inspection conducted when an inspection otherwise is required.

The bill eliminates the requirement that rules be adopted governing soil absorption specifications (R.C. 3718.02(A)(3)). Further, the bill specifies that the rules do not apply to a system on a parcel for which a plat is submitted for approval under the Municipal Corporation Platting Law or for which a division without a plat is submitted for approval under that Law on or before the effective date of the rules if the approval of the plat or division of the parcel without a plat is pending on or after that date. For purposes of such a system, the Public Health Council must adopt rules that are identical to the rules that governed such a system and that were in effect on January 1, 2009. (R.C. 3718.02(A)(3).)

The bill prohibits the Public Health Council, the Sewage Treatment System Technical Advisory Committee (see below), and the Director of Health from establishing soil absorption specifications and vertical separation distances for sewage treatment systems. It requires such specifications and distances to be established by boards of health in accordance with the bill (see "**Approval of sewage treatment systems by boards of health**," below). (R.C. 3718.041(B).)

Rules governing the inspection of systems

Current law requires the Public Health Council to adopt rules requiring a board of health to inspect a sewage treatment system not later than 18 months after its installation to ensure that the system is operating properly. The bill instead requires the Council to adopt rules authorizing rather than requiring a board of health to so inspect a sewage treatment system. (R.C. 3718.02(A)(6).)

Rules governing the bonding of installers, service providers, and septage haulers

The bill requires the Public Health Council to adopt rules that establish uniform statewide bonding requirements or other financial security requirements for installers, service providers, and septage haulers as a condition of registration within any health district. The rules must preclude a board of health from requiring an additional or different bond or security requirement as a condition of registration beyond the bonding and security requirements established in the Council's rules. (R.C. 3718.02(A)(7).)

Rules governing the maintenance of sewage treatment systems

The bill requires the Public Health Council to adopt rules requiring a board of health to develop a program for the maintenance of sewage treatment systems that are operated within the health district governed by the board. The rules must require the submission of maintenance reports by persons operating sewage treatment systems at least every five years. (R.C. 3718.02(A)(14).)

Rules governing connection to a central sewer system

Under the bill, the Public Health Council must adopt rules specifying conditions and circumstances under which a property owner is required to connect to an available central sewer system. The rules must provide that after a property owner is required to connect to a central sewer system, the property owner is prohibited from installing, replacing, or continuing to operate a sewage treatment system at the property. In specifying the conditions and circumstances, the rules must establish a minimum distance from a central sewer system within which a property owner must be located in order to be subject to the requirement to connect to a central sewer system. The minimum distance must measure not more than 200 feet across the property to be serviced by the central sewer system from the foundation of the structure owned by the property owner to the right-of-way where the central sewer system is located. (R.C. 3718.02(A)(15).)

Report regarding rules of the Public Health Council

The bill provides that not later than 30 days prior to the submission of a proposed rule pertaining to sewage treatment systems by the Public Health Council to the Joint Committee on Agency Rule Review, the Council and the Director of Health jointly must prepare a written report and provide a copy of the report to every member of the General Assembly. The report must contain all of the following:

- (1) A determination of the potential benefit that the adoption and implementation of the rule will have on the health, safety, and welfare of the public;
- (2) A determination of the economic reasonableness and the technical feasibility of the rule;
- (3) A determination of the financial impact that the rule may have on the public's ability to purchase housing; and
- (4) A list of all systems that satisfy the requirements of the Sewage Treatment Systems Law and the estimated cost of each system. In addition, if more than one system satisfies those requirements and the rule requires a system for which the

estimated cost is more than other systems that satisfy the requirements, the report must contain an explanation of the reasons why the system is required. (R.C. 3718.02(C).)

Intent statement regarding rules

The bill declares that it is the intent of the General Assembly in amending the provisions of the Sewage Treatment Systems Law governing the adoption of rules by the Public Health Council related to the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that the rules must not have a substantial negative impact on the public's ability to finance or purchase housing. The bill also declares that it is the intent of the General Assembly that during the rule development and adoption processes for those rules, the Public Health Council must equally consider the financial impact that the rules may have on the citizens of Ohio and the businesses located in it and the environmental concerns that the rules are intended to address. Further, the bill declares that it is the intent of the General Assembly that the rules must advance the availability of new or progressive sewage treatment system technology for the citizens of Ohio. (Section 11.)

Rules of local boards of health

Under current law, a board of health may adopt rules necessary for the public health providing for more stringent standards governing household sewage treatment systems, installers, service providers, or septage haulers than those established in rules of the Public Health Council. The bill instead authorizes boards of health to adopt rules providing for standards governing the use of sewage treatment systems and providing for more stringent standards governing installers, service providers, or septage haulers. Thus, under the bill, a board of health is authorized to adopt rules establishing standards governing the use of sewage treatment systems that are more or less stringent than those established by the Public Health Council. (R.C. 3718.02(B).)

Affect of rules on housing purchases

The bill declares that if a rule adopted by the Public Health Council or a board of health under the Sewage Treatment Systems Law has a substantial negative financial impact on the public's ability to purchase housing, the rule has no force or effect (R.C. 3718.02(D)).

Duties of the Sewage Treatment System Technical Advisory Committee and the Director of Health

Current law creates the Sewage Treatment System Technical Advisory Committee. One of the duties of the Committee is to develop with the Department of Health standards and guidelines for use by the Director of Health in approving or

disapproving sewage treatment systems or components of systems. The bill instead requires the Committee to develop with the Department of Health rules that establish standards and guidelines for use by the Director in approving or disapproving a sewage treatment system or component of a system. The bill then requires the Director to adopt such rules. The rules must require the Director to approve sewage treatment systems representing a range of available systems from low-cost systems to high-cost systems that will not create a public health nuisance (see "**Public health nuisance**," below) when operated and maintained properly. In developing the rules, the Committee must use scientific peer-reviewed papers concerning sewage treatment systems or components of a system and third-party evaluations of such systems or components using accepted protocols. The bill also requires the Director to develop with the Committee an application form for use by applicants for approval of a sewage treatment system or a component of a system. The bill requires the Director, in approving or disapproving an application, to use the standards and guidelines established in rules adopted under the bill. (R.C. 3718.03(F)(1), 3718.04(C), and 3718.05(E).)

Approval of sewage treatment systems by boards of health

The bill declares that a board of health has sole authority to approve sewage treatment systems for use within the health district that is governed by the board. A board of health must approve the use of sewage treatment systems based on applicable local conditions and in accordance with rules adopted by the board. The board must select sewage treatment systems for approved use in the applicable health district from those sewage treatment systems that have been approved by the Director of Health for use in the state. A board of health, in approving sewage treatment systems, must ensure that the approved sewage treatment systems represent a range of available systems from low-cost systems to high-cost systems that will not create a public health nuisance (see "**Public health nuisance**," below) when operated and maintained properly. A board of health, when approving the use of a sewage treatment system, must establish soil absorption specifications and vertical separation distances applicable to that sewage treatment system taking into consideration applicable local conditions. (R.C. 3718.041(A).)

Public health nuisance

The bill declares that for purposes of the Sewage Treatment Systems Law, a sewage treatment system is causing a public health nuisance if any of the following situations occurs:

- (1) An inspection of the property at which the system is located reveals odor, color, or other visual manifestations of raw or poorly treated sewage;

(2) Water samples taken at or near the property at which the sewage treatment system is located exceed 5,000 fecal coliform counts per 100 milliliters in two or more samples when five or fewer samples are taken or in more than 20% of the samples when more than five samples are taken; or

(3) Water samples taken at or near the property at which the sewage treatment system is located exceed 576 e. coli. counts per 100 milliliters in two or more samples when five or fewer samples are taken or in more than 20% of the samples when more than five samples are taken. (R.C. 3718.011.)

Household Sewage Treatment System Revolving Loan and Grant Programs

The bill establishes the Household Sewage Treatment System Revolving Loan Program and the Household Sewage Treatment System Grant Program in the Department of Health to provide loans and grants to eligible persons for repairs to or upgrades of household sewage treatment systems.

Loan program

The bill creates in the state treasury the Household Sewage Treatment System Revolving Loan Fund consisting of money appropriated or transferred to it and any grants, gifts, or contributions of money received for deposit to the credit of the Fund. The Director of Health must use money in the Fund for the purpose of making loans as discussed below. The bill requires interest income and income from the investment of money in the Fund to be credited to the Fund. (R.C. 3718.31.) The Director may lend money in the Fund to an eligible person for the purpose of paying the allowable estimated cost of an eligible project (R.C. 3718.33(A)). "Eligible person" is defined to mean a person who qualifies as a person with a failing household sewage treatment system pursuant to guidelines that the Director establishes in rules (see below) for purposes of the Revolving Loan Program and for purposes of the Household Sewage Treatment System Grant Program (see below) (R.C. 3718.30(A)). "Eligible project" means the rehabilitation, renovation, improvement, or replacement of a household sewage treatment system (R.C. 3718.30(B)).

Loans must be made in accordance with the procedures and requirements established in rules (see below) and only if the Director determines that all of the following apply:

(1) The project is an eligible project;

(2) The repayment of the loan will be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority that the Director requires; and

(3) The amount of the loan does not exceed the allowable estimated cost of the project as determined by the applicable board of health in accordance with rules (see below). (R.C. 3718.33(A).)

The interest rate for a loan cannot exceed 5% as established in rules (R.C. 3718.33(A)).

Under the bill, the Director may take any actions that are necessary or appropriate with respect to a loan that is made under the bill, including facilitating the collection of amounts due on a loan (R.C. 3718.33(B)). All money that is received by the state from the repayment of loans that are made from the Household Sewage Treatment System Revolving Loan Fund, including interest, fees, and charges associated with such loans, must be deposited in the state treasury to the credit of the Fund (R.C. 3718.34)).

The Director of Health must adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary for the implementation of the revolving loan program. The rules, at a minimum, must establish all of the following:

(1) Guidelines for determining if a person qualifies as a person with a failing household sewage treatment system;

(2) Interest rates of only 3% and 5% for loans that are made under the revolving loan program. In addition, the rules must require that an eligible person who has an annual income equal to or less than 200% of the federal poverty level¹ receive a loan with an interest rate of 3% and an eligible person who has an annual income greater than 200% of the federal poverty level receive a loan with an interest rate of 5%.

(3) Procedures and requirements in accordance with which an eligible person who receives a loan may choose to have the repayment of the loan assessed as a part of the person's real property taxes. In addition, the rules must require the Director to certify to the applicable county auditor the amount of the repayment of a loan that is to be so assessed for purposes of placement on the general tax list and duplicate. The bill establishes appropriate procedures for placing the amount certified on the general tax list and duplicate (R.C. 319.281).

(4) Procedures and requirements in accordance with which a board of health must determine the allowable estimated cost of an eligible project. The rules must require that the allowable estimated cost be equal to the difference between the

¹ As used in the bill, "federal poverty level" means the income level represented by the poverty guidelines as revised annually by the United States Department of Health and Human Services in accordance with the Omnibus Reconciliation Act of 1981, as amended, for a family size equal to the size of the family of the person whose income is being determined (R.C. 3718.36(G)).

estimated cost of an eligible project that complies with the rules adopted by the Public Health Council under the Sewage Treatment Systems Law that took effect on January 1, 2007, and the estimated cost of an eligible project that would have complied with the rules adopted by the Council that were in effect prior to January 1, 2007.

(5) Procedures by which a board of health must notify the Director of Health of the board's determination of the allowable estimated cost of an eligible project in accordance with the rules (see item 4, above). (R.C. 3718.32.)

Grant program

The bill creates in the state treasury the Household Sewage Treatment System Grant Fund consisting of money appropriated or transferred to it and any grants, gifts, or contributions of money received for deposit to the credit of the Fund. The Director of Health must use money in the fund for the purpose of making grants as discussed below. Interest income and income from the investment of money in the Fund must be credited to the Fund. (R.C. 3718.35.)

The Director may grant money in the Fund to an eligible person for the purpose of paying the allowable estimated cost of an eligible project. Grants must be made in accordance with the procedures and requirements established in rules (see below) and only if the Director determines that both of the following apply:

(1) The project is an eligible project; and

(2) The amount of the grant does not exceed the allowable estimated cost of the project as determined by the applicable board of health in accordance with rules (see below). (R.C. 3718.37.)

The Director must adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary for the implementation of the grant program. The rules, at a minimum, must establish all of the following:

(1) Guidelines for determining if a person qualifies as a person with a failing household sewage treatment system;

(2) A requirement that an eligible person be 65 years of age or older or have an annual income that is equal to or less than 150% of the federal poverty level in order to qualify for a grant;

(3) Procedures and requirements governing applications for grants;

(4) Procedures and requirements governing the awarding of grants;

(5) Procedures and requirements in accordance with which a board of health must determine the allowable estimated cost of an eligible project. The rules must require that the allowable estimated cost be equal to the difference in the estimated cost of an eligible project that complies with the rules adopted by the Public Health Council under the Sewage Treatment Systems Law that took effect on January 1, 2007, and the estimated cost of an eligible project that would have complied with the rules adopted by the Council that were in effect prior to January 1, 2007.

(6) Procedures by which a board of health must notify the Director of the board's determination of the allowable estimated cost of an eligible project in accordance with the rules (see item 5, above). (R.C. 3718.36.)

Appropriation

The bill appropriates money for purposes of the loan and grant programs established by the bill. Not later than 30 days after the effective date of the bill, the Director of Budget and Management must do both of the following:

(1) Transfer \$10 million cash from the General Revenue Fund to the Household Sewage Treatment System Revolving Loan Fund; and

(2) Transfer \$5 million cash for fiscal year 2010, and \$5 million cash for fiscal year 2011, from the General Revenue Fund to the Household Sewage Treatment System Grant Fund. (Sections 8 and 9.)

Delay of upgrades and replacement until rules adopted

On and after the effective date of the bill, a board of health is not permitted to require the rehabilitation, renovation, improvement, or replacement of a household sewage treatment system that is in existence on the effective date of the bill pursuant to rules adopted by the Public Health Council under the Sewage Treatment Systems Law until the effective date of the rules that are required to be adopted under the bill regarding the Household Sewage Treatment System Revolving Loan Program and the Household Sewage Treatment System Grant Program (Section 10).

System upgrade delay

Under the bill, notwithstanding any provision of the Sewage Treatment Systems Law or rules adopted under it to the contrary, a person who is notified by a board of health that the person must replace the person's existing household sewage treatment system with a new household sewage treatment system for the purpose of complying with those rules may request the board of health instead to prescribe and authorize a temporary improvement of the existing system if the person is or has been notified by a

state agency or a political subdivision that the person will be required to connect the person's premises to a sewerage system within ten years after receipt of the connection notice. If a board of health receives a request from a person who meets the above requirements, the board must prescribe a temporary improvement of the person's existing household sewage treatment system. The cost of the temporary improvement cannot exceed 15% of the person's estimated cost to install a new household sewage treatment system that complies with the rules adopted under the Sewage Treatment Systems Law. (R.C. 3718.38.)

Reinstatement of Revised Code sections

As discussed above, Am. Sub. H.B. 119 of the 127th General Assembly suspended the operation of numerous statutes in the Sewage Treatment Systems Law until July 1, 2009. The bill reinstates the operation of those statutes. (Sections 3, 4, 5, 6, and 7.)

Declaration of emergency

Stating that provisions of law that were suspended by the enactment of Am. Sub. H.B. 119 of the 127th General Assembly are scheduled to be reinstated on July 1, 2009, and the bill is necessary to revise the law governing sewage treatment systems prior to that date, the bill declares an emergency. Therefore, the bill will go into immediate effect. (Section 12.)

HISTORY

ACTION	DATE
Introduced	04-07-09

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