



# Ohio Legislative Service Commission

## Bill Analysis

Bill Rowland

### Sub. S.B. 110\*

128th General Assembly

(As Reported by H. Environment and Brownfield Development)

**Sens.** Niehaus, Cafaro, Fedor, Harris, Kearney, Sawyer, Schaffer, Schiavoni, Seitz, Turner, D. Miller, Strahorn, Smith, R. Miller, Morano

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## BILL SUMMARY

- Requires the Public Health Council to adopt new rules governing sewage treatment systems.
- Specifies that the rules must require boards of health to approve or disapprove the installation, operation, or alteration of sewage treatment systems, and establishes new requirements for alteration permits as well as installation and operation permits.
- Requires rules governing the siting, design, installation, operation, monitoring, maintenance, and abandonment of sewage treatment systems that are required to be adopted under current law to also address the progressive and incremental alteration or repair of an existing system and the progressive or incremental installation of a new system to replace an existing system.
- Requires rules governing the siting, design, installation, operation, monitoring, maintenance, and abandonment of sewage treatment systems that are required to be adopted under current law to be adopted so as to establish a preference for the repair of an existing sewage treatment system, when technically and economically feasible, rather than its replacement with a new system.
- Requires the adoption of rules governing soil absorption specifications and vertical separation distances, requires the rules to identify soil conditions that present low, moderate, or high risks of inadequate treatment of sewage, establishes approval

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\* This analysis was prepared before the report of the House Environment and Brownfield Development Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

procedures for higher vertical separation distances, and requires the rules to include options for the reduction of vertical separation distances, including the use of certain types of drains, pretreatment of sewage, and soil elevation.

- Requires the adoption of rules establishing specifications for the quality of treated sewage effluent from systems and rules governing the reasonable maintenance of systems according to maintenance requirements approved by the Director of Health or according to accepted standards and practices.
- Specifies that the rules must require each board of health to develop a program for the administration of maintenance requirements, including requirements under which a person may demonstrate the required maintenance of a system in lieu of having an inspection conducted.
- Specifies that the rules must require a board of health to notify the Director of Health regarding the issuance of an installation, operation, or alteration permit and to computerize the process of the issuance of such permits to the extent practicable.
- Specifies that the rules must require an inspection of a system not later than 12 months after installation rather than 18 months as in current law.
- Specifies that the rules must establish uniform statewide bonding requirements or other financial security requirements for installers, service providers, and septage haulers and that the rules must establish a cost methodology for determining the fee for the registration of installers, service providers, and septage haulers.
- Requires rules to be adopted authorizing a board of health to require a property owner whose property is serviced by a sewage treatment system to connect to an available central sewer system under certain circumstances.
- Requires rules to be adopted governing sewage treatment system instructions, standards for the use of drains, inspections of septage hauling truck tanks, the structural soundness of septic tanks and other sewage treatment system components, notice and hearing requirements regarding actions of a board of health, and the regulation of gray water recycling systems.
- States that an application for an installation permit that is accepted by a board of health prior to January 1, 2012, must be valid for three years from the date of the submission of the complete application and the accompanying application fee and that an installation permit issued by a board of health prior to January 1, 2012, must be valid until January 1, 2013, unless extended by a board of health for not more than an additional six months.

- Declares what constitutes a public health nuisance for purposes of the Household and Small Flow On-Site Sewage Treatment Systems Law.
- Broadens the authority of boards of health to adopt rules governing sewage treatment systems that are more stringent than rules of the Public Health Council, requires boards of health to consider and document the economic impact of their rules on property owners, and establishes additional requirements governing the adoption of rules by boards of health.
- Requires a board of health to approve or deny, in the health district in which it has jurisdiction, the installation, operation, or alteration of sewage treatment systems that have been approved for use in Ohio, and establishes requirements governing such approval or denial.
- Alters the duties of the Sewage Treatment System Technical Advisory Committee with respect to the approval of new sewage treatment systems and components of systems, and alters the membership of the Committee.
- Alters the time frames, procedures, and requirements to be followed by the Director of Health when approving or disapproving applications for the installation and use of a sewage treatment system in Ohio that differs in design and function from systems or components of systems that are already authorized for use in Ohio under rules, including the addition of a requirement that the Director include terms and conditions with the approval of a system.
- Requires the Director of Health to develop educational programs to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems.
- Alters requirements governing fees charged by boards of health and fees established by the Public Health Council for use by the Director of Health.
- Alters requirements governing emergency orders of health commissioners.
- Establishes procedures under which appeals from hearings by a board of health may be made either to a court of common pleas or to a county sewage treatment system appeals board, and establishes procedures for the appointment and operation of a sewage treatment system appeals board.
- Provides that a sewage treatment system that was in operation prior to the bill's effective date cannot be required to be replaced with a new sewage treatment system under the Sewage Treatment Systems Law or rules adopted under it and must be deemed approved if the system does not cause a public health nuisance or,

if the system is causing a public health nuisance, repairs are made to the system that eliminate the public health nuisance as determined by the applicable board of health.

- States that the rules governing sewage treatment systems that are codified in the Ohio Administrative Code Chapter 3701-29 and that are in effect on the bill's effective date must remain in effect until those rules are superseded by rules adopted under the bill, and specifies that the new rules adopted under the bill must not take effect prior to January 1, 2012.
- Establishes other requirements governing sewage treatment systems.
- Extends to December 15, 2010, the date by which the recommendations of the Great Lakes-St. Lawrence River Basin Water Resources Compact Advisory Board are due.

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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. Subsequently, Am. Sub. H.B. 1 of the 128th General Assembly extended the suspension to January 1, 2010, and Sub. H.B. 363 of the 128th General Assembly extended it again to July 1, 2010. 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 and later by Am. Sub. H.B. 1 and Sub. H.B. 363. 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, Am. Sub. H.B. 1, and Sub. H.B. 363.

## **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(F), (Q) and (R).) The bill alters many of the requirements and establishes new requirements governing the adoption of rules by the Public Health Council.

### **Rules governing the installation, operation, and alteration of systems**

Under current law, the Public Health Council must adopt rules requiring the appropriate board of health to approve or disapprove the use of a sewage treatment system if it is not connected to a sanitary sewerage system. The bill instead requires that a board of health approve or disapprove the installation, operation, and alteration of a sewage treatment system if it is not so connected. (R.C. 3718.02(A)(1).)

### **Rules governing site evaluations**

Current law provides that the rules of the Public Health Council must require a board of health to conduct a site evaluation for any proposed installation of a sewage treatment system. The bill instead provides that the rules must require a board of health, or other person as established by rule, to conduct such a site evaluation. (R.C. 3718.02(A)(2).)

### **Rules governing the siting, design, etc. of systems**

Current law requires the rules to prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that may be used in Ohio 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. (R.C. 3718.02(A)(3)(a) to (d).)

The bill applies the rules to all sewage treatment systems rather than only to household sewage treatment systems and alters the requirements pertaining to rules governing the siting, design, installation, operation, monitoring, maintenance, and abandonment of sewage treatment systems. Under the bill, the Public Health Council



must adopt rules prescribing standards for all of those activities and for the progressive or incremental alteration or repair of an existing sewage treatment system or the progressive or incremental installation of a new system to replace an existing sewage treatment system. The rules must be adopted as to establish a preference for the repair of an existing sewage treatment system, when technically and economically feasible, rather than its replacement with a new system. (R.C. 3718.02(A)(3).) The standards are required to include at a minimum all of the following:

(1) Soil absorption specifications and vertical separation distances. The bill defines "vertical separation distance" to mean the distance of the infiltrative surface of the distribution system of a soil absorption system, or component thereof, to a limiting condition in the soil<sup>1</sup> (R.C. 3718.01(T)). "Infiltrative surface" is defined to mean the point or area of application of treated or partially treated sewage to the soil or sand fill for purposes of treatment, dispersal, or both (R.C. 3718.01(G)). "Limiting condition" is defined to mean a restrictive soil layer, bedrock,<sup>2</sup> a water table,<sup>3</sup> or ground water that limits or precludes the treatment or dispersal of sewage in the soil of a property where a household sewage treatment system is located (R.C. 3718.01(J)).

The bill requires soil absorption specifications established in rules to include standards regarding the sizing of sewage treatment systems in use in the state. Further, in establishing soil absorption specifications and vertical separation distances, the rules must identify those soil conditions that present a low or moderate risk of inadequate treatment or dispersal of sewage from sewage treatment systems. For low and moderate risk conditions, the required vertical separation distance must not exceed 18 inches, except as authorized in rules governing the reduction or increase of vertical separation distances (see below). In addition, the rules must identify those soil conditions that present a high risk of inadequate treatment or dispersal of sewage. For such high risk conditions, the vertical separation distance must be set at a depth from 24 to 36 inches and must not be lowered unless a reduction of vertical separation is granted in accordance with rules. The rules also must establish options to be utilized by a board of health when approving the reductions of or compliance with vertical separation distances that are established in rules. The options for a board of health in providing such approval must include, but not be limited to: the use where deemed appropriate for a particular site of subsurface interceptor drains, perimeter drains, or

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<sup>1</sup> The bill defines "soil" to mean the naturally occurring pedogenically developed and undeveloped regolith overlying bedrock (R.C. 3718.01(S)).

<sup>2</sup> The bill defines "bedrock" to mean hard stratum that underlies unconsolidated surface materials or soil (R.C. 3718.01(B)).

<sup>3</sup> The bill defines "water table" to mean the surface of the saturated zone below which all interconnected voids are filled with water and at which the pressure is atmospheric (R.C. 3718.01(U)).



engineered drainage; pretreatment of sewage; or soil elevation. (R.C. 3718.02(A)(3)(a)(i) to (iii).)

Finally, the rules must provide that a board of health may petition the Director to increase the vertical separation distances required for sewage treatment systems in the applicable health district or a portion of the district when conditions present a high risk of inadequate treatment or dispersal of sewage. The rules also must provide that the Director may approve such a request upon a demonstration by the board of health that unusual or unique local conditions relating to terrain, bedrock, water table, soil fragments, or soil textures require the establishment of greater vertical separation distances within the jurisdiction of the board of health or a portion thereof. If, under the rules, the Director of Health approves a greater vertical separation distance, a board of health still may approve a reduction of that vertical separation distance for an individual sewage treatment system pursuant to rules. Further, if, under the rules, the Director approves a greater vertical separation distance, a person who is denied permission by a board of health to install or replace a sewage treatment system as a result of the Director's approval may request a hearing with the board of health in accordance with the bill (see "**Hearings and appeals**," below). (R.C. 3718.02(A)(3)(a)(iv).)

(2) Specifications for the quality of treated sewage effluent from household sewage treatment systems that is applied to soil on the property where a household sewage treatment system is located. The specifications established in the rules for the quality of effluent from discharging systems must comply with discharge requirements imposed by the NPDES permit program regulated by the Environmental Protection Agency. (R.C. 3718.02(A)(3)(b).)

(3) Requirements for the reasonable maintenance of a system according to maintenance requirements approved by the Director of Health as recommended by the Sewage Treatment System Technical Advisory Committee or according to accepted standards and practices established in rules, as applicable. The requirements may include standards for service contracts or other arrangements that assure regular maintenance and upkeep of the system. In determining the reasonableness of a maintenance requirement, the Director must consider a manufacturer's maintenance requirements as well as all other maintenance alternatives. (R.C. 3718.02(A)(3)(c).) The bill also requires the Public Health Council to adopt rules requiring each board of health to develop a program for the administration of maintenance requirements. The rules must include 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 is otherwise required. The rules must require a board of health to provide written notice to a person that is demonstrating maintenance of a

system in lieu of inspection that if proof of the required maintenance of the system is not provided as required by rules, the system is subject to inspection by the board and the reasonable cost of the inspection must be paid by the person. The rules must authorize a board of health to inspect any sewage treatment system if there is a good-faith complaint regarding the system, there is probable cause for the inspection, or proof of the required maintenance of the system has not been provided as required by rules. In addition, the rules must authorize a board of health to inspect a sewage treatment system without prior notice in any instance in which the board has probable cause to believe that the system is endangering or threatening to endanger public health. The rules must require that the reasonable costs for sewage effluent testing or evaluation be paid by the owner of a sewage treatment system that is being investigated. Further, the rules must establish a methodology for determining the reasonable costs of an inspection in accordance with provisions in current law governing the determination of costs by boards of health. The rules must allow, but not require, a board of health to continue an inspection program that was established by the board prior to the effective date of the rules, provided that the program authorizes a person to demonstrate the required maintenance of a system in lieu of an inspection. (R.C. 3718.02(A)(7).)

### **Rules governing the issuance of permits**

Current law requires the Public Health Council to adopt rules prescribing criteria and procedures under which boards of health must issue installation and operation permits. In addition, the rules must require a board of health to certify to the Director of Health that an installation permit has been issued. The certification must occur not later than 60 days after the permit is issued. The bill instead requires the rules to prescribe criteria for the issuance of installation permits, operation permits, and alteration permits. Further, the bill provides that the rules must require a board of health to notify the Director rather than certify to the Director that an installation, operation, or alteration permit was issued within the 60-day time frame. The rules also must require the notification to be in a format prescribed by the Director and to include information related to the issuance of the permit. With the assistance of the Department of Health, a board of health, to the extent practicable, must computerize the process of the issuance of permits for sewage treatment systems. (R.C. 3718.02(A)(5).)

### **Rules governing inspections 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 inspection to take place not later than 12 months after installation. (R.C. 3718.02(A)(6).)

## **Rules governing the bonding of and registration fee for installers, service providers, and septage haulers**

Current law requires the Public Health Council to adopt rules requiring a board of health to register installers, service providers, and septage haulers that perform work within the health district; prescribe criteria and procedures for the registration; and prescribe criteria for a demonstration of competency as a part of the registration. The bill retains those requirements and also requires the rules to 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 establish a methodology by which the required amount of a bond or other security may be calculated for each installer, service provider, and septage hauler. The methodology, at a minimum, must consider the number of systems installed or serviced and the type of system installed or serviced by an installer, service provider, or septage hauler on an annual basis. The rules must provide that no board of health may require an additional or different bond or security requirement as a condition of registration beyond the bonding and security requirements established in the rules. Further, the bill requires the rules to establish a cost methodology for determining the fee for the registration of an installer, service provider, or septage hauler in any health district. (R.C. 3718.02(A)(8).)

## **Rules governing system instructions**

Current law requires the Public Health Council to adopt rules requiring a board of health and the manufacturer of a sewage treatment system, when possible, to provide instructions for the operation and maintenance of the system. The rules must authorize the instructions to be posted on the Department of Health's web site and the manufacturer's web site. The bill specifies that the rules instead must require only the manufacturer of a sewage treatment system that is authorized or approved for use in Ohio to provide the instructions. It eliminates the requirement that a board of health provide instructions and eliminates the provision that allows instructions to be provided only when possible. The bill also removes the requirement that the rules must authorize the instructions to be posted on the Department of Health's web site and the manufacturer's web site. Instead, it requires the rules to provide that a board of health may require a copy of a manufacturer's instructions for the operation and maintenance of a system to be filed with the board prior to the installation and use of the system in the health district in which the board has jurisdiction. (R.C. 3718.02(A)(11).)

## **Rules governing connection to a central sewer system**

Under the bill, the Public Health Council must adopt rules authorizing a board of health to require a property owner whose property is serviced by a sewage treatment

system to connect to an available central sewer system under any of the following circumstances and conditions:

(1) The central sewer system is located not more than 300 feet from the structure owned by the property owner measured from the foundation of the structure to the right-of-way where the central sewer system is located;

(2) There is an administrative or judicial order requiring connection to a central sewer system; or

(3) The property is the subject of a sewer assessment process initiated by a county, municipal corporation, or other political subdivision. (R.C. 3718.02(A)(16)(a) to (c).)

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 use a sewage treatment system. Further, the rules must establish exceptions for extenuating circumstances that allow a property owner to continue to use a sewage treatment system. The rules must provide that if a property owner is required to connect to a central sewer system, a board of health must afford the property owner a period of time not to exceed three years to install the connection to the central sewer system. The rules must authorize a board of health to require connection to a central sewer system within an expedited time frame if a sewage treatment system owned by a property owner is causing a public health nuisance and the cost of connection to a central sewer system is not excessive. (R.C. 3718.02(A)(16).)

The bill requires governmental entities constructing central sewer systems to construct the central sewer systems in a manner that minimizes the distance between the foundations of the structures to be serviced by the central sewer system and the connecting point of the central sewer system. It requires the rules to provide that a property owner that is required under rules to connect to a municipal central sewer system not be required to submit to annexation by the municipal corporation as a condition of connecting to the municipal central sewer system. However, if, on or before July 1, 2010, a municipal corporation has entered into a sewer service agreement with a sewer service provider, or entered into a cooperative economic development agreement or joint economic development zone agreement with a township or townships, and the agreement requires annexation as a condition for allowing connection to a municipal central sewer system, a property owner may be required to submit to annexation by the municipal corporation as a condition for connecting to the municipal central sewer system. Finally, a board of health cannot require the connection to a central sewer system under the rules if a board of county commissioners

has adopted a resolution requiring connection under the County Sewer District Law. (R.C. 3718.02(A)(16).)

The bill amends the County Sewer District Law to make it consistent with the bill's provisions discussed above regarding connection to central sewer systems by establishing a 300-foot threshold for connection under that Law rather than a 200-foot threshold as in current law (R.C. 6117.51).

### **Additional rules**

The bill establishes new rulemaking authority governing sewage treatment systems. Under the bill, the Public Health Council must adopt rules that do all of the following:

(1) Prescribe standards for the use of subsurface interceptor drains, perimeter drains, and engineered drainage to remove or divert any subsurface water from an area to be used for soil absorption of sewage in the soil of a sewage treatment system;

(2) Prescribe standards for the inspection of septage hauling truck tanks by boards of health, including, but not limited to, tank seal safety specifications;

(3) Establish standards and testing methods to ensure that all septic tanks, other disposal component tanks, dosing tanks, pump vaults, household sewage treatment disposal system holding tanks and privy vaults, or other applicable sewage disposal system components manufactured after the effective date of the bill and used in Ohio are watertight and structurally sound;

(4) Require a board of health to give notice and an opportunity for a hearing to an affected property owner pursuant to the bill's provisions governing hearings and appeals (see "**Hearings and appeals**," below) regarding the denial of an installation, operation, or alteration permit for a sewage treatment system; the imposition of a condition on the installation of a sewage treatment system; the required replacement of a sewage treatment system; or any other final order or decision of a board of health that is made under the Sewage Treatment Systems Law concerning which a property owner is claiming to be aggrieved or adversely affected. The bill requires the rules to establish procedures for giving such notice and for conducting the hearing.

(5) Prescribe standards for the regulation of gray water recycling systems. The bill defines "gray water recycling systems" to mean systems that treat and reuse wastewater discharged from lavatories, bathtubs, showers, clothes washers, and laundry sinks that does not contain food wastes or bodily wastes (R.C. 3718.01(E)).

(6) Prohibit a sewage treatment system from causing a public health nuisance (see "**Public health nuisance**," below). (R.C. 3718.02(A)(15) and (17) to (21).)

### **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 and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation:

(1) The sewage treatment system is not operating properly due to a missing component, incorrect settings, or a mechanical or electrical failure;

(2) There is a blockage in a known sewage treatment system component or pipe that causes a backup of sewage or effluent affecting the treatment process or inhibiting proper plumbing drainage;

(3) An inspection conducted by, or under the supervision of, the Environmental Protection Agency or a registered sanitarian documents that there is ponding of liquid or bleeding of liquid onto the surface of the ground or into surface water and the liquid has a distinct sewage odor, a black or gray coloration, or the presence of organic matter and any of the following:

(a) The presence of sewage effluent identified through a dye test;

(b) The presence of fecal coliform at a level that is equal to or greater than 5,000 colonies per 100 milliliters of liquid as determined in two or more samples of the liquid when five or fewer samples are collected or in more than 20% of the samples when more than five samples of the liquid are collected;

(3) Water samples that exceed 1,030 E. coli counts per 100 milliliters in two or more samples when five or fewer samples are collected or in more than 20% of the samples when more than five samples are collected; or

(4) With respect to a discharging system for which a NPDES permit has been issued under the Water Pollution Control Law and rules adopted under it, the system routinely exceeds the effluent discharge limitations specified in the permit. (R.C. 3718.011(A)(1) to (4).)

The bill provides that, with respect to items (1) and (2) above, a property owner may request a test to be conducted by a board of health to verify that the sewage treatment system is causing a public health nuisance. The property owner is responsible for the costs of the test. (R.C. 3718.011(B).)



## Rules of 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 broadens the rulemaking authority of boards of health by allowing them to adopt rules providing for more stringent standards than those established in any of the rules of the Public Health Council under the Sewage Treatment Systems Law rather than just more stringent standards governing household sewage treatment systems, installers, service providers, or septage haulers. The bill then requires a board of health, in proposing or adopting the rules, to consider and document the economic impact of the rules on property owners within the applicable health district. (R.C. 3718.02(B)(1).) The bill requires the Public Health Council to adopt rules defining "economic impact" for purposes of the provisions of the bill and current law governing rules of boards of health (R.C. 3718.02(A)(22)).

Current law requires a board of health that intends to adopt more stringent rules to notify the Department of Health of the rules at least 90 days prior to the proposed date of adoption. The Director of Health must approve or disapprove any proposed rule within 90 days after receiving notice of it. If the Director fails to approve or disapprove a proposed rule within 90 days after receiving notice of it, the proposed rule is deemed approved. The bill instead requires a board that intends to adopt rules to notify the Department of the proposed rules and submit a copy of the proposed rules and the documentation of the economic impact of the rules at least 90 days prior to the proposed date of adoption. The Director must approve or disapprove any proposed rule within 90 days after receiving a copy of the proposed rule from the board of health. The bill repeals the provision in current law under which a rule is deemed approved if the Director does not approve or disapprove it within the 90-day period. (R.C. 3718.02(B)(2).)

The bill then requires the Director, in reviewing a proposed rule, to approve the rule if it: (1) does not conflict with the Sewage Treatment Systems Law or rules adopted under it, (2) is authorized under the Sewage Treatment Systems Law, (3) is no less stringent than rules adopted by the Public Health Council, (4) unless otherwise authorized by the Sewage Treatment Systems Law or rules adopted under it, does not require design changes to a sewage treatment system, or component thereof, that differ from the design authorized in rules adopted by the Public Health Council or approved by the Director of Health (see "**Approval of sewage treatment systems**," below), and (5) does not require operation or maintenance procedures for a sewage treatment system that conflict with operation or maintenance procedures authorized in rules



adopted by the Public Health Council or approved by the Director (see below) (R.C. 3718.02(B)(3)).

Under the bill, if a board of health fails to submit a proposed rule to the Director or fails to demonstrate that the board has considered the economic impact of the proposed rule, the rule has no force or effect and is not enforceable (R.C. 3718.02(B)(4)).

### **Board of health approval of the installation, operation, or alteration of systems**

Under the bill, a board of health, in accordance with rules adopted by the Public Health Council, must approve or deny the installation, operation, or alteration of sewage treatment systems the use of which has been authorized in rules or that have been approved for use in this state by the Director of Health (see below). The board must approve an installation, operation, or alteration only in the health district in which the board has jurisdiction through the issuance of a permit in accordance with rules. A board is not permitted to approve the installation, operation, or alteration of a sewage treatment system if the installation, operation, or alteration is not appropriate for the site at which the use of the system is or is proposed to be located. In determining whether to approve or disapprove the installation, operation, or alteration of a sewage treatment system, including the progressive or incremental installation or alteration of a system, a board must consider the economic impact on the property owner, the state of available technology, and the nature and economics of various alternatives. A board must provide written documentation of such economic impact if requested by the property owner. For purposes of such approval or denial, "economic impact" is defined to mean, as applicable, the cost to the property owner for the installation of the proposed sewage treatment system, including the cost of progressive or incremental installation of the system; the cost of an alternative system, including the cost of progressive or incremental installation of the system, that, when installed and maintained properly, will not create a public health nuisance (see above) compared to the proposed sewage treatment system; and the costs of repairing the sewage treatment system, including the cost of progressive or incremental repairs, as opposed to replacing the system with a new system. (R.C. 3718.023(A) and (C).)

In addition, the board is required to ensure that a system, when installed and maintained properly, will not create a public health nuisance and require a system to comply with the requirements established in the bill governing treatment and discharge of sewage (see "**Treatment and discharges**," below) and other applicable requirements. The board must permit a property owner to select a sewage treatment system for use by the property owner from those systems that have been approved for use in the state, from the least expensive system to the most expensive system, and a property owner may select any such system regardless of its cost, provided that the

system selected will comply with all applicable requirements and standards established under the Sewage Treatment Systems Law and rules adopted under it. (R.C. 3718.023(A).)

### **Treatment and discharges**

Under the bill, a board of health must ensure that the design and installation of a soil absorption system prevents public health nuisances. In addition, a board of health must ensure that a sewage treatment system that is installed after the bill's effective date must not discharge into a ditch, stream, pond, lake, natural or artificial waterway, drain tile, or other surface water or onto the surface of the ground unless authorized by a NPDES permit issued by the Environmental Protection Agency under the Water Pollution Control Law and rules adopted under it. In addition, a board must ensure that a sewage treatment system will not discharge into an abandoned well, a drainage well, a dry well, a cesspool, a sinkhole, or another connection to ground water. If a household sewage treatment system serving a two- or three-family dwelling or a small flow on-site sewage treatment system is classified as a class V injection well, a board of health must ensure that the system complies with specified rules adopted under the Water Pollution Control Law. (R.C. 3718.023(B).)

### **Period of validity of applications and permits**

The bill states that an application for an installation permit that is accepted by a board of health prior to January 1, 2012, must be valid for three years from the date of the submission of the complete application and the accompanying application fee. Further, an installation permit issued by a board of health prior to January 1, 2012, must be valid until January 1, 2013, unless extended by a board of health for not more than an additional six months. (R.C. 3718.023(D) and (E).)

### **Use of best management practices**

Under the bill, the Director of Health in cooperation with a board of health must assess the familiarity of the board's staff with best management practices in the use of sewage treatment systems, as necessary, and conduct appropriate training to educate the board's staff in those best management practices and in the use of any new sewage treatment system technology that is recommended for use by the Sewage Treatment System Technical Advisory Committee (see below) (R.C. 3718.024).

### **Memorandums of agreement between boards of health and the Environmental Protection Agency**

Under the bill, the Environmental Protection Agency is prohibited from requiring a board of health to enter into a memorandum of understanding or any other

agreement with the Agency regarding the issuance of NPDES permits for off-lot household sewage treatment systems. Rather, a representative 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 such a permit for the system if needed. The Agency must make revisions to any applicable general NPDES permits, issued pursuant to the Federal Water Pollution Control Act, so that such a memorandum of understanding is not required. A board of health voluntarily may enter into a memorandum of understanding with the Agency to implement such a general permit. The Agency must work with boards of health to facilitate securing NPDES permits on behalf of property owners in counties without a memorandum of understanding. (R.C. 3718.025.)

### **Sewage Treatment System Technical Advisory Committee**

Current law creates the Sewage Treatment System Technical Advisory Committee. One of the purposes of the Committee is to develop with the Department of Health standards and guidelines for approving or disapproving sewage treatment systems or components of systems. The bill additionally requires the Committee to develop protocols for approving or disapproving sewage treatment systems or components of systems. Further, the bill requires any guideline requiring the submission of scientific information or testing data to specify, in writing, the protocol and format to be used in submitting the information or data. (R.C. 3718.03(F)(1).)

Current law also requires the Committee to advise the Director of Health on the approval or disapproval of an application from a manufacturer for approval of a new sewage treatment system (see below). The bill instead requires the Committee to make recommendations to the Director regarding such approval or disapproval. (R.C. 3718.03(F)(3).)

Current law requires the Committee to pursue and recruit in an active manner the research, development, introduction, and timely approval of innovative and cost-effective household sewage treatment systems and components of a system for use in Ohio, which must include conducting pilot projects to assess the effectiveness of a system or components of a system. The bill requires the Committee to conduct such activities regarding all sewage treatment systems, not just household sewage treatment systems. (R.C. 3718.03(F)(4).)

### **Membership of the Committee**

Under current law, the Sewage Treatment System Technical Advisory Committee consists of ten members representing various fields of expertise that are germane to sewage treatment systems. The members are appointed by the Governor,

the President of the Senate, or the Speaker of the House of Representatives. The bill expands the membership of the Committee to 13 members and provides for the appointment of the new members not later than 30 days after the bill's effective date. Under the bill, the Governor must appoint one additional member who is a representative of a statewide organization representing townships, the President of the Senate must appoint one additional member with demonstrated experience in the design of sewage treatment systems, and the Speaker of the House of Representatives must appoint one additional member who is a registered professional engineer with experience in sewage treatment systems. The bill also requires the existing member appointed by the Governor to represent academia to be active in teaching or research in the area of on-site wastewater treatment. In addition, the bill requires the existing member appointed by the Governor who is an engineer employed by the Environmental Protection Agency to be a registered professional engineer. Finally, the bill requires the Director of Health or the Director's designee, who serves on the Committee under current law, to serve as Committee secretary and authorizes the Director or the Director's designee to vote on actions taken by the Committee. (R.C. 3718.03(A) and Section 4.)

### **Approval of sewage treatment systems**

Current law provides two methods by which sewage treatment systems or components of systems may be approved for use in Ohio. First, the Public Health Council may authorize systems or components in rules. The systems or components authorized by the Public Health Council generally are traditional systems with proven technology. The second method of approval involves the approval of new technology that differs from systems or components authorized in rules. Under the second method, the Director of Health approves the systems or components with advice from the Sewage Treatment System Technical Advisory Committee. Approvals are conducted in accordance with guidelines developed by the Director and the Committee.

Current law establishes requirements governing the submission of applications to the Director of Health for the approval of the use of a sewage treatment system or a component of a system that differs in design from systems the use of which is authorized in rules adopted by the Public Health Council. Applications must be submitted by the manufacturers of such systems or components. The bill requires a manufacturer seeking approval for the installation and use, rather than just the use, of a system or component to submit an application. (R.C. 3718.04(A).)

Under existing law, upon receipt of an application, the Director must examine it and all accompanying information to determine if the application is complete. If the Director determines that the application is not complete, the Director must notify the applicant not later than 14 days after determining that the application is not complete,

provide a description of the information that is missing from the application, and return the application and all accompanying information to the applicant. The bill instead requires the Director to provide such notification to the applicant not later than 60 days after submission of the application. Current law authorizes the applicant to resubmit the application to the Director. The bill specifies that such resubmission may be made only if the application includes the information that was identified by the Director when the application was determined to be incomplete. Current law then requires the Director, not later than 14 days after receipt of a complete application, to notify the Sewage Treatment System Technical Advisory Committee of the complete application and send a copy of the complete application and all accompanying information to the Committee together with a request that the Committee advise the Director on the approval or disapproval of the system. The bill instead requires the Director to notify the Committee not later than 30 days after the receipt of a complete application and send a copy of the complete application and all accompanying information to the Committee together with a request that the Committee recommend that the Director approve or disapprove the system. (R.C. 3718.04(B).)

Under the bill, not later than 90 days after receipt of a complete application, the Committee must recommend approval or disapproval of the application and submit its recommendation in writing to the Director. The Director must approve or disapprove the application not later than 60 days after the Committee submits its recommendation to the Director or, if the Committee fails to recommend approval or disapproval within the required time, not later than 120 days after the submission of a complete application. If the Director fails to approve or disapprove an application within the required time, the application is deemed approved. (R.C. 3718.04(B).)

Current law provides that in approving or disapproving an application, the Director must use the standards and guidelines that the Committee developed with the Department of Health for that purpose. The bill requires the Director to also use the protocols that the Committee developed with the Department for that purpose. (R.C. 3718.04(C).)

Current law precludes the Director from approving an application that fails to comply with those standards and guidelines. If the Committee advises the Director concerning the application, the Director must consider the advice before approving or disapproving the application. However, if the Committee fails to provide advice or if the Committee fails to provide advice within a reasonable period of time before the Director is required to approve or disapprove the application, the Director may approve or disapprove the application without considering the advice of the Committee. Not later than 90 days after receipt of a complete application, the Director must approve or disapprove the application in writing. If the Director fails to approve or disapprove the

application within that 90-day period, the application is deemed approved. (R.C. 3718.04(C).)

The bill substantially revises the above provisions. It precludes the Director from approving an application that fails to comply with the standards, guidelines, and protocols. If the Committee recommends approval or disapproval of an application, the Director must consider the Committee's recommendation before approving or disapproving the application. If the Committee fails to provide advice or recommend approval or disapproval of the application within the required time, the Director may approve or disapprove the application without considering the advice of the Committee. Under the bill, the Director must establish and include any appropriate terms and conditions with the approval of a sewage treatment system or component of a system for use in Ohio. For purposes of establishing soil absorption specifications for a sewage treatment system, the terms and conditions must include standards regarding the sizing of the system. (R.C. 3718.04(C).)

Current law provides that if the Director approves an application, the Director must notify boards of health concerning the approval. The bill specifies that the Director must notify the boards that the sewage treatment system or component of a system that is the subject of the application is approved for statewide use. (R.C. 3718.04(D).)

The bill states that decisions of the Director approving or disapproving applications for new systems or components of systems may be appealed in accordance with the Administrative Procedure Act (R.C. 3718.04(E)). Further, it states that no approval is required under the above provisions with respect to a sewage treatment system or component of a system that has been approved by the Director prior to the bill's effective date unless the manufacturer of the system or component changes the design or seeks modifications to any terms and conditions of the prior approval (R.C. 3718.04(F)). Finally, the bill authorizes the Director to revoke the approval of a sewage treatment system or component of a system if the Director finds, based on substantial evidence, that the system or component fails to comply with applicable standards for the system or component. The revocation of an approval may be appealed in accordance with the Administrative Procedure Act. (R.C. 3718.04(G).)

### **Acknowledgement of system approval**

As discussed above, a manufacturer of a sewage treatment system or component of a sewage treatment system may obtain approval of the system by applying to the Director of Health who must use standards, guidelines, and protocols developed in conjunction with the Sewage Treatment System Technical Advisory Committee and consider recommendations of the Committee. However, not all sewage treatment



systems are approved by the Director. Some systems are authorized for use in rules adopted by the Public Health Council. The bill authorizes an installer or manufacturer of a sewage treatment system or component of a system the use of which has been authorized in rules to request from the Director a written statement acknowledging that the system or component of a system is approved for use in Ohio and that the approval is equivalent in all respects to the approval of a system or component of a system by the Director with recommendations from the Committee. The Director may approve or deny such a request as the Director determines appropriate. (R.C. 3718.041.)

## **Duties of the Director of Health**

The bill adds to the duties of the Director of Health under the Sewage Treatment Systems Law by requiring the Director to develop educational programs, in conjunction with boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems (R.C. 3718.05(G)).

## **Fees**

Current law authorizes a board of health to establish fees for the purpose of carrying out its duties under the Sewage Treatment Systems Law, including a fee for a sewage treatment system installation permit issued by the board. The bill authorizes a board to establish fees for sewage treatment system installation permits, operation permits, and alterations permits. (R.C. 3718.06(A)(1).)

Current law authorizes the Public Health Council to adopt rules in accordance with the Administrative Procedure Act establishing a fee to be collected from applicants for installation permits. The Director of Health must use the proceeds of the fee to administer and enforce the Sewage Treatment Systems Law and the Council's rules adopted under it. The bill authorizes the rules to establish a fee to be collected from applicants for installation and alteration permits and requires the Director to use not more than 75% of its proceeds for administration and enforcement. It then requires the Director to use not less than 25% of the proceeds from the fee to establish a program in cooperation with boards of health to fund installation and evaluation of sewage treatment system new technology pilot projects through grants or other agreements. In the selection of pilot projects, the Director must consult with the Sewage Treatment System Technical Advisory Committee. The bill also requires the report that the Director is required to submit to the Public Health Council under current law, if the Director is making recommendations about the amount of the fee, regarding the costs associated with administering the Sewage Treatment Systems Law to include an evaluation of the costs associated with the sewage treatment system new technology pilot projects program. (R.C. 3718.06(B).)



## **Enforcement**

Under current law, the health commissioner or the commissioner's designated representative, without prior notice or hearing and in accordance with the rules of the Public Health Council, may issue an emergency order requiring any action necessary to meet a public health emergency regarding domestic septage management or regarding a sewage treatment system. The bill also authorizes the issuance of an emergency order to prevent or abate an imminent and substantial threat to surface water or ground water. Further, the bill specifies that emergency orders regarding a sewage treatment system must be regarding such a system that is being operated in a manner that does not comply with the Sewage Treatment Systems Law or rules adopted under it. (R.C. 3718.09(B).)

## **Hearings and appeals**

The bill establishes new requirements regarding hearings and certain appeals for purposes of the Sewage Treatment Systems Law. Under the bill, a property owner may request a hearing with the board of health regarding the denial of an installation, operation, or alteration permit for a sewage treatment system; the imposition of a condition on the installation of a sewage treatment system; the required replacement of a sewage treatment system; or any other final order or decision of a board of health that is made under the Sewage Treatment Systems Law concerning which the property owner is claiming to be aggrieved or adversely affected. (R.C. 3718.02(A)(19) and 3718.11(A).)

A property owner may appeal the results of the hearing to either of the following:

- (1) The court of common pleas of the county in which the property owner's land is located; or
- (2) A sewage treatment system appeals board that is established as described below. (R.C. 3718.11(A).)

A property owner that wishes to appeal to a sewage treatment system appeals board must file the appeal with the board of health within whose jurisdiction the property owner's land is located. Upon receipt of a filing, the board of health must send the filing of the appeal to the chairperson of the sewage treatment system appeals board for the county in which the board of health has jurisdiction. (R.C. 3718.11(B).)

Not later than 90 days after the effective date of the bill, a sewage treatment system appeals board must be appointed for each county as follows:

(1) One member must be appointed by the health commissioner of the general health district having jurisdiction in the county;

(2) One member must be appointed by the judge of the probate court of the county having the longest continuous service as a judge of the probate court; and

(3) One member must be appointed by the Director of Health. (R.C. 3718.11(C)(1).)

Terms of appointment to a sewage treatment system appeals board are for two years. Members may be reappointed. Vacancies must be filled in the same manner as provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member was appointed must hold office for the remainder of that term. (R.C. 3718.11(C)(2).)

The person appointed by the judge of the probate court must serve as chairperson of the board. A majority vote of the members of the board is necessary to take action on any matter. The chairperson must designate the time and location for a hearing before the board. Finally, members of the board must serve without compensation. (R.C. 3718.11(C)(3).)

A board of health must send an appeal that has been filed with the board of health to the sewage treatment system appeals board immediately after the appeal has been filed. Not later than 45 days after a hearing before a sewage treatment system appeals board, the board must issue a written decision concerning an appeal before the board. (R.C. 3718.11(C)(4).)

The judge of the probate court who made an appointment to the board must establish due process procedures to be used by the applicable sewage treatment system appeals board for the purpose of hearing appeals regarding orders and decisions of a board of health. All appeals before the applicable sewage treatment system appeals board must be conducted in accordance with those procedures. The procedures may include filing fees applicable to appeals conducted by the sewage treatment system appeals board. (R.C. 3718.11(C)(5).)

The bill states that an appeal before a sewage treatment system appeals board is final, and no further appeal may be taken (R.C. 3718.11(D)).

### **Grandparenting of existing systems**

The bill provides that a sewage treatment system that was in operation prior to the bill's effective date cannot be required to be replaced with a new sewage treatment system under the Sewage Treatment Systems Law or rules adopted under it and must

be deemed approved if the system does not cause a public health nuisance or, if the system is causing a public health nuisance, repairs are made to the system that eliminate the public health nuisance as determined by the applicable board of health (R.C. 3718.012).

### **Existing rules**

The bill states that notwithstanding any provision of law to the contrary, the rules governing sewage treatment systems that are codified in Ohio Administrative Code Chapter 3701-29 and that are in effect on the effective date of the bill must remain in effect until those rules are superseded by rules adopted under the bill. The bill then specifies that the new rules adopted under the bill must not take effect prior to January 1, 2012. (Section 3.)

### **References to sewage treatment system**

The bill changes numerous references to "household sewage treatment system" to "sewage treatment system." Thus, small flow on-site sewage treatment systems are incorporated into the applicable requirements by reference (see, for example, R.C. 711.05 and 711.10).

### **Great Lakes-St. Lawrence River Basin Water Resources Compact Advisory Board**

Current law requires the Director of Natural Resources to convene an advisory board consisting of specified persons with an interest in the Great Lakes-St. Lawrence River Basin Water Resources Compact. The board is required to develop recommendations for legislation that is necessary to implement and effectuate the requirements and purposes of the Compact. Under existing law, the board must present its final recommendations to the Governor and the General Assembly not later than June 8, 2010. The bill extends that date to December 15, 2010. (Sections 5 and 6.)

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-14-09
Reported, S. Environment & Natural Resources	05-19-10
Passed Senate (33-0)	05-19-10
Reported, H. Environment & Brownfield Development	---

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