



Ohio Legislative Service Commission

Wendy Risner

Fiscal Note & Local Impact Statement

Bill: H.B. 141 of the 128th G.A.

Date: June 16, 2009

Status: As Introduced

Sponsor: Rep. Dodd

Local Impact Statement Procedure Required: Yes

Contents: To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law, and to declare an emergency

State Fiscal Highlights

| STATE FUND | FY 2010 | FY 2011 | FUTURE YEARS |
|--|---|---|--|
| General Revenue Fund | | | |
| Revenues | - 0 - | - 0 -- | - 0 -- |
| Expenditures | Potential increase for rule promulgation, administration, and education | Potential increase for rule promulgation, administration, and education | Potential increase for administration, and education |
| Sewage Treatment System Innovation Fund (Fund 5CJ0) | | | |
| Revenues | Potential gain due to additional approval applications | Potential gain due to additional approval applications | Potential gain due to additional approval applications |
| Expenditures | Potential increase for rule promulgation, administration, and education | Potential increase for rule promulgation, administration, and education | Potential increase for administration, and education |

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill makes changes to the law regarding sewage treatment systems. As a result, there will be additional costs to the Ohio Department of Health (ODH) associated with rule promulgation and administration. ODH will incur additional costs to develop educational programs, in conjunction with local boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems.
- ODH could receive additional applications from manufacturers seeking approval for the installation and use, rather than just the use as is currently required, of a sewage treatment system or component. ODH could experience a gain in revenue due to additional approval applications.

Local Fiscal Highlights

| LOCAL GOVERNMENT | FY 2009 | FY 2010 | FUTURE YEARS |
|-------------------------------|----------------------------|----------------------------|----------------------------|
| Local Boards of Health | | | |
| Revenues | Potential gain | Potential gain | Potential gain |
| Expenditures | Increase | Increase | Increase |
| Local Courts | | | |
| Revenues | - 0 - | - 0 - | - 0 - |
| Expenditures | Potential minimal increase | Potential minimal increase | Potential minimal increase |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- According to the Association of Health Commissioners (AOHC), costs for implementation of any rule changes for household sewage treatment programs could be up to \$10,000 per local board. This cost would be for the first year of implementation (as long as the rule changes were only done once in the first year) and would include administrative costs such as informing the public of changes, additional education for the board staff and the public, passage of local regulations if necessary, reprinting of pamphlets and educational materials, increased call volume, and additional community meetings.
- According to AOHC, the requirement regarding the development of a program for maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/additional duties required on the part of boards in rules and if the board could charge fees for any duties undertaken as a result of the requirement.
- The local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the process of the issuance of permits for sewage treatment systems.
- The requirement that local boards must consider the "economic impact" on the owner for the approval or disapproval of a system could increase costs to boards.
- Local courts could incur an increase in administrative and court costs associated with the filing of injunctive actions. Any increase would likely be minimal since the number of injunctions filed would likely be few.

Detailed Fiscal Analysis

Background

According to the web site of the Ohio Department of Health (ODH), it regulates sewage treatment systems and the Public Health Council establishes state minimum rules for siting, permitting, installing, altering, operating, and abandoning sewage treatment and disposal systems. Local boards of health are tasked with the associated permitting, inspecting, and enforcing the law.

H.B. 231 of the 125th General Assembly made changes to the Household Sewage Treatment Systems Law. However, H.B. 119 of the 127th General Assembly contained substantial amendments to the law regarding the regulation of household sewage treatment systems. The sewage treatment system rules adopted by the Public Health Council that became effective on January 1, 2007, were rescinded. H.B. 119 also enacted several uncodified provisions into state law that took effect July 1, 2007, and remain in effect until July 1, 2009. H.B. 141 amends the Household and Small Flow On-Site Sewage Treatment Systems Law by amending many of the statutes that were suspended by H.B. 119 and reinstates the operation of those suspended statutes.

A household sewage treatment system is a system, or a part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling. A small flow on-site sewage treatment system is 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 permit issued by the Ohio Environmental Protection Agency.

Sewage Treatment Systems Rules

The bill makes changes to the rules the Public Health Council is to adopt. The bill addresses, among other things, the rules governing installing, operating, and altering systems, the siting and designing of systems, issuing permits, inspecting systems, bonding installers, providers, and haulers, system instructions, and connecting to a central sewer system. Some of those changes are discussed below.

- The bill requires local boards of health to approve or disapprove the installation, operation, and alteration of a system if it is not connected to a sanitary sewerage system. A disapproval of an installation, operation, or alteration may be appealed in accordance with the law governing appeals of administrative action taken by political subdivisions.
- The bill applies the rules governing the siting, designing, installing, operating, monitoring, maintaining, and abandoning of systems and alters some of the requirements/standards regarding these. The bill requires the Council to adopt rules requiring each board of health to develop a program for the enforcement of maintenance requirements. A board must

be authorized to inspect any system if there is a complaint or probable cause.

- The bill requires boards of health to notify ODH in a format prescribed by the Director and to include information related to the issuance of a permit. Additionally, a board of health, to the extent practicable, must computerize the process of the issuance of permits for sewage treatment systems.
- The bill requires a board of health to inspect a sewage treatment system within 12 months of installation. Currently, an inspection is required 18 months after installation.
- The bill requires the Public Health Council to adopt rules specifying conditions and circumstances under which a property owner is required to connect to an available central sewer system.

Additionally, the bill establishes new rulemaking authority governing sewage treatment systems. These rules include some of the following: (1) prescribing standards for the use of subsurface drains to remove subsurface water from an area to be used for soil absorption of sewage in the soil of a system, (2) prescribing standards for the inspection of septage hauling truck tanks by boards of health, and (3) requiring a board of health to give notice and an opportunity for a hearing to an affected property owner regarding the denial of an installation, operation, or alteration permit for a sewage treatment system.

The bill also requires ODH 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.

Boards of health rules and approval process

The bill broadens the rulemaking authority of boards by allowing them to adopt rules providing for more stringent standards than those established in rules of the Council rather than just more stringent standards governing household sewage treatment systems, installers, service providers, or septage haulers. The bill requires the board, in proposing or adopting the rules, to consider and document the economic impact of the rules on property owners. The bill outlines the procedure for the adoption of these more stringent rules.

Under the bill, a board of health 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. 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. In determining the approval or disapproval of a system, a board must consider and document the economic impact on the property owner, the state of available technology, and the nature and economics of various alternatives. "Economic impact" is defined to mean, as applicable, the cost to the property owner for the

installation of the proposed sewage treatment system; the cost of an alternative system that, when installed and maintained properly, will not create a public health nuisance compared to the proposed sewage treatment system; and the costs of repairing the sewage treatment system as opposed to replacing the system with a new system.

Fiscal impact on state entities

ODH will incur an increase in costs for rule promulgation and administration, as well as increased costs for the educational program requirement. ODH also may incur increased costs associated with advising local boards of health on the process of computerization of permits. ODH will provide only technical assistance, not funding for this. LSC assumes that ODH will use GRF moneys to pay for this since funds in the Sewage Treatment Innovation Fund (5CJ0) may not be sufficient to pay for these costs.

The Ohio Environmental Protection Agency (OEPA) may incur a minimal increase in costs. This cost would be associated with additional staff hours for sorting through the rule change.

Fiscal impact on local entities

According to the Association of Ohio Health Commissioners (AOHC), the costs for implementation of any rule changes for household sewage treatment programs could be up to \$10,000 per local board of health. This cost would be for the first year of implementation (as long as the changes were done only once in the first year) and would include administrative costs such as informing the public of changes, educating board staff and the public, passing of local regulations if necessary, reprinting of pamphlets and educational materials, increased call volume, and additional community meetings. Additionally, there could be some costs to local health departments regarding the educational programs for the proper operation and maintenance of systems.

The requirement regarding the development of a program for maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/additional duties required on the part of boards in rules and if the boards could charge fees for any duties undertaken.

The local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the process of the issuance of permits for sewage treatment systems. It is expected that these costs would be incurred upfront. However, in the long run, computerization may make the programs more efficient and ultimately decrease costs for boards.

Lastly, requiring local boards to provide an "economic impact" for the approval or disapproval of a system would increase costs to boards.

The requirement that a property owner, under certain circumstances, is required to connect to an available central sewer system could have an impact on local entities. LSC assumes that the local entities would charge property owners to connect to the central sewer system.

Sewage Treatment System Technical Advisory Committee

The bill makes changes to the duties of the Sewage Treatment System Technical Advisory Committee and adds three new members.

Fiscal impact on state entities

ODH could incur a minimal increase in costs associated with the addition of three members to the Committee. The members serve without compensation, so the cost would only be for reimbursements for actual and necessary expenses.

Approval of sewage treatment systems

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. The bill establishes timelines for 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. Additionally, the bill specifies that approval and disapprovals of applications for new systems or components of systems may be appealed in accordance with the Administrative Procedure Act.

Fiscal impact on state entities

ODH could receive additional applications from manufacturers seeking approval for the installation and use, rather than just the use as is currently required, of a system or component. This would result in a revenue gain to the Sewage Treatment Innovation Fund (Fund 5CJ0).

Fees for permits

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.

Fiscal impact on local entities

According to AOHC, local boards of health may already have fees for installation, operation, and alteration permits.

Enforcement and emergency

The bill authorizes the issuance of an emergency order to prevent or abate an imminent and substantial threat to surface water or ground water. The bill also authorizes the Director of Health to file an injunctive action in a court of competent jurisdiction against a board of health that allows a sewage treatment system to cause a public health nuisance, provided that the Director provides reasonable notice to the board and an opportunity to abate the nuisance prior to filing the action.

Fiscal Impact on state entities

ODH could incur an increase in administrative costs as a result of filing injunctive action against a board of health that allows a system to cause a public health nuisance. Any increase would likely be minimal since the number of injunctions filed would likely be few.

Fiscal impact on local entities

Local courts could incur an increase in administrative and court costs associated with the filing of injunctive actions. Any increase would likely be minimal since the number of injunctions filed would likely be few.