Sub. S.B. 105

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(As Passed by the Senate)

Sens. Gardner, Kearns

BILL SUMMARY

- Requires the Public Health Council to adopt rules requiring the use of an approved household sewage treatment system at any single-, two-, or three-family dwelling not connected to a sanitary sewerage system.
- Requires the Council to adopt rules establishing minimum standards for the site evaluation, design, construction, and abandonment of, and discharge of sewage from, those household sewage treatment systems.
- Prohibits any person from acting as a household sewage system installer, site evaluator, service provider, or septage hauler unless registered under a statutory registration and regulatory scheme that it establishes.
- Requires property owners to obtain a permit before installing or altering a household sewage treatment system or causing either of those activities to be performed, and authorizes boards of health to require property owners to obtain an operation permit before using a new or altered system.
- Provides for the establishment and collection of fees to be charged by local boards of health.
- Establishes judicial and administrative enforcement mechanisms.
- Requires boards of county commissioners and county or regional planning commissions to send written notice of meetings to consider proposed plats to the applicable board of health and district office of the Environmental Protection Agency, and permits those authorities to require written proof of compliance with household sewage treatment rules in rules governing plats.

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BACKGROUND

Currently, household sewage disposal is 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 propose to install or alter household sewage systems or to clean sewage tanks must be registered by the board of health having jurisdiction where the work will be done. Registration requirements are established by the board of health; certificates of registration expire annually and must be renewed within 30 days before their expiration. If the health commissioner of the health district finds that a person registered by the district is engaging or has engaged in practices that violate the district's rules, the terms of a permit to install or repair a household sewage system, or applicable state laws, the board of health must 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 require that a permit be obtained from the board of health having jurisdiction before a household sewage system is installed or altered. A permit is valid until the installation or alteration is completed or for one year after issuance, whichever is earlier. The design, construction, installation, location, maintenance, and operation of household sewage disposal systems must conform to the Council's rules, engineering practices acceptable to the Department of Health, and effluent standards of the Ohio Environmental Protection Agency.

A board of health may adopt standards for household sewage systems that are more stringent than those of the Council when local conditions require more stringent standards. A board of health also may grant a variance from its rules or those of the Council if the variance is not contrary to the public interest and the applicant for the variance shows that strict application of the rules will cause an unusual and unnecessary hardship because of practical difficulties or other special conditions.

CONTENT AND OPERATION

Definition of "person"

The bill extends its requirements and prohibitions to any state, its political subdivisions, and any agencies of either by defining "person" to include not only the individuals and private entities defined as such under law not affected by it, but also any state, any political subdivision of a state, and any department, division, board, commission, agency, or instrumentality of a state or political subdivision (sec. 3718.01(I)).

Public Health Council rules

Within two years after the bill's effective date, the Public Health Council must adopt rules in accordance with the Administrative Procedure Act to regulate household sewage treatment systems. The systems include those that are exempt from obtaining a permit under the Water Pollution Control Law and that are installed on a single parcel of land for use at a single-family, two-family, or three-family dwelling to receive sewage for treatment and ultimate disposal. The types of systems affected are septic tanks, treatment systems with electrical or mechanical components or both, filters, leaching tile fields, privies, and other types of systems that the Council prescribes in rules it must adopt under the bill. (Sec. 3718.01(E).) The rules must be of general application throughout the state and be adopted by using the information contained in the study that the Director of Health must conduct (see "***Duties of the Director of Health***," below). (Sec. 3718.02(A).) The rules must do at least all of the following:

(1) Require that use of a household sewage treatment system be approved by the appropriate board of health for any single-family, two-family, or three-family dwelling not connected to a sanitary sewerage system (sec. 3718.02(A)(1));

(2) Require each board of health, for any proposed installation of a household sewage treatment system, to do one of the following:

(a) Conduct a site evaluation;

(b) Enter into a contract with a registered site evaluator (see "***Registration of installers, site evaluators, service providers, and septage haulers***," below) under which the site evaluator will conduct a site evaluation, and review the site evaluation; or

(c) Review a site evaluation conducted by a registered site evaluator who has been hired for that purpose by the owner, leaseholder, or assignee of real property on which a household sewage treatment system is proposed to be installed (sec. 3718.02(A)(2));

(3) Prescribe minimum standards for the site evaluation, design, construction, and abandonment of systems and for the discharge of sewage from them (sec. 3718.02(A)(3));

(4) Prescribe minimum criteria and procedures under which boards of health must issue installation and alteration permits, and may issue operation or abandonment permits, for household sewage treatment systems. These rules must establish a maximum length of time after receipt of a completed application for a permit to install or alter a system, including any revisions and any additional information requested by the board of health, within which a board of health must either issue the permit or deny the application (sec. 3718.02(A)(4)).

(5) Prescribe minimum criteria under which boards of health must coordinate with the Environmental Protection Agency and the Department of Health for the review and the approval or denial of permits (see "***Permits for systems***," below) for household sewage treatment systems in a subdivision, as defined in the Plats Law, and prescribe criteria for the provision of written evidence of compliance with board of health rules concerning household sewage treatment for purposes of platting under that law (sec. 3718.02(A)(5));

(6) Prescribe minimum criteria and procedures under which boards of health must provide for periodic basic system assessments of systems that are installed or altered pursuant to a permit. The bill defines these assessments as the observation of, testing of, or collection of samples of the contents of or effluent from a household sewage treatment system in order to gather and report

information about the condition and functioning of the system to the board or its designated representative (sec. 3718.01(B)). These rules must require that assessments of household sewage treatment systems with electric or mechanical components or both or systems that are designed to discharge be conducted at least annually and be conducted at least every five years for all other types of systems. The rules also must prescribe minimum criteria and procedures under which boards must provide for periodic basic system assessments of systems operating on the date 90 days after the effective date of the new rules or that are installed or altered pursuant to a permit issued prior to that date under rules that were applicable on the date on which the permit was issued. The rules must require that systems that were in existence prior to the bill's effective date must be required only to achieve the performance standards that were established at the time of the original installation of the systems. Further, the rules must require a board of health to submit to the Director, not later than three years after the bill's effective date, a detailed schedule for the performance of periodic basic system assessments and must require the board to perform the assessments in accordance with the schedule. The schedule must include a minimum of one year of community education, promotion, and marketing prior to implementation. In addition, the rules must provide that replacement of a system must be required only when a public health nuisance is verified by a board of health and the board determines that alternative corrective measures do not or will not abate the nuisance. The rules also must authorize boards of health, in lieu of conducting basic system assessments themselves, to approve a continuing operation and maintenance contract between an owner, leaseholder, or assignee of real property and a registered service provider under which the service provider agrees to conduct basic system assessments and must establish surety bonding requirements for service providers that accept such contracts. Finally, nothing in the rules adopted under these provisions is permitted to authorize the acceptance or approval of a basic system assessment that is required for the transfer of title of real property in lieu of the basic system assessments required under the bill and the rules adopted by the Public Health Council or boards of health pertaining to basic system assessments. (Sec. 3718.02(A)(6).)

(7) Require each board of health to register, in accordance with the bill, installers, site evaluators, service providers, and septage haulers that work in the health district (see "***Registration of installers, site evaluators, service providers, and septage haulers***," below) (sec. 3718.02(A)(7));

(8) Prescribe minimum criteria and procedures, including the development of an examination for persons who intend to register as septage haulers, site evaluators, service providers, or installers, that are in addition to the criteria and procedures established in the bill and under which boards of health must register installers, site evaluators, service providers, and septage haulers (see "***Registration***

of installers, site evaluators, service providers, and septage haulers," below) (sec. 3718.02(A)(8)). Installers and septage haulers are, respectively, persons who engage in the business of installing or altering household sewage treatment systems or are employed by such persons and those who engage in the collection, transportation, and disposal of domestic septage (sec. 3718.01(G) and (L)). "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, household sewage treatment system or any component of such a system, portable toilet, Type III marine sanitation device as defined in federal regulations, or a similar household, noncommercial, nonindustrial system (sec. 3718.01(D)). Under the bill, "site evaluator" means any person in the business of conducting site evaluations, that is, taking an inventory of factors such as soil properties, topography, vegetation, hydrology, past land uses, nearby water sources, and area as those factors pertain to the installation and operation of household sewage treatment systems (sec. 3718.01(P) and (O)). "Service provider" means a person who engages in the business of performing basic system assessments or who services, but does not install or alter, household sewage treatment systems (sec. 3718.01(M)). Under the bill, the term "alter" means to change by making substantive replacements of, additions to, or deletions in the design or materials of an existing household sewage treatment system or to change the location of such a system (sec. 3718.01(A)). "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution from toilets, urinals, lavatories, bathtubs, laundry tubs or devices, floor drains, drinking fountains, or other sanitary fixtures; it may include liquids containing chemicals in solution (sec. 3718.01(N)).

(9) Prescribe criteria and procedures under which boards of health must require installers, site evaluators, service providers, and septage haulers to file a bond or proof of insurance with the board covering their activities within the health district to ensure compliance with the bill's provisions and the Council's and the applicable board's rules that apply to installers, site evaluators, service providers, and haulers (sec. 3718.02(A)(9));

(10) Prescribe ongoing goals and criteria for research and development by the Department concerning household sewage treatment systems and require the Department to provide technical assistance to boards of health that are administering the bill and the rules adopted under it (sec. 3718.02(A)(10));

(11) Prescribe criteria under which the Director may approve and certify training courses for installers, site evaluators, service providers, and septage haulers and examine the records of training course providers (sec. 3718.02(A)(11));

(12) Set standards of conduct for registered installers, site evaluators, service providers, and septage haulers and define acts and omissions, in addition to those specified in the bill (see "***Suspension or revocation of a registration***,"

below), that constitute grounds for the suspension or revocation of, or denial of an application for or renewal of, a registration (sec. 3718.02(A)(12));

(13) Require installers to install only those types of systems or components of such systems that meet one of the following criteria: (a) the systems or components have been tested and certified by an independent and recognized organization that engages in testing and certification, or (b) if no such organization tests and certifies a particular type of system or components of such a system, the Director has determined that that type of system or its components are acceptable for use. In lieu of testing and certification by an independent and recognized organization, the Council may prescribe criteria governing systems or components whose use is limited to specific locations in Ohio. (Sec. 3718.02(A)(13).)

(14) Establish a procedure for providing a reasonable right of entry for a board of health or its designated representative to conduct basic system assessments and inspections for administration and enforcement of the bill and the rules adopted and orders issued under it (sec. 3718.02(A)(14)). "Inspection" is defined as the on-site evaluation or analysis by a registered sanitarian of the design and installation of a system, the evaluation or analysis of any problems found in the condition or functioning of the system, and the evaluation or analysis of the system's subsequent condition and functioning after the correction of the problems (sec. 3718.01(F)).

(15) Prescribe minimum criteria and procedures under which boards of health may establish household sewage treatment district management programs to provide a responsive approach toward preventing or solving sewage treatment problems resulting from household sewage treatment systems within the districts established under the program. For purposes of the program, a board of health may enter into a contract with any entity to administer a household sewage treatment district management program (sec. 3718.02(A)(15));

(16) Establish the number, composition, and terms of office of members and the function of any household sewage treatment advisory board that the Director may establish pursuant to the Director's existing general statutory power to appoint advisory boards with the Governor's approval (sec. 3718.02(A)(16)); and

(17) Prescribe criteria to be used by the Director for approving or disapproving rules adopted by a board of health under the bill (sec. 3718.02(A)(17)).

The Council may adopt any other rules that it determines necessary to implement the bill and protect the public health and welfare (sec. 3718.02(A)).

At least 60 days before adopting a rule, the Council must provide boards of health and interested parties with the opportunity to comment on the rule.

The bill specifies that the Council's existing rules governing household sewage treatment systems, installers, and sewage tank cleaners ("septage haulers" under the bill) remain in effect as they exist on its effective date until they are superseded by the new rules that the Council is required to adopt (Section 3).

Rules of boards of health

The bill authorizes boards of health to adopt rules providing more stringent standards governing systems, installers, site evaluators, service providers, or septage haulers than those in the rules of the Council when more stringent standards are necessary for the public health. Boards of health establishing more stringent standards must follow the procedures under the Health Districts Law governing the issuance of orders and adoption of rules. More stringent rules proposed by a board of health are subject to review and approval by the Director. A board that proposes to adopt more stringent rules must notify the Department at least 60 days prior to the proposed date of adoption. If the Director fails to approve or disapprove a proposed more stringent rule within 60 days after receiving the board's notice, it must be conclusively presumed that the rule has been approved. (Sec. 3718.02(B).)

Duties of the Director of Health

The bill requires the Director to do all of the following:

(1) Administer and enforce the bill and the rules adopted under it by the Council;

(2) Determine the maximum amount of the bond or insurance coverage that is required of installers, site evaluators, service providers, and septage haulers under the Council's rules;

(3) In accordance with rules adopted by the Council, examine records of boards of health that the Director determines necessary to ascertain compliance with the bill and rules adopted under it;

(4) Review and approve or disapprove rules proposed by boards of health that are more stringent than the rules the Council must adopt under the bill;

(5) Survey boards of health as required by the bill (see "***Compliance by boards of health***," below);

(6) Not more than one year after the bill's effective date, conduct and submit to the Council a study including: (a) a literature search to determine available technological information concerning household sewage treatment systems, (b) a review of the laws, rules, and standards of other states and any model codes governing household sewage treatment, (c) a determination of the types of systems permitted by boards of health to be used in this state, and (d) a survey of a statistically significant sample of the types of systems permitted to be used in this state; and

(7) Implement a financial assistance awareness program to provide information to boards of health regarding the availability of state and federal financial assistance sources and other options available to owners, leaseholders, and assignees of real property for financing the alteration or replacement of systems (sec. 3718.03).

Registration of installers, site evaluators, service providers, and septage haulers

Boards of health are required to administer and enforce the bill's provisions and Council and board rules pertaining to the registration of installers, site evaluators, service providers, and septage haulers (sec. 3718.04(A)). Beginning on and after the first day of January of the year following the effective date of the rules that the Council must adopt, the bill prohibits any person from collecting, transporting, or disposing of septage from a system unless the person or the person's employer first registers as a septage hauler with the board of health of each health district in which the person intends to operate as a septage hauler. It also prohibits any person from installing, excavating to install, or altering a system on and after that date unless the person or the person's employer first registers with the board of health of each health district in which the person intends to operate as an installer. The bill specifies that a home builder that contracts for the services of an installer is not an employer of an installer for these purposes. Further, the bill prohibits any person from conducting business as a site evaluator or as a service provider unless the person or the person's employer first registers as a site evaluator or service provider with the board of health of each health district in which the person intends to work as a site evaluator or service provider. If required by a manufacturer of a system, the applicant for registration as a service provider must supply to the health district written authorization from the manufacturer to conduct the service. A board of health cannot require more than one registration in each category as a septage hauler, as an installer, as a site evaluator, or as a service provider for any single employer. (Sec. 3718.04(B) and (C).)

To apply for registration, a person or the person's employer must submit a completed application to the board of health on a form prescribed by the Director. The application must contain the information prescribed in the rules adopted by

the Council under the bill and any additional information required by the board of health and must list each known employee who will engage in the activity that is subject to registration. The application must be accompanied by the registration fee established by the board of health (see "***Fees***," below). (Sec. 3718.05(A)(1).)

In addition to complying with the registration requirements established under the bill, each person who intends to register must successfully complete an examination. The examination must be developed by the Council by rule under the bill (see "***Public Health Council rules***," above). Provisions must be made to administer the examination orally if requested. (Sec. 3718.05(A)(2).)

Under the bill, the health commissioner of the health district or the commissioner's designated representative must acknowledge receipt of a registration application and notify the applicant of any deficiencies in it within 14 calendar days after its receipt. Within 60 calendar days after receiving a completed or revised application, including any additional information requested by the health commissioner or the commissioner's designated representative, and after determining whether the applicant has successfully completed the required examination, the board must either issue the registration or deny the application. The board must deny an application if it determines that the applicant has engaged in conduct or committed an act or omission that constitutes grounds for denial of a registration application under rules adopted by the Council under the bill, has committed an act or omission that constitutes grounds for suspension or revocation of a registration under the bill or rules of the Council (see "***Public Health Council rules***," above, and "***Suspension or revocation of a registration***," below), or has not done all of the following:

(1) Stated on the application that the applicant will comply with all applicable statutes, rules, resolutions, and ordinances of the state and its political subdivisions;

(2) Demonstrated to the board's satisfaction a method by which the applicant will ensure employee knowledge of those statutes, rules, resolutions, and ordinances;

(3) Successfully completed the examination required by the bill;

(4) Complied with any surety bonding or insurance requirements established by the board;

(5) Participated in any educational courses prescribed by the board of health and approved by the Director; and

(6) If required by a manufacturer, supplied to the board of health written manufacturer authorization for any system that the applicant intends to service the system. (Sec. 3718.05(B).)

The bill specifies that a registration is valid only for work being conducted in the health district where it was issued (sec. 3718.05(D)). Registrations expire at the end of the calendar year in which they were issued. To renew a registration, a registrant must submit a completed renewal application to the board of health on a form prescribed by the Director. This application must include the information specified in the rules adopted by the Council and must be accompanied by any renewal fee prescribed by the board (see "***Fees***," below). Additionally, the applicant must attend any required educational seminar concerning domestic septage and sewage disposal that is held by the board of health. Proof of attendance must be submitted with the renewal application. If the board makes any of the following determinations, it must deny a renewal application:

(1) The applicant has engaged in conduct or committed an act or omission that constitutes grounds for denial specified in rules adopted by the Council under the bill or has committed an act or omission that constitutes grounds for suspension or revocation under the bill or rules of the Council adopted under it;

(2) Any of the previously enumerated criteria for issuance of a registration have not been met; or

(3) The applicant failed to attend any required educational seminar. (Sec. 3718.06(A) and (B).)

If a board of health issues a registration or registration renewal, within 90 days thereafter, the board must certify to the Director on a form prescribed by the Director that the registration or renewal was issued. If a board denies a registration or renewal of a registration, it must return the registration or renewal fee, less an amount established by the board under its rules as an administrative fee for processing the application for registration or renewal, to the applicant and send the applicant a copy of the denial. The board must notify the Director of Health and the boards of health of all other health districts in which the applicant is registered of the denial of a registration or registration renewal. (Secs. 3718.05(C), 3718.06(C), and 3718.07.)

Suspension or revocation of a registration

Under the bill, the board of health that issued an installer, site evaluator, service provider, or septage hauler registration or renewal may suspend or revoke it if the registrant does any of the following:

(1) Fraudulently or deceptively obtains or attempts to renew the registration or registration renewal;

(2) Fails at any time to meet the qualifications for the registration or registration renewal; or

(3) Is violating or has violated any provision of the bill, rules of the Council or board of health adopted under it, or applicable statutes, rules, resolutions, or ordinances of the state or its political subdivisions. A registrant is responsible for employees' compliance with the bill and any of those statutes, rules, resolutions, or ordinances.

A board of health that suspends or revokes a registration or registration renewal must notify the Director of the suspension or revocation. The Director then must notify the boards of health of all other health districts in which the registrant is registered of the suspension or revocation. (Sec. 3718.08.)

Permits for systems

Beginning on and after 90 days after the effective date of the rules the bill requires the Council to adopt, any person who is an owner, leaseholder, or assignee of real property is prohibited from doing either of the following:

(1) Installing or altering a system on his property or causing either of those activities to be performed without first obtaining an installation or alteration permit from the board of health of the health district in whose jurisdiction the system is or is to be located. Upon completion of the work authorized by the permit, the permit holder must notify the board of health of the completion of the work in accordance with those rules.

(2) Using or causing the use of a new or altered system on the person's property that was installed or altered pursuant to a permit issued under (1), above, without first obtaining a permit to operate the system, if required, from the board of health. The application for a permit to operate a system must be submitted at the same time as the application for the permit to install or alter in accordance with the Council's rules governing the issuance of permits. (Sec. 3718.09(A).)

Within 60 days after issuance of an installation or alteration permit, the board must certify that fact to the Director on a form prescribed by the Director (sec. 3718.09(C)).

A board of health must administer and enforce the bill's provisions and rules adopted by the Council or the board pertaining to the installation, alteration, and operation of systems. A board of health must deny a permit to install, alter, or operate a system if the information on the permit application is incomplete or

inaccurate or indicates that the system cannot comply with the rules of the Council or more stringent rules of the board. A board also must deny a permit to operate if it finds from an inspection that the system was not installed or altered in accordance with those rules. A board of health may suspend or revoke a permit if the permit holder:

(1) Fraudulently or deceptively obtained or attempted to obtain the permit; or

(2) Is violating or threatening to violate any provision of the bill or the rules of the Council or the board adopted under it. (Sec. 3718.09(B).)

Variances

Under the bill, an applicant for a permit to install, alter, or operate a system may make a written application to the board of health in whose jurisdiction the system is or is to be located for a variance from the rules of the Council or the board. The variance application must include a statement of the particular rules from which the variance is sought, a description of the proposed system or alteration, and a discussion of the necessity for the variance. A board cannot grant a variance unless the applicant demonstrates that there will be an unusual and unnecessary hardship in complying with the rules and that the variance will not adversely affect the public health or conflict with the intent of the rules of the Council and the board. Not later than 60 days after granting a variance, the board must notify the Director of the variance. (Sec. 3718.10.)

Fees

Current law unchanged by the bill authorizes a board of health to establish, by rule, a uniform system of fees to be charged for the services it provides. The district advisory council of a general health district or, in the instance of a city health district, the legislative authority of the city may disapprove any fee established by the board, precluding the board from charging the fee. Fees for services provided by the board for specified purposes must be established in accordance with rules adopted by the Public Health Council. The rules must establish fee categories and uniform methodologies for use in calculating the costs of the specified services provided. In adopting the rules, the Council must consider recommendations that it receives from advisory boards established either by statute or the Director for entities that are subject to the fees. In addition, at least 30 days prior to establishing such a fee for a service provided by a board of health, the board must notify any entity that would be affected by the proposed fee of its amount.

Under the bill, these provisions of current law govern the establishment of the fees for registrations and renewals, site evaluations of property for systems, permits to install or alter and to operate systems, and basic system assessments and inspections. All fees so established and collected by a board must be deposited into a special fund of the district to be used exclusively by the board in carrying out those duties. (Secs. 3709.09 and 3718.11(A)(1).)

Fees paid by property owners

The bill authorizes the health commissioner or the commissioner's designated representative to provide an invoice for a basic system assessment fee established under the bill and the rules adopted by the Council under it to the owner, leaseholder, or assignee of the property on which the system is located who is required to pay the fee. That person must pay the fee shown on the invoice to the health commissioner or the commissioner's designee within 30 days after receiving the invoice. Existing law provides for notice to an owner, leaseholder, or assignee of real property regarding late payment of an operation permit or inspection fee for a system. The notice must indicate that there may be late payment penalties and that late payments will be placed as a lien on that person's real property. Existing law also establishes a procedure for objections to the amount of unpaid operation permit or inspection fees. The objections must be made within 30 days of the receipt of the notification of a fee. The bill extends these provisions to basic system assessment fees paid by property owners.

Under existing law, failure to timely pay the fee amount and accrued late payment penalties or to object to the notice authorizes the health commissioner or the commissioner's designee to certify the amount of the fee and accrued late payment penalties to the county auditor. Upon receipt of such a certification, the auditor must place the certified amount on the real property tax list and duplicate as a lien against the property where the system is located. The certified amount must be collected in the same manner as other property taxes. Existing law also authorizes the county prosecutor to file a civil action for collection of the fee. The bill applies all of these provisions to any unpaid fee levied under the bill. (Secs. 319.281, 3709.091, and 3718.13.)

Installation permit fee for use by Director

The bill authorizes the Council to adopt rules establishing an amount to be collected from applicants for installation permits for use by the Director for carrying out the Director's duties under the bill and rules adopted under it. A board of health must collect that amount at the same time that it collects any fee established by it for an installation permit and is not required to provide notice or hold public hearings regarding the amount of the fee. Within 60 days after the end of the month in which an installation permit is issued, a board of health must

certify the amount collected pursuant to the Council's rules and transmit that amount to the Treasurer of State for deposit into the Household Sewage Treatment System Fund created by the bill. The fund must be used by the Department solely for carrying out its duties under the bill and the rules adopted by the Council. (Secs. 3718.11(A)(2) and 3718.12.)

The bill permits the Director to submit recommendations to the Council regarding the amount to be collected with health district installation permit fees pursuant to the Council's rules. When making such recommendations, the Director must submit a report stating the current and projected expenses for carrying out the Director's duties under the bill and rules adopted under it and the total of all moneys that have been deposited into the Household Sewage Treatment System Fund. In addition, the Director may include in the report recommendations for modifying the household sewage treatment system program established by the bill and rules adopted by the Council under it. (Sec. 3718.11(B).)

Compliance by boards of health

The bill requires the Director to survey each city and general health district biennially to determine whether there is "substantial compliance" with the bill's requirements pertaining to health districts and the applicable rules of the Council adopted under the bill. If the Director determines there is substantial compliance, the Director must place the health district on an approved list. The Director may resurvey any approved health district when the Director believes a resurvey is necessary. After a survey or resurvey, the Director may remove from the approved list any health district that is not substantially complying with the requirements and rules.

If the Director determines that a health district is not eligible to be placed on the approved list or to continue on it, the Director must certify that determination to the board of health of the health district. The bill requires the Director, or an approved district with which the Director has entered into a contract for that purpose, to conduct the duties of the unapproved health district within that district until the district is placed on or returned to the approved list. During that time, the Director or contracting district collects all fees payable to the board of health as well as all fees paid to the board prior to the time that the Director determined that the district was ineligible to be on the approved list and that have not been expended or encumbered. The Director must deposit the fees into the state treasury to the credit of a special fund, created by the bill, to be used by the Director to administer and enforce the bill's applicable requirements and rules of the Council within that district. A contracting district must deposit the fees to the credit of its own special fund, created under the bill, to be used by the district to carry out the unapproved district's duties. The Director or contracting

district must pay any balance remaining in the applicable fund to the health district when it is placed on or returned to the approved list. (Sec. 3718.14.)

Emergency orders

The bill authorizes the health commissioner or the commissioner's designated representative having jurisdiction, without prior notice and in accordance with rules adopted by the Council, to issue an emergency order requiring any action necessary to meet a "public health emergency" regarding domestic septage collection and treatment or regarding a household sewage treatment system. The recipient of such an order immediately must comply with it and may apply to the issuer of the order for a hearing on it. If a hearing is requested, it must be held as soon as possible, but not later than 20 days after the issuer's receipt of the application for a hearing. (Sec. 3718.16(B).)

Prohibitions and enforcement

Prohibitions

The bill prohibits violation of any of its provisions, any rule adopted or order issued under it, or any condition of a registration or permit issued under it (sec. 3718.15).

Judicial remedies; civil and criminal penalties

Under the bill, the prosecuting attorney of the appropriate county or the city director of law, village solicitor, or other chief legal officer of the appropriate municipal corporation, upon the complaint of the Director or a board of health, must prosecute to termination or bring an action for injunction or other appropriate relief against any person who is violating or has violated the bill, any rule adopted or order issued under it, or any condition of a registration or a permit issued under it. The court of common pleas or the municipal or county court in which an action for injunction is filed has jurisdiction to grant injunctive relief upon a showing that the respondent named in the complaint is or was in violation of the bill or the rules, orders, or conditions.

Additionally, upon a finding of a violation by a manufacturer, an installer, a site evaluator, a service provider, or a septage hauler, the court may assess against the person a civil penalty of not more then $1,000 per day of violation. Of any such civil penalties assessed by a court, 75% must be transferred to the health district whose board of health brought the complaint and must be deposited to the credit of that district's fund, created by the bill, to be used for the bill's purposes and the rules adopted under the bill. The remaining 25% of the moneys must be transferred to the prosecuting attorney of the county or city director of law, village

solicitor, or other chief legal officer of the municipal corporation that prosecuted or brought the action to be used to pay the expenses incurred in it. (Sec. 3718.17(A).)

Criminal violations that were committed purposely are punishable by a fine of not more than $1,000, and each day of violation is a separate offense. Moneys collected from fines must be distributed into the fund created under the bill of the health district in which the violation occurred if the district is on the Director's approved list (see "***Compliance by boards of health***," above). If the district in which the violation occurred is not on the approved list, the moneys must be deposited into the Household Sewage Treatment System Fund if the Director is carrying out the district's duties under the bill and applicable rules adopted under it. If another district has contracted with the Director to carry out those duties, the moneys must be deposited into that district's fund created under the bill. (Sec. 3718.99.)

Administrative remedies

The bill authorizes a board of health having jurisdiction to issue, modify, suspend, or revoke enforcement orders to a registered installer, site evaluator, service provider, or septage hauler; holder of a permit to install or alter or to operate a system; or other person directing the recipient of the order to abate a violation of the bill, a rule adopted or order issued under it, or a condition of a registration or permit issued under it within a specified, reasonable time. If an enforcement order is neglected or disregarded, the applicable board of health may take action in accordance with existing law that provides procedures by which a board of health may cause the arrest and prosecution of persons neglecting or disregarding its order or to perform, through the board's officers and employees, what the offending persons should have performed. (Secs. 3707.02 and 3718.16(A).)

Bill's remedies in addition to other available remedies

The bill declares that the remedies contained in it are in addition to any other remedies available under law. (Sec. 3718.17(B).)

Inspection and enforcement as the practice of environmental health

Under current law, consultation, instruction, investigation, inspection, or evaluations that require specialized knowledge, training, and experience in the field of environmental health science for the purpose of administering and enforcing specified statutes and rules related to environmental health science, including the current home sewage disposal system rules, are included in the definition of the practice of environmental health under the Sanitarians Law for the

purpose of identifying the personnel of specified state departments and political subdivisions who are subject to registration under that law. Specifically included are employees of the Department of Health, the Environmental Protection Agency, the Department of Agriculture, and health districts that engage in those activities. The bill includes those activities in the definition of the practice of environmental health with respect to the administration and enforcement of the bill and requirements established under it. (Sec. 4736.01.)

Notice and proof of compliance with rules required under Plats Law

Under current law, whenever a plat is submitted to the board of county commissioners, or a county planning commission or a regional planning commission adopts a plan for streets or highways, certain notice requirements apply. Specifically, within five days of submission of the plat, the board of county commissioners, or the county or regional planning commission, as applicable, must schedule a meeting to consider the plat and must send written notice by regular mail to the clerk of the board of township trustees of the township in which the plat is located. In addition to the township trustees, the bill requires written notice to be sent to the board of health in which the plat is located and the district office of the Environmental Protection Agency with jurisdiction in the area in which the plat is located. (Secs. 711.05 and 711.10.)

Current law authorizes a board of county commissioners, and requires a county or regional planning commission, to adopt general rules governing plats and subdivisions of land falling within its jurisdiction in order to provide for proper planning. The rules may require proof of compliance with any applicable zoning resolutions as a basis for approval of a plat. The bill also authorizes the rules of a board of county commissioners and a county or regional planning commission to require proof of compliance with household sewage treatment rules adopted by a board of health under current law as shown by written evidence of compliance with those rules provided in accordance with rules adopted under the bill (see "***Public Health Council rules***," above). (Secs. 711.05 and 711.10.)

Approval of division without plat

Under current law, an authority having approving jurisdiction of plats must approve without plat a proposed division of a parcel of land along an existing public street and involving not more than five lots within seven working days after submission if the designated representative of the authority is satisfied that the division is not contrary to applicable platting, subdividing, or zoning regulations. The bill requires that the designated representative of the authority be satisfied that the proposed division is not contrary to applicable platting, subdividing, or zoning rules or resolutions or to household sewage treatment rules adopted by the applicable board of health under existing law. (Sec. 711.131.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
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Reported, S. Energy, Natural Resources & Environment	04-18-00	p.	1612
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