



Eric Vendel

Bill Analysis
Legislative Service Commission

Sub. H.B. 231

125th General Assembly

(As Reported by S. Energy, Natural Resources and Environment)

Reps. Niehaus, Seitz, McGregor, Barrett, Kearns, Husted, Setzer, Collier, Webster, Carano, Allen, Aslanides, Carmichael, Strahorn, Daniels, Domenick, Flowers, Hollister, Otterman, T. Patton, Wolpert

Sen. Spada

BILL SUMMARY

- Defines "sewage treatment system" as a household sewage treatment system, a small flow on-site sewage treatment system, or both, as applicable.
- Defines "small flow on-site sewage treatment system" as a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage per day and that does not require a national pollutant discharge elimination system permit or an injection well drilling or operating permit issued under the Water Pollution Control Law.
- Requires the Public Health Council to adopt rules requiring a board of health to approve or disapprove the use of a sewage treatment system if it is not connected to a sanitary sewerage system.
- Requires the Council to adopt rules establishing standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that may be used in Ohio.
- Requires the Council to adopt rules that prescribe criteria and procedures under which boards of health must issue installation and operation permits for sewage treatment systems.
- Requires the Council to adopt rules requiring a board of health to inspect a sewage treatment system not later than 18 months after its installation.

- Requires a board of health to register sewage system installers, service providers, and septage haulers that work in the health district under a regulatory scheme that the Council must established in rules.
- Requires the Council to adopt rules that require a board of health and the manufacturer of a system, when possible, to provide instructions for the operation and maintenance of the system.
- Requires the Council to adopt rules that prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems that may be used in Ohio.
- Allows a board of health to regulate the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems in accordance with the rules adopted by the Council.
- Requires a board to first send written notification to the Director of Health and the Director of Environmental Protection if the board chooses to regulate small flow on-site sewage treatment systems.
- Creates the Sewage Treatment System Technical Advisory Committee for the purposes of developing guidelines with the Department of Health for use by the Director of Health in the approval or disapproval of sewage treatment systems for use in Ohio and advising the Director on the approval or disapproval of applications for approval of sewage treatment systems for that use.
- Requires a manufacturer of a sewage treatment system or a system component that differs in design or function from systems or components the use of which is authorized in rules adopted under the bill to apply for approval of the system or component for use in Ohio.
- Provides for the establishment and collection of fees to be charged by local boards of health.
- Establishes judicial and administrative enforcement mechanisms.
- Exempts sewerage or treatment works for the on-lot disposal of sewage from a small flow on-site sewage treatment system specifically from plan approval and general supervision requirements and generally from the

administrative and permitting requirements established under the Water Pollution Control Law as well as from fees levied for those purposes if a board of health has notified the Director of Health and the Director of Environmental Protection that the board has chosen to regulate the system and the board remains in compliance with the rules adopted by the Public Health Council concerning such systems.

- For purposes of the transfer of residential real property, requires the Director of Commerce to revise the real property disclosure form not later than January 1, 2006, to include a statement that information on the operation and maintenance of the type of sewage treatment system serving the property is available from the Department of Health or the applicable board of health.
- Requires the applicable board of health to be notified when a plat has been submitted for approval, allows the authority approving plats to require proof of compliance with household sewage treatment rules adopted by the applicable board of health or the Public Health Council, and makes other changes in the Plats Law.

TABLE OF CONTENTS

Definition of "person"	5
Public Health Council rules.....	5
Rules of boards of health	8
Regulation of small flow on-site sewage treatment systems by boards of health....	8
Sewage Treatment System Technical Advisory Committee.....	9
Duties of Technical Advisory Committee.....	10
Report of Technical Advisory Committee	10
Approval of sewage treatment systems for use in Ohio	11
Duties of Director of Health.....	12
Fees.....	12
Procedures regarding unpaid fees and late payment of fees.....	13
Installation permit fee for use by Director.....	13
Compliance by boards of health.....	14
Emergency orders	15
Prohibition and enforcement	15
Prohibition.....	15
Judicial remedies; civil and criminal penalties.....	15
Administrative remedies.....	16
Bill's remedies in addition to other available remedies	16
Exemptions from Water Pollution Control Law and related fees	16

Disclosure of information on operation and maintenance of sewage treatment systems at time of transfers of residential real property	17
Inspection and enforcement as practice of environmental health	17
Platting	18
Notice of submission of plat and of any meeting concerning it	18
Proposed division of parcel of land without plat	18
Rules	19

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 (see below), 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 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(H)).

Public Health Council rules

Not later than one year after the bill's effective date, the Public Health Council must adopt rules in accordance with the Administrative Procedure Act to regulate sewage treatment systems (sec. 3718.02(A)). Under the bill, "sewage treatment system" means a household sewage treatment system, a small flow on-site sewage treatment system, or both, as applicable (sec. 3718.01(M)). "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 (sec. 3718.01(D)).¹ "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 per day and that does not require a national pollutant discharge elimination system permit or an injection well drilling or operating permit issued under the Water Pollution Control Law (sec. 3718.01(N)).

The Council's rules must be of general application throughout the state and must do at least all of the following:

(1) Require that the appropriate board of health approve or disapprove the use of a sewage treatment system if it is not connected to a sanitary sewerage system (sec. 3718.02(A)(1));

(2) Require that a board of health conduct a site evaluation for any proposed installation of a sewage treatment system (sec. 3718.02(A)(2));

(3) Prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that may be used in Ohio. The standards must include at a minimum soil absorption specifications, specifications for discharging systems that do not

¹ The bill applies this definition of "household sewage treatment system" to existing uses in the Revised Code (secs. 521.01, 3709.091, and 6111.04).

conflict with provisions related to the national pollution discharge elimination system permit program established under the Water Pollution Control Law and rules adopted under it, requirements for the maintenance of a system according to the manufacturer's instructions, if available, and requirements and procedures under which a person may demonstrate the required maintenance of a system in lieu of having an inspection conducted when an inspection otherwise is required. The rules also must require that a system that has been or is sited or installed prior to or on the effective date of the rules and that is operating on that date must be deemed approved unless the system is declared to be a public health nuisance by a board of health. (Sec. 3718.02(A)(3).)²

(4) Prescribe procedures for notification to boards of health of the approval of a sewage treatment system or components of a system by the Director of Health under the bill (see "Approval of sewage treatment systems for use in Ohio," below) (sec. 3718.02(A)(4));

(5) Prescribe criteria and procedures under which boards of health must issue installation and operation permits for sewage treatment systems. The rules must require as a condition of an installation permit that the installer of a system warrant that the system was installed in accordance with all applicable rules and design requirements. In addition, the rules must require a board of health, not later than 60 days after the issuance of an installation permit, to certify to the Director on a form provided by the Director that the permit was issued. (Sec. 3718.02(A)(5).)

(6) Require 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 rules must require a board of health, not later than 60 days after the inspection, to certify to the Director on a form provided by the Director that the inspection was performed. (Sec. 3718.02(A)(6).)

(7) Require a board of health to register installers, service providers, and septage haulers that perform work in the health district; prescribe criteria and procedures for the registration; and prescribe criteria for a demonstration of competency as a part of the registration (sec. 3718.02(A)(7)). Installers and septage haulers are, respectively, persons who engage in the business of installing or altering sewage treatment systems or are employed by such persons and those who engage in the collection, transportation, disposal, and land application of domestic septage (sec. 3718.01(F) and (J)). "Domestic septage" means the liquid or solid material removed from a sewage treatment system, portable toilet, or Type

² Under the bill, "manufacturer" means any person that manufactures sewage treatment systems or components of systems (sec. 3718.01(G)).

III marine sanitation device as defined in federal regulations, but does not include grease removed from a grease trap (sec. 3718.01(C)). "Service provider" means a person who services, but does not install or alter, sewage treatment systems (sec. 3718.01(K)). Under the bill, "alter" means to change by making substantive replacements of, additions to, or deletions in the design or materials of an existing sewage treatment system or to change the location of an existing system (sec. 3718.01(A)). "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution that originates from humans and human activities. "Sewage" includes liquids containing household chemicals in solution commonly discharged from a residence or from commercial, institutional, or other similar facilities. (Sec. 3718.01(L).)

(8) Prescribe requirements for the collection, transportation, disposal, and land application of domestic septage in Ohio from a sewage treatment system (sec. 3718.02(A)(8));

(9) Require boards of health to maintain records that are determined necessary to ascertain compliance with the bill and the rules adopted under it (sec. 3718.02(A)(9));

(10) Require 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. In addition, the rules must require a board of health and a manufacturer to provide a copy of the operation and maintenance instructions, if available, upon receiving a written request. (Sec. 3718.02(A)(10).)

(11) Prescribe criteria for the provision of written evidence of compliance with rules pertaining to household sewage treatment for purposes of the Platting Law (see "**Platting; Rules**," below) (sec. 3718.02(A)(11));

(12) 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)(12)).

(13) Prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems that may be used in Ohio (sec. 3718.02(A)(13)).

The Council may adopt any other rules that it determines necessary to implement the bill and to protect the public health and welfare. At least 60 days before adopting any rule, the Council must provide boards of health and any other interested parties with the opportunity to comment on the rule. (Sec. 3718.02(A).)

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 existed 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 for more stringent standards governing household sewage treatment systems, installers, 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 established in 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 by and approval of the Director of Health. A board that proposes to adopt more stringent rules must notify the Department of Health at least 90 days prior to the proposed date of adoption. The Director must approve or disapprove a proposed more stringent rule within 90 days after receiving the board's notice. If the Director fails to approve or disapprove a proposed rule within 90 days after receiving notice of it, the proposed rule must be deemed approved. (Sec. 3718.02(B).)

Regulation of small flow on-site sewage treatment systems by boards of health

The bill authorizes a board of health to regulate the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems in accordance with rules adopted by the Public Health Council under the bill. This authority becomes operative when the rules take effect. If a board chooses to regulate those systems, the board first must send written notification to the Director of Health and the Director of Environmental Protection. (Sec. 3718.021(A) and Section 4.)

If a board of health chooses to regulate small flow on-site sewage treatment systems and later determines that it no longer wants to regulate those systems, the board must notify the Director of Health and the Director of Environmental Protection. Upon the receipt of the notification by the Director of Environmental Protection, the board of health must cease regulating small flow on-site sewage treatment systems, and the Environmental Protection Agency must regulate them. (Sec. 3718.021(B).)

If after a survey conducted under the bill (see '*Compliance by boards of health*,' below) the Director of Health finds that a board of health that has chosen to regulate small flow on-site sewage treatment systems is not complying with the applicable rules adopted by the Public Health Council, the Director must notify the Director of Environmental Protection and the board of health. Upon receipt of the notification, the board must cease regulating small flow on-site sewage treatment systems, and the Environmental Protection Agency must regulate them. (Sec. 3718.021(C).)

Sewage Treatment System Technical Advisory Committee

The bill creates the Sewage Treatment System Technical Advisory Committee consisting of the Director of Health or the Director's designee and ten members who are knowledgeable about sewage treatment systems and technologies to be appointed by the Director. Of the ten members appointed by the Director, one must represent academia, two must represent the interests of manufacturers of household sewage treatment systems, one must represent installers and service providers, two must be health commissioners who are members of and recommended by the Association of Ohio Health Commissioners, one must be a sanitarian who is registered under the Sanitarians Law and is a member of the Ohio Environmental Health Association, one must be an engineer from the Environmental Protection Agency, one must be selected from among soil scientists from the Division of Soil and Water Conservation in the Department of Natural Resources, and one must be a representative of the public who is not employed by the state or any of its political subdivisions and who does not have a pecuniary interest in sewage treatment systems. All appointments to the Committee must be made not later than 60 days after the effective date of the bill. (Sec. 3718.03(A).)

The bill establishes staggered three-year terms for the appointed members of the Technical Advisory Committee and includes standard appointment procedures and requirements. Further, the bill provides that the Director may remove a member from the Committee for failure to attend two consecutive meetings without showing good cause for the absences. (Sec. 3718.03(B).) The Director or the Director's designee must serve as the chairperson of the Committee. The Committee annually must select from among its members a vice-chairperson and a secretary to keep a record of its proceedings. A majority vote of the members of the full Committee is necessary to take action on any matter. The Committee may adopt bylaws governing its operation, including bylaws that establish the frequency of meetings. (Sec. 3718.03(C).)

The bill states that serving as a member of the Technical Advisory Committee does not constitute holding a public office or position of employment under Ohio laws and does not constitute grounds for removal of public officers or

employees from their offices or positions of employment. Members must serve without compensation for attending Committee meetings. (Sec. 3718.03(D).)

In addition, a member of the Committee cannot have a conflict of interest with the position in violation of current ethics law requirements (sec. 3718.03(E)).

The bill requires the Department to provide meeting space for the Committee and requires the Department's staff to assist the Committee in its duties (sec. 3718.03(H)). Finally, the bill exempts the Committee from sunset review (sec. 3718.03(I)).

Duties of Technical Advisory Committee

The Sewage Treatment System Technical Advisory Committee must do all of the following:

(1) Develop with the Department standards and guidelines for use by the Director in approving or disapproving a sewage treatment system or components of a system under the bill (see below);

(2) Develop with the Department an application form to be submitted to the Director by an applicant for approval or disapproval of a sewage treatment system or components of a system and specify the information that must be included with an application form; and

(3) Advise the Director on the approval or disapproval of an application sent to the Director requesting approval of a sewage treatment system or components of a system (sec. 3718.03(F)).

Report of Technical Advisory Committee

If the Technical Advisory Committee meets in a calendar year, the Director of Health must prepare and submit a report concerning its activities to the General Assembly not later than 90 days after the end of the calendar year. The report must discuss the number of applications submitted for approval of new types of sewage treatment systems or components of systems, the number of such systems and components that were approved, any information that the Committee considers beneficial to the General Assembly, and any other information that the Director determines is beneficial to the General Assembly. If the Committee determines that certain information should be included in the report, it must submit the information to the Director not later than 30 days after the end of the calendar year. (Sec. 3718.03(G).)

Approval of sewage treatment systems for use in Ohio

Under the bill, a manufacturer seeking approval for the use of a sewage treatment system or a component of a system in Ohio that differs in design or function from systems or components of systems the use of which is authorized in rules adopted under the bill must request an application form from the Department of Health. The applicant must complete the form and include with it all of the information that is required by the Department and the Sewage Treatment System Technical Advisory Committee. The applicant then must submit a completed application and all required information to the Director of Health. (Sec. 3718.04(A).) Upon receipt of an application, the Director is required to examine the application and all accompanying information to determine if the application is complete. If the Director determines that the application is not complete, he must notify the applicant not later than 14 days after determining that it 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 applicant may resubmit the application to the Director. Not later than 14 days after receipt of a complete application, the Director must notify the 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. (Sec. 3718.04(B).)

In approving or disapproving an application, the Director is required to use the standards and guidelines that the Committee developed with the Department for that purpose (see above). The Director cannot approve 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. (Sec. 3718.04(C).)

If the Director approves an application, he must notify the applicant in writing. The Director also must notify boards of health in accordance with the procedures established in rules adopted under the bill (see above). If the Director disapproves an application, he must notify the applicant in writing and provide a brief explanation for the disapproval. (Sec. 3718.04(D).)

Duties of 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) In accordance with rules adopted by the Council, examine records of boards of health that are determined necessary to ascertain compliance with the bill and rules adopted under it;

(3) Review and approve or disapprove rules proposed by boards of health that are more stringent than the rules that the Council must adopt under the bill (see above). The Director cannot disapprove a proposed rule unless he determines that the proposed rule conflicts with the bill or rules adopted by the Public Health Council under it or fails to promote public health or environmental protection. If the Director disapproves a proposed rule, he must provide a written explanation of the disapproval to the board of health that proposed the rule.

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

(5) Develop with the Sewage Treatment System Technical Advisory Committee standards and guidelines for use by the Director in approving or disapproving a sewage treatment system for use in Ohio and an application form for use by applicants for that approval, including identification of the information that must be included with the form (see above); and

(6) Provide instructions on the operation and maintenance of a sewage treatment system. The Director must provide the operation and maintenance instructions on the Department's web site and must provide a copy of them upon receipt of a written request for the instructions. (Sec. 3718.05.)

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. Unpaid fees become a lien on the affected real property (see "*Procedures regarding unpaid fees and late payment of fees*," below).

Under the bill, these provisions of current law govern the establishment of fees by a board of health for the purpose of carrying out its duties under the bill and rules adopted under it, including a fee for an installation permit issued by the board. 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 3718.06(A)(1).)

Procedures regarding unpaid fees and late payment of fees

Current law specifies that if any owner, leaseholder, or assignee of real property fails to pay a fee as required by rules of a board of health for an operation permit or for the inspection of a household sewage disposal (treatment under the bill) system located on the real property, the health commissioner of the health district or the health commissioner's representative must notify the owner, leaseholder, or assignee of the real property of the amount of the fee and any accrued penalties for late payment of the fee. The owner, leaseholder, or assignee may object to the amount in writing, but if that person fails to pay the fee in a timely manner or fails to object in a timely manner, the health commissioner may certify the amount to the county auditor to be placed on the general tax list and duplicate as a lien on the property. The bill applies these procedures governing unpaid fees and late payment of fees regarding household sewage treatment systems also to unpaid fees and late payment of fees regarding small flow on-site sewage treatment systems. (Secs. 319.281 and 3709.091.)

Installation permit fee for use by Director

The bill authorizes the Council to adopt rules in accordance with the Administrative Procedure Act establishing a fee to be collected from applicants for installation permits for use by the Director for administering and enforcing the bill and rules adopted under it by the Council. A board of health must collect the fee at the same time that it collects the fee established by it for an installation permit. Not later than 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 in the state treasury to the credit of the existing General Operations Fund. Money so credited to the Fund must be used by the Director solely for administering and enforcing the bill and the rules adopted under it by the Council. (Sec. 3718.06(A)(2).)



The bill permits the Director to submit recommendations to the Council regarding the amount of the fee 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 of administering and enforcing the bill and the rules adopted under it by the Council and the total of all money that has been deposited under the bill to the credit of the General Operations Fund. In addition, the Director may include in the report recommendations for modifying the requirements of the bill and the rules adopted under it by the Council. (Sec. 3718.06(B).)

Compliance by boards of health

The bill requires the Director to survey each city and general health district at least once every three years 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 that there is substantial compliance, the Director must place the health district on an approved list. The Director may resurvey an approved health district when the Director believes that a resurvey is necessary. After a resurvey, the Director may remove from the approved list a district that is not substantially complying with the statutory 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 the contracting district collects all fees payable to the board of health under the bill as well as all such 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 carry out the duties of the unapproved district under the bill and rules adopted under it. 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 repay any balance remaining in the applicable fund to the health district when it is placed on or returned to the approved list. (Sec. 3718.07.)

In addition, if a health district is removed from the approved list and the board of health of the district is regulating small flow on-site sewage treatment systems in the district, the Director of Environmental Protection must regulate those systems in that district in accordance with the bill (see above) (sec. 3718.07).

Emergency orders

The bill authorizes the health commissioner or the commissioner's designated representative, without prior notice or hearing and in accordance with the rules adopted by the Council, to 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 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. 3718.09(B).)

Prohibition and enforcement

Prohibition

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 rules adopted under it (sec. 3718.08).

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 permit issued under rules adopted 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 such 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 an intentional violation, the court may assess against the person a civil penalty of not more than \$100 per day of violation. Of any such civil penalties assessed by a court, 75% must be paid to the health district whose board of health brought the complaint, or to the state treasury to the credit of the General Operations Fund if the Director is carrying out the duties of an unapproved health district in which the violation occurred, and must be used for the bill's purposes and the rules adopted under the bill. The remaining 25% of the penalties must be paid 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 bringing the action. (Sec. 3718.10(A).)

Violations that were committed purposely are also subject to a criminal penalty, which is a fine of not more than \$1,000; each day of violation is a separate offense. Money collected from the fines must be distributed to the credit of the fund created by the bill of the health district in which the violation occurred if the district is on the Director's approved list (see above). If the district in which the violation occurred is not on the approved list, the money must be deposited into the state treasury to the credit of the General Operations 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 money must be deposited to the credit of that district's special fund created by the bill. (Sec. 3718.99.)

Administrative remedies

The bill authorizes a board of health to issue, modify, suspend, or revoke enforcement orders to a registration or permit holder 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 establishes procedures by which a board of health may cause the arrest and prosecution of persons neglecting or disregarding its order or may perform, through the board's officers and employees, what the offending persons should have performed. (Secs. 3707.02, not in the bill, and 3718.09(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. 3718.10(B).)

Exemptions from Water Pollution Control Law and related fees

Current law prohibits the causing of water pollution without a permit issued under the Water Pollution Control Law. However, existing law creates several exemptions from this prohibition, including an exemption for septic tanks or any other disposal systems for the disposal or treatment of sewage from single-, two-, or three-family dwellings in compliance with the sanitary code and board of health requirements. The bill instead exempts a household sewage treatment system or a small flow on-site sewage treatment system, as applicable, that is installed in compliance with the bill and rules adopted under it. The bill retains a statement that the exemption does not authorize, without a permit, any discharge that is prohibited by, or for which a permit is required by, federal regulations. (Sec. 6111.04(F)(7).)

Current law requires the Director of Environmental Protection to approve plans for the installation of or change in sewerage or treatment works. In addition, the Director has general supervisory responsibilities for those works. The bill adds to the existing list of exemptions from this requirement an exemption for sewerage or treatment works for the on-lot disposal or treatment of sewage from a small flow on-site sewage treatment system if the board of health of a city or general health district has notified the Director of Health and the Director of Environmental Protection that the board has chosen to regulate the system and the board remains in compliance with the rules adopted by the Public Health Council under the bill concerning such systems. The bill also exempts sewerage or treatment works for the on-lot disposal or treatment of sewage from such a small flow on-site sewage treatment system from the administrative and permitting requirements established in the Water Pollution Control Law and rules adopted under it and from related fees. (Secs. 6111.44(B)(4) and 6111.441.)

Disclosure of information on operation and maintenance of sewage treatment systems at time of transfers of residential real property

Current law requires transferors of certain residential real property to provide potential transferees with forms disclosing specific information regarding the physical condition of the property to be transferred. Examples of that information include, but are not limited to, the source of water supply to the property, the nature of the sewer system serving the property, the condition of the structure of the property, the presence of hazardous materials or substances, and any material defects in the property that are within the actual knowledge of the transferor. The bill requires the Director of Commerce to revise the disclosure form not later than January 1, 2006, to include on the form a statement that information on the operation and maintenance of the type of sewage treatment system that is serving the property is available from the Department of Health or the board of health of the health district in which the property is located. (Sec. 5302.30(C) and (D)(2).)

Inspection and enforcement as 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 "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 who engage in those activities.

The bill includes those activities in the definition of "practice of environmental health" with respect to the administration and enforcement of the bill and requirements established under it. (Sec. 4736.01.)

Platting

Notice of submission of plat and of any meeting concerning it

Under current law, a board of county commissioners, within five days of the submission of a plat for approval, must schedule a meeting to consider the plat and must send a written notice by regular mail to the clerk of the board of township trustees of the township in which the plat is located. The notice must inform the trustees of the submission of the plat and of the date, time, and location of any meeting at which the board of county commissioners will consider or act on the proposed plat. The bill also requires the notice to be sent to the board of health of the health district in which the plat is located. (Sec. 711.05(A).)

Similarly, under current law, whenever a county planning commission or a regional planning commission adopts a plan for the major streets or highways of the county or region, no plat of a subdivision of land within the county or region, with specified exceptions, can be recorded until it is approved by the county or regional planning commission and the approval is endorsed in writing on the plat. Within five days after the submission of a plat for approval, the county or regional planning commission must schedule a meeting to consider the plat and send a notice by regular or electronic mail to the clerk of the board of township trustees of the township in which the plat is located. The notice must inform the trustees of the submission of the plat and of the date, time, and location of any meeting at which the planning commission will consider or act on the plat. The bill also requires the notice to be sent to the board of health of the health district in which the plat is located. (Sec. 711.10.)

Proposed division of parcel of land without plat

Existing law specifies that a proposed division of a parcel of land along an existing public street, not involving the opening, widening, or extension of any street or road, and involving no more than five lots after the original tract has been completely subdivided, may be submitted to the authority having approving jurisdiction of plats for approval without a plat. If the authority acting through a properly designated representative is satisfied that the proposed division is not contrary to applicable platting, subdividing, zoning, or access management regulations or regulations adopted regarding surface or subsurface drainage, it must approve the proposed division within seven working days after submission. The bill also requires that the authority be satisfied that the proposed division is not contrary to household sewage treatment rules adopted by the applicable board of health or the Public Health Council under the bill. (Sec. 711.131.)

Rules

Current law allows a board of county commissioners to adopt general rules governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with existing county highways, for the proper amount of open spaces for traffic, circulation, and utilities, and for the avoidance of future congestion of population detrimental to the public health, safety, or welfare, but a board cannot impose a greater minimum lot area than 4,800 square feet. The rules may require the county department of health to review and comment on a plat before the board acts on it and may also require proof of compliance with any applicable zoning resolutions as a basis for approval of a plat. The bill adds that the rules may require proof of compliance with household sewage treatment rules adopted by the board of health or the Public Health Council under the bill (see above). (Sec. 711.05(B).)

Similarly, existing law requires a county or regional planning commission to adopt general rules governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air, and for the avoidance of congestion of population. The rules may require the county department of health to review and comment on a plat before the commission acts on it and may also require proof of compliance with any applicable zoning resolutions as a basis for approval of a plat. The bill adds that the rules may require proof of compliance with household sewage treatment rules adopted by the board of health or the Public Health Council under the bill (see above). (Sec. 711.10.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-24-03	p. 942
Reported, H. Energy & Environment	05-04-04	pp. 1807-1808
Passed House (67-32)	05-25-04	pp. 1973-1974
Reported, S. Energy, Natural Resources & Environment	11-18-04	p. 2299

H0231-RS-125.doc/jc

