Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 110 of the 128th G.A. **Date**: June 3, 2010

Status: As Recommended by Conference Committee **Sponsor**: Sen. Niehaus

Local Impact Statement Procedure Required: Yes

Contents: To revise the Household Sewage and Small Flow On-Site Sewage Treatment Systems Law

State Fiscal Highlights

- The bill makes changes to the law regarding sewage treatment systems. As a result, there will be additional costs to the Ohio Department of Health (ODH) associated with rule promulgation and administration. ODH will incur additional costs to develop educational programs, in conjunction with local boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. LSC assumes that ODH may have to use some GRF moneys to help pay for this since funds in the Sewage Treatment Innovation Fund (Fund 5CJ0) may not be sufficient to pay for these costs. The bill specifies that rules required to be adopted under the bill must not take effect prior to January 1, 2012.
- ODH could receive additional applications from manufacturers seeking approval for the installation and use, rather than just the use as is currently required, of a sewage treatment system or component. ODH could experience a gain in revenue due to additional approval applications and possibly alteration permits for sewage treatment systems.

Local Fiscal Highlights

- According to the Association of Health Commissioners (AOHC), costs for implementation of any rule changes for household sewage treatment programs could be up to $10,000 per local board. This cost would include administrative costs such as informing the public of changes, additional education for the board staff and the public, passage of local regulations if necessary, reprinting of pamphlets and educational materials, increased call volume, and additional community meetings.
- According to AOHC, the requirement regarding the development of a program for maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/additional duties required on the part of boards in rules and if boards

currently do similar functions. Additionally, if any fee revenues related to these duties were collected, this could help offset costs.

- Local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the process of the issuance of permits for sewage treatment systems, the requirement that the boards provide written documentation of economic impact to an owner, when requested, regarding the approval or disapproval of a system, and the development of educational programs to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. However, local boards of health could realize a gain in revenue for fees associated with operation and alteration permits if they do not currently collect these.
- Local county courts of common pleas could experience an increase in administrative and court costs relating to sewage treatment systems appeals. Filing fees could help offset these costs.
- Sewage treatment system appeals boards are established in the bill for each county. There could be additional administrative duties for county probate courts relating to the establishment of due process procedures. If filing fees are collected for appeals before sewage treatment appeals boards, this could help offset any costs associated with the boards. Members will not receive compensation. However, the bill does not address whether members are to be reimbursed for necessary expenses related to serving on the board.

Detailed Fiscal Analysis

Background

A household sewage treatment system is a system, or a part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling. A small flow on-site sewage treatment system is a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage a day and that does not require a National Pollutant Discharge Elimination System permit issued by the Ohio Environmental Protection Agency.

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

Sewage treatment systems rules

The bill makes changes to the rules the Public Health Council is to adopt. The bill addresses, among other things, the rules governing installing, operating, and altering systems, the siting and designing of systems, issuing permits, inspecting systems, bonding installers, providers, and haulers. The bill also adds some provisions to the rules that are to be adopted. Some of those changes and/or additions are discussed below.

- The bill requires local boards of health to approve or disapprove the installation, operation, and alteration of a system if it is not connected to a sanitary sewage system.
- The bill requires the Council to adopt rules requiring each board of health to develop a program for the administration of maintenance requirements. Rules must include procedures for owners to demonstrate maintenance of a system in lieu of having an inspection. A board must be authorized to inspect any system if there is a good faith complaint, there is probable cause, or proof of required maintenance is not provided. Property owners are required to pay for reasonable costs for sewage effluent testing or evaluation. Rules are to establish a methodology for determining the reasonable costs of an inspection.
- The bill requires boards of health to notify ODH in a format prescribed by the Director and to include information related to the issuance of a permit. Additionally, a board of health, to the extent practicable, must computerize the process of the issuance of permits for sewage treatment systems.

- The bill requires a board of health to inspect a sewage treatment system within 12 months of installation. Currently, an inspection is required 18 months after installation.
- The bill requires a board of health to give notice and an opportunity for a hearing to certain affected property owners.

The bill also requires ODH to develop educational programs, in conjunction with boards of health, to educate owners of sewage treatment systems regarding the proper operation and maintenance of those systems. Also, ODH, in cooperation with a board of health is required to assess the familiarity of the board's staff with best management practices in the use of sewage treatment systems and conduct appropriate training.

The bill declares that a sewage treatment system is causing a public health nuisance if certain situations occur and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation. Some of the situations involve a sewage treatment system that is not operating properly or a blockage in a system causes a backup of sewage or effluent. Under these two situations, a property owner may request a test to be conducted by a board of health to verify a public health nuisance exists. The owner is responsible for test costs. Another situation involves instances where an inspection is conducted by, or under the supervision of, the Environmental Protection Agency or a registered sanitarian, and the test documents ponding of liquid or bleeding of liquid onto the surface of the ground or into surface water. The bill outlines the methods used to determine these situations.

The bill specifies that a sewage treatment system that was in operation prior to the bill's effective date must not be required to be replaced with a new system. The existing system will be deemed approved if the system does not cause a public health nuisance or if it is causing a nuisance, repairs are made to the system, and the nuisance is eliminated as determined by the appropriate board of health.

Boards of health rules and approval process

The bill allows boards of health to adopt rules providing for more stringent standards than those established in rules of the Council in some instances. The bill requires the board, in proposing or adopting the rules, to consider and document the economic impact of the rules on property owners. The bill outlines the procedure for the adoption of these rules.

Under the bill, a board of health must approve or deny the installation, operation, or alteration of sewage treatment systems, the use of which has been authorized in rules or that have been approved for use in this state by the Director of Health. The board must approve an installation, operation, or alteration only in the health district in which the board has jurisdiction through the issuance of a permit in accordance with rules. In determining the approval or disapproval of a system, a board must consider the economic impact on the property owner, the state of available

technology, and the nature and economics of various alternatives. The board is required to provide written documentation of the economic impact if the property owner requests it. "Economic impact" is defined to mean, as applicable, the cost to the property owner for the installation of the proposed sewage treatment system, including the cost of progressive or incremental installation of the system; the cost of an alternative system, including the cost of progressive or incremental installation of the system, that, when installed and maintained properly, will not create a public health nuisance compared to the proposed sewage treatment system; and the costs of repairing the sewage treatment system, including the cost of progressive or incremental installation of the system, as opposed to replacing the system with a new system.

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

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

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

The requirement regarding the development of a program for administration of maintenance requirements of sewage treatment systems could increase costs to local boards of health. The costs would be dependent upon the level of involvement/ additional duties required on the part of boards in rules and if local boards of health are currently involved in duties of a similar nature. Additionally, if any fee revenues related to these duties were collected, this could help offset costs. The changes in relation to public health nuisances could have an impact on local boards of health and possibly OEPA. It is assumed that local boards and OEPA are currently involved in some public health nuisance cases involving sewage. Additionally, the bill specifies that local boards are allowed to charge reasonable fees for tests, which would help offset testing costs.

The local boards of health may also realize an increase in costs associated with the provision that specifies that, to the extent practicable, boards must computerize the

process of the issuance of permits for sewage treatment systems. It is expected that these costs would be incurred up front. However, in the long run, computerization may make the programs more efficient and ultimately decrease costs for boards.

Lastly, requiring local boards to provide an "economic impact" for the approval or disapproval of a system would increase costs to boards if property owners request written documentation.

Sewage Treatment System Technical Advisory Committee

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

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

Approval of sewage treatment systems

Current law establishes requirements governing the submission of applications to the Director of Health for the approval of the use of a sewage treatment system or a component of a system that differs in design from systems the use of which is authorized in rules adopted by the Public Health Council. Applications must be submitted by the manufacturers of such systems or components. The bill requires a manufacturer seeking approval for the installation and use, rather than just the use, of a system or component to submit an application. The bill establishes timelines for approval. The bill specifies that the Director must notify the boards that the sewage treatment system or component of a system that is the subject of the application is approved for statewide use. Additionally, the bill specifies that approval and disapprovals of applications for new systems or components of systems may be appealed in accordance with the Administrative Procedure Act.

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

Fees for permits

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

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

Sewage treatment system appeals board

A property owner may request a hearing with the board of health for the denial of an installation, operation, or alteration permit, the required replacement of a system, or any other final order or decision of a board of health involving sewage treatment systems in which a property owner claims to be aggrieved or adversely affected. A property owner may appeal the results of the hearing regarding this order or decision to an appropriate court of common pleas or a sewage treatment system appeals board, which is established in the bill.

The bill specifies that not later than 90 days after the effective date of the bill, a sewage treatment system appeals board is to be appointed for each county. The boards are to consist of one member appointed by the health commissioner having jurisdiction in the county, one member appointed by the judge of the probate court of the county having the longest continuous service, and one shall be appointed by the director of health. The members are to serve without compensation. However, the bill does not address whether necessary expenses related to serving on the board will be reimbursed.

The judge of the probate court who made an appointment to the board is required to establish due process procedures to be used by the appropriate sewage treatment system appeals boards. The procedures may include filing fees. An appeal before the board is final and no further appeal may be taken.

Courts of common pleas may experience an increase in court costs if individuals file appeals relating to sewage treatment systems. Filing fees may help offset these costs.

There could be additional administrative duties for certain local governmental entities for establishing a sewage treatment system appeals board. In particular, county probate courts could experience increased duties relating to the establishment of due process procedures.

If filing fees are collected for appeals before sewage treatment appeals boards, this could help offset any costs associated with the boards. The bill does not address whether members are to be reimbursed for necessary expenses related to serving on the board.

Great Lakes-St. Lawrence River Basin Water Resources Compact

The bill extends to December 15, 2010, the date at which the Great Lakes-St. Lawrence River Basin Water Resources Compact Advisory Board is to submit final recommendations. Members do not receive compensation. However, if they receive reimbursements for necessary expenses, extending the date could result in additional meetings. If this occurs, it is possible that there could be additional reimbursements to members.

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