

ONSITE WASTEWATER TREATMENT SYSTEMS

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House Bill 5752 as introduced
Sponsor: Rep. James A. Lower

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5753 as introduced
Sponsor: Rep. Abdullah Hammoud

Committee: Natural Resources
Complete to 4-10-18

BRIEF SUMMARY:

Taken together, House Bills 5752 and 5753 would add Part 128 (Onsite Wastewater Treatment Systems) to the Public Health Code to establish state and local standards for onsite wastewater treatment systems (commonly called septic systems). Among other things, the bills would require the Department of Environmental Quality (DEQ) to develop a statewide code to govern the installation, operation, maintenance, and inspection of septic systems; require regular septic system inspections, assessments, or evaluations; require inspection results to be maintained by the DEQ in a statewide database; and establish a Technical Advisory Committee to advise the DEQ regarding septic system standards.

BACKGROUND INFORMATION:

The Michigan Water Strategy is a 30-year planning document developed by the Office of the Great Lakes in collaboration with the Departments of Environmental Quality, Natural Resources, and Agriculture and Rural Development and the Michigan Economic Development Corporation. Its final part was published in October of 2016.¹ Among its recommendations is that the state develop and implement, by 2019, “a uniform statewide sanitary code that is flexible and provides standards for site suitability based on risk.” The document notes that “Michigan is the only state without a specific law related to individual or small-quantity on-site wastewater treatment systems.”

DETAILED SUMMARY:

House Bills 5752 and 5753 would add Part 128 to the Public Health Code to establish state and local standards for the installation, operation, maintenance, and inspection of onsite wastewater treatment systems.

Under the bills, an *onsite wastewater treatment system* would mean a system of components and appurtenances used to collect and treat sewage and wastewater from one or more dwellings or structures and discharge not more than 10,000 gallons per day of the

¹ http://www.michigan.gov/documents/deq/deq-ogl-waterstrategy_538161_7.pdf

resulting effluent to a soil dispersal system on property owned or controlled by the owner of the onsite wastewater treatment system.

A **conventional system** would mean an onsite wastewater treatment system that contains a watertight septic tank with nonuniform distribution of effluent to a soil dispersion system that does not include any components of an alternative technology. An **alternative system** would mean a system that is not a conventional system but is at least as effective as a conventional system. An **experimental system** would mean a system that is in experimental use and requires further testing regarding its effectiveness and acceptability.

A **proprietary product** would mean a treatment or distribution product held under patent or trademark that significantly contributes to treatment performance or effluent dispersal objectives. **Nonproprietary technology** would mean a wastewater treatment or distribution technology, method, or product that is not subject to a patent or trademark and that significantly contributes to the attainment of treatment or dispersal objectives.

Authorized local health departments – conventional systems

Under HB 5753, the DEQ would authorize a local health department to administer the proposed Part 128 for conventional systems if the local health department met the following conditions:

- Adopted regulations that provide protection for public health and the environment at least equivalent to Part 128. The regulations would be submitted to the DEQ for review and approval. Except for point of sale ordinances (see below), the regulations could require a greater level of public health and environmental protection than that provided by Part 128.
- Adopted regulations consistent with Part 128 to carry out responsibilities under that part and the statewide code (see below), including authority to do the following:
 - Conduct site evaluations, issue construction permits, and perform interim and final inspections.
 - Issue notices and penalties to persons who violate Part 128 or endanger public health or the environment.
 - Respond to complaints regarding an onsite wastewater treatment system failure.
 - Provide an administrative review for anyone affected by a local health department order, decision, or notice.
- Maintained qualified staff to administer a program for conventional systems. Qualified staff would have to meet the following:
 - Possess at least a four-year bachelor's degree in environmental health, chemistry, biology, geology, or engineering.
 - Obtain at least eight hours of training, including at least four hours of field training on the U.S. Department of Agriculture soil classification system.
 - Demonstrate competency regarding local sanitary regulations, state criteria for subsurface sewage disposal, and the Land Division Act.
 - Demonstrate competency regarding the Michigan local public health accreditation program and minimum program requirements pertaining to onsite wastewater treatment systems.

- Conduct at least ten supervised field evaluations of onsite wastewater treatment system designs and ten supervised final inspections.
- Conduct, in a way that demonstrates understanding of the onsite wastewater treatment program, at least five solo field evaluations of onsite wastewater treatment system designs and five solo final inspections.
- Attend and observe at least two complete onsite wastewater treatment system installations from beginning to end.

Authorized local health departments – alternative systems

Under HB 5752, the DEQ could authorize a local health department to administer the proposed Part 128 for alternative systems if the local health department met the authorization requirements for conventional systems, above, and also adopted regulations consistent with Part 128 to carry out responsibilities under that part, including authority to do the following:

- Review, evaluate, approve, or reject applications, plans, and specifications to alter, install, repair, or replace alternative systems.
- Issue construction permits for alternative systems (see below).
- Issue operating permits to ensure the long-term maintenance of alternative systems.

Point of sale ordinances

HB 5752 would prohibit local units of government from adopting a point of sale ordinance related to onsite wastewater treatment and would require local units to phase out or repeal any existing point of sale ordinances requiring inspections of onsite wastewater treatment systems within three years after the effective date of HB 5752. ***Point of sale ordinances***, generally speaking, require local inspection of septic systems prior to the sale or transfer of a property.²

Construction permits

HB 5752 would prohibit a person from installing, constructing, altering, or repairing a conventional or alternative system unless he or she has received a construction permit from the DEQ or an authorized local health department. (The project would also be subject to any permits required under Part 31 or 41 of the Natural Resources and Environmental Protection Act.) A local unit of government would not be allowed to issue a building permit for a residence or facility that will be served by an onsite wastewater treatment system unless that system has been issued a construction permit under Part 128.

A construction permit for the installation of an alternative system would be issued if the soils, site conditions, and operating conditions are appropriate for use of the alternative system in compliance with the statewide code (see below). The alternative system would also have to use either a proprietary product that has been registered for use by the DEQ (see below) or a nonproprietary technology that meets the recommended standards and guidance under the statewide code.

² See <https://www.mymlsa.org/septic-system-ordinances/>

The DEQ would have to develop recommended standards and guidance to assist local health departments in permitting different types of onsite wastewater treatment systems, including nonproprietary technologies such as sand filters; proprietary products such as aerobic treatment systems and packed bed filters; and proprietary products such as subsurface dripline products or gravelless distribution products.

Proprietary product registration

Beginning January 1, 2020, a person would be prohibited from installing, constructing, altering, or repairing a proprietary product unless he or she has received a construction permit from the DEQ or an authorized local health department and the product has been registered by the DEQ for use in this state.

A person could apply for registration of a proprietary product by submitting an application with the required information to the DEQ. The DEQ could charge a \$3,000 fee to cover its costs in reviewing applications for registration. Within 30 days after receiving an application and fee, the DEQ would have to review the application and determine whether it is administratively complete. Within 60 days after receiving an administratively complete application, the DEQ would have to approve or deny the application and notify the applicant in writing. A registration would be valid for five years. A registration could be renewed, and there would not be a fee for renewal.

The DEQ, after a contested case hearing, could deny, suspend, or revoke a registration if the department finds that the registration was obtained or applied for through misrepresentation or fraud; the registrant used fraudulent, coercive, or dishonest practices in transacting business under its registration; the application review fees were not paid; or field reviews show that the product does not function or perform as designed.

Technical Advisory Committee

HB 5753 would create the Technical Advisory Committee within the DEQ. Within 90 days after HB 5752 takes effect, the governor would appoint to the committee individuals who have technical or scientific expertise regarding onsite wastewater treatment systems, as follows:

- Four regional local health department representatives recommended by a state organization representing local health departments.
- Two professional engineers.
- Two hydrogeologists.
- One university representative.
- One onsite wastewater treatment system product manufacturer.
- One onsite wastewater treatment system installer.
- One onsite wastewater treatment system service provider.
- Two representatives of the DEQ.
- One state epidemiologist.
- One individual representing users of onsite wastewater treatment systems.

The members of the committee would serve for four-year terms or until a successor is appointed. Committee members would serve without compensation, but could be

reimbursed for expenses. The governor could remove a member of the committee for good cause, including incompetence or malfeasance in office. Vacancies on the committee would be filled for the unexpired term in the same manner as the original appointment.

After its first meeting, at which it would elect a chairperson and other officers, the committee would meet at least bimonthly, but it could meet more frequently at the call of the chairperson or if requested by DEQ. The committee's business would be conducted at a public meeting held in accordance with the Open Meetings Act, and documents created, used, or held by the committee in the performance of official business would be subject to the Freedom of Information Act.

The committee would advise the DEQ regarding the following:

- Recommended standards and guidance for onsite wastewater treatment system management.
- Recommended standards and guidance for alternative onsite wastewater treatment systems.
- Proprietary product testing and design standards and recommended standards and guidance for their use.
- Nonproprietary technologies and recommended standards and guidance for their use.
- Inspection elements and reporting.
- Qualifications and documentation required for registered inspectors.
- Qualifications required for individuals involved in onsite wastewater treatment system management who are not registered inspectors.
- Continuing education requirements for individuals involved in onsite wastewater treatment system management.

The committee could consult with experts in the field, including from environmental organizations, financial organizations, home builders and home sellers, local units of government, and conservation districts. In performing its duties, the committee would have to consider field performance data regarding a product or technology; factors that may affect the operation of onsite wastewater treatment systems, such as potential use or local soil conditions; the certification of onsite wastewater treatment systems by NSF International or another recognized certifying agency; and sufficient theory and applied research to document the efficacy of onsite wastewater treatment systems.

The DEQ would provide administrative support to the committee.

Statewide code

HB 5753 would require the DEQ to promulgate rules, after consultation with the Technical Advisory Committee, to establish a statewide code containing performance-based standards for onsite wastewater treatment systems. The rules would have to be promulgated within three years after HB 5752 takes effect. The rules would have to provide baseline protection for public health and the environment, including the following:

- Minimum standards and criteria for onsite wastewater treatment system siting, design, and installation.

- Wastewater effluent standards.
- Corrective actions necessary for systems that fail to meet these standards.
- Requirements for the construction approval process used by the DEQ and local health departments for onsite wastewater treatment systems.
- Requirements for the operation, inspection, and maintenance of onsite wastewater treatment systems, including defining the routine maintenance required to ensure the system's continued proper performance.
- Requirements for approval of conventional, alternative, and experimental wastewater treatment system products, components, or devices.
- Criteria for requesting and granting appeals by local health departments.
- Criteria for allowing continued use of approved onsite wastewater treatment systems for which a construction permit was issued prior to the effective date of the statewide code if the system can be managed in a way that effectively treats sanitary sewage while protecting public health and the environment, including surface waters and groundwater quality.
- Qualifications and continuing education requirements for individuals involved in the management of onsite wastewater treatment systems.
- A requirement that septic tanks installed or altered after the effective date of HB 5753 contain a septic tank access riser and secondary safety device.

Septic tank assessments

HB 5752 would require a person that owns a conventional system to have a septic tank assessment conducted on that system at least once every ten years. If a septic tank evaluation (see below) had been conducted on that system, an assessment would be required within ten years after that evaluation.

A septic tank assessment would have to be conducted by a local health department, a registered inspector (see below), or a septic waste servicer licensed under Part 117 of the Public Health Code. The individual conducting the septic tank assessment would have to do the following:

- Identify the size and condition of the septic tank.
- Determine the level of effluent in the septic tank prior to any pumping.
- Pump out the septic tank if the total depth of scum plus sludge layers is 1/3 or more of the septic tank's depth.
- Identify any evidence of *failure* of the onsite wastewater treatment system and whether the failure presents an *imminent danger*.

Failure would mean any of the following:

- A discharge of sewage to the surface of the ground.
- A discharge of sewage or effluent into surface water or directly into groundwater.
- An inability of the system to accept sewage at the rate it is being discharged.
- A structural failure of the tank or its associated parts.
- A discharge of treated wastewater that does not comply with applicable standards.

- An illegal connection to the system or illegal discharge from the system.
- Evidence of effluent in the tank above or below the invert of the outlet.

Imminent danger would mean a condition or practice that could reasonably be expected to cause death, disease, or serious physical harm either immediately or before the danger can be eliminated through routine enforcement procedures.

The individual conducting the assessment would have to document the information gathered in an inspection report and provide that report to the owner of the onsite wastewater treatment system and to the authorized local health department or the DEQ within ten days after completing the assessment. If the inspection report identified evidence of failure, the owner of the onsite wastewater treatment system would have to remedy the failure as directed by the authorized local health department or the DEQ.

The entity conducting an assessment would be required to charge a \$25 state administrative fee, in addition to whatever fee it charges for conducting the assessment. State administrative fees would be forwarded for deposit in the Onsite Wastewater Treatment System Administration Fund (see below).

Onsite wastewater treatment system evaluations

HB 5752 would require the owner of a conventional system to arrange for an onsite wastewater treatment system evaluation to be conducted on the conventional system if any of the following apply:

- Any form of inspection other than a septic tank assessment is requested or permitted by the property owner.
- A complaint is filed with the local health department or the DEQ based on a suspected failure of the system, and the local health department or the DEQ determines that there is reasonable cause for an evaluation to be conducted.
- A change in use is proposed that would increase the use of an existing conventional system.
- The owner of the property on which the system is located applies for a building permit for a new structure or an addition to a structure.

An onsite wastewater treatment system evaluation would have to be conducted by the DEQ, an authorized local health department, or a registered inspector (see below). The individual conducting the septic tank assessment would have to do the following:

- Identify the size and condition of the septic tank.
- Verify that all sewage-related plumbing fixtures are connected to the septic tank.
- Determine the level of effluent in the septic tank.
- Evaluate the treatment and dispersal system following the septic tank.
- Document evidence of *failure* of the onsite wastewater treatment system and whether the failure presents an *imminent danger*.
- Determine if the total depth of scum plus sludge layers is 1/3 or more of the septic tank's depth.

The individual conducting the evaluation would have to document the information gathered and the findings of the evaluation in an inspection report and provide that report to the owner of the onsite wastewater treatment system and to the authorized local health department or the DEQ within fifteen days after completing the assessment. If the evaluation identifies a need for the septic tank to be pumped, the owner of the system must have the system pumped by a licensed septage waste hauler within 30 days of the inspection report. If the inspection report identifies evidence of failure causing an imminent public health hazard, the owner of the onsite wastewater treatment system would have to remedy the failure as directed by the authorized local health department or the DEQ.

The DEQ or an authorized local health department would be required to charge a reasonable fee for conducting an onsite wastewater treatment system evaluation that does not exceed the cost of doing so. In addition, the entity or individual conducting the evaluation would have to charge an additional \$25 state administrative fee. State administrative fees would be forwarded for deposit in the Onsite Wastewater Treatment System Administration Fund (see below).

An onsite wastewater treatment evaluation would be valid for five years, as long as there is not a failure of the system or a change to the use of the system during that time period.

Registered inspectors

Beginning January 1, 2020, an onsite wastewater treatment system evaluation could be conducted only by the DEQ, a registered inspector, or qualified local health department staff.

The educational and training requirements for qualifying as a registered inspector or to conduct evaluations would be established in the statewide code. The DEQ could also review and approve a program to qualify inspectors of onsite wastewater treatment systems that is conducted by an organization or authorized local health department and accept inspectors qualified through that program as qualifying to be registered inspectors; individuals registered through such a program would still have to pay the application fee and thereafter meet DEQ requirements as specified in the statewide code.

An individual could apply to become a registered inspector by submitting an application to the DEQ with the information the DEQ requires to document his or her qualifications. The DEQ could charge a \$180 application fee. Registrations would be reviewed every three years by the DEQ and renewed for individuals who continue to meet the requirements.

After a contested case hearing, an inspector registration could be denied, suspended, or revoked for fraud or deceit in obtaining or renewing the registration; for gross negligence, incompetence, or misconduct in conducting or reporting an inspection; for failure to complete continuing education requirements; for submission of a record of inspection that knowingly is based on false, incorrect, misleading, or fabricated information; or for failure to pay required fees.

The DEQ would be required to maintain a list of registered inspectors and make that information available electronically to the public.

Alternative system inspections

HB 5752 would require an alternative system to be inspected by the DEQ, an authorized local health department, or a registered inspector at least once every five years unless otherwise provided in the statewide code.

Onsite Wastewater System Electronic Database

Under HB 5752, the DEQ would be required to maintain and make available to the public an Onsite Wastewater System Electronic Database for recording and tracking the results of septic tank assessments and onsite wastewater system evaluations. The database would be prohibited from containing personal information related to the owner of an onsite wastewater treatment system.

Onsite Wastewater Treatment System Administration Fund

HB 5752 would create the Onsite Wastewater Treatment System Administration Fund within the state treasury. The application fees, state administrative fees, system evaluation fees, and registration application review fees collected under Part 128 would be deposited in the Fund. The DEQ would expend money from the fund, upon appropriation, only to administer Part 128 and to provide grants to local health departments to carry out their responsibilities under Part 128.

Penalty for false information

A person that knowingly submitted to the DEQ or a local health department false, incorrect, fabricated, or misleading information related to an onsite wastewater treatment system would be guilty of a misdemeanor punishable by a fine of up to \$10,000 for each violation or imprisonment for up to 1 year, or both.

Other provisions

The bills give the DEQ and local health departments exclusive jurisdiction over the regulation, permitting, and inspection of onsite wastewater treatment systems. To the extent that a local health department is not authorized to implement the proposed Part 128, the DEQ would have that responsibility. The DEQ could enter into agreements, contracts, or cooperative arrangements with appropriate authorized local health departments or other persons for purposes of implementing and administering Part 128.

Part 127 of the Public Health Code addresses, among other things, outhouses and septic tank disposal systems. HB 5753 would amend Section 12752, within that part, to specify that onsite wastewater treatment systems are subject to Part 128.

Each bill would take effect 90 days after being enacted. The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

Proposed MCL 333.12801 et seq. (HB 5752)

MCL 333.12752 and proposed MCL 333.12802, 333.12808, and 333.12809 (HB 5753)

FISCAL IMPACT:

The precise net fiscal impact of a statewide onsite wastewater treatment regulation program on both state and local units of government is difficult to project as Michigan has not administered such a program previously; the bills would likely generate both new costs and revenues. House Bill 5752 would create the Onsite Wastewater Treatment System Administration Fund to support the program at the state level and to provide grants to local health departments to cover their respective programmatic costs. The fund would receive revenue from proprietary product registration application fees of \$3,000, inspector registration fees of \$180, and administrative fees of \$25. The DEQ projects proprietary product registrations to generate about \$15,000 annually after an initial year of \$60,000 in revenue, inspector registrations to generate about \$60,000 in annual revenue, and administrative fees revenue to average about \$3.25 million annually. The DEQ estimates that the fund would receive just over \$3.3 million in annual revenue after the first year of the program. It is uncertain whether specific program costs will match these respective revenue projections. The bills provide for the DEQ to cover programmatic costs incurred by local governments through grants from the fund; it is also uncertain whether these grants will match these local costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.