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Senate Bill 71 (as introduced 1-25-05)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 10-5-05

CONTENT

The bill would add Part 50 (On-Site Disposal Systems) to the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- **Require the Department of Environmental Quality (DEQ) to develop a model county ordinance establishing standards for the design, installation, and maintenance of on-site disposal systems.**
- **Prohibit the transfer of property containing an on-site disposal system unless the system had been inspected and a written copy of the inspection report was provided to the prospective transferee.**
- **Require the DEQ to develop and each county to distribute educational materials to owners of on-site disposal systems.**

The bill also would amend Part 52 (Strategic Water Quality Initiatives) of NREPA to allow the DEQ to use, upon appropriation, a maximum of \$5 million from the Strategic Water Quality Initiatives Fund for grants to counties to conduct inspections of on-site disposal systems.

The bill would require the Department of Environmental Quality to prepare a model county ordinance that would establish standards for the design, installation, and maintenance of on-site disposal systems, which would be defined in the bill as natural systems or mechanical devices used to collect, treat, and discharge or reclaim wastewater from one or more dwelling units without the use of community-wide sewers or a centralized treatment facility.

The model ordinance would have to include all of the following:

- A prioritization procedure that would identify and first address those systems that are at greatest risk to ground or surface waters of the State, including waters identified as impaired under Section 303(d) of the Federal Water Pollution Control Act (described in **BACKGROUND**), and areas identified as having significant ecological importance.
- Standards for the minimum height of the system above groundwater before fill.
- Standards for siting and maintenance that would require consideration of soil permeability.
- Standards for siting and maintenance based on distance from a water body.
- Standards that would address the appropriateness of a system based on current use.

The model ordinance could require different standards for on-site disposal systems based upon the geologic conditions in the system's location or proposed location.

The bill would prohibit the transfer of property containing an on-site disposal system unless the system had been inspected and a written copy of the inspection report was provided to the prospective transferee as required under the Seller Disclosure Act. (That Act requires that a transferor or his or her agent provide a written disclosure statement to a prospective transferee before the transferor executes a binding purchase agreement or an installment sales contract with the prospective transferee. The Act provides that if any amendment to the disclosure is delivered after the execution of the purchase agreement, the prospective transferee may terminate the purchase agreement within certain time limits.)

The inspection of the on-site disposal system would have to determine whether the system was in compliance with all applicable county ordinances, whether the system was functioning in the designed manner, and whether the system's holding tank needed to be emptied. For systems installed on or after the effective date of an applicable county ordinance, the inspection would have to determine the actions needed to bring the system into compliance with the ordinance. For systems installed before the effective date of such an ordinance, the inspection would have to determine the actions needed to allow the system to function as designed. The actions described in the report would have to be taken within one year after the report was provided to the prospective transferee.

The inspection of an on-site disposal system would have to be conducted by the county in which the system was located, or by a person authorized by the county to conduct the inspection. The authorized person or the county could charge a reasonable fee, not to exceed the cost of conducting the inspection.

The prohibition against a transfer without an inspection would not apply to the transfers described in Section 3 of the Seller Disclosure Act, i.e.:

- Transfers pursuant to court order.
- Transfers to a mortgagee by a mortgagor or successor in interest who is in default.
- Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure.
- Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- Transfers from one co-tenant to one or more other co-tenants.
- Transfers made to a spouse, parent, grandparent, child, or grandchild.
- Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance.
- Transfers or exchanges to or from any governmental entity.
- Transfers made by a person licensed under Article 24 (Residential Builders) of the Occupational Code of newly constructed residential property that has not been inhabited.

Under the bill, each county would have to provide educational materials to owners of on-site disposal systems located within its jurisdiction at least once each year. The Department of Environmental Quality would have to develop these educational materials and provide them to the counties for distribution.

Part 52 of the NREPA provides for a Strategic Water Quality Initiatives Fund within the State Treasury, and authorizes money from the Fund to be spent, upon appropriation, only for loans and for the costs of administering the Fund.

The bill also would authorize the use of up to \$5.0 million of money in the Fund, upon appropriation, for grants to counties to conduct inspections of on-site disposal systems under the bill. Of the money appropriated, the DEQ could not use more than 5% for administrative costs.

MCL 324.5204 et al.

BACKGROUND

Under Section 303(d) of Title III of the Federal Water Pollution Control Act, each state must identify waters within the state for which existing effluent limitations are not stringent enough to implement any water quality standard applicable to such waters. The state must establish a priority ranking of the waters, based on the severity of the pollution and the uses to be made of such waters. Each state also must establish the waters for which controls on thermal discharges under the Act are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife. In addition, the state must establish for the waters the total maximum daily load of pollutants necessary to implement the applicable water quality standards, and the maximum daily thermal load to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. Each state must submit a list of the identified waters and the established loads for approval of the administrator (the Director of the Environmental Protection Agency) pursuant to the Act.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would cost the State up to \$5.0 million from the Strategic Water Quality Initiatives Fund. Providing the funding in the form of grants instead of loans would reduce the loan capacity of this program. There also would be incremental costs for staff support and for providing educational material to counties for distribution to owners of on-site disposal systems.

Local units of government would incur costs for the required inspections, although those costs could be recovered by fees charged to disposal system owners.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.